

**BENICIA CITY COUNCIL  
REGULAR MEETING AGENDA**

**City Council Chambers  
July 01, 2014  
7:00 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 (7:00 PM):**

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**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  
Application due date: August 1, 2014

Historic Preservation Review Commission  
1 unexpired term  
Application due date: August 1, 2014

Economic Development Board  
2 full terms  
1 unexpired term  
Application due date: August 1, 2014

Human Services Board  
3 full terms  
Application due date: August 1, 2014

Benicia Housing Authority  
2 full terms  
Application due date: August 1, 2014

Parks, Recreation & Cemetery Commission  
1 full term  
Application due date: August 1, 2014

Finance Committee  
1 unexpired term  
Application due date: August 1, 2014

Community Sustainability Commission (Student Commissioner)  
1 full term  
Application due date: August 1, 2014

## **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**

Update from City Attorney

**B. PROCLAMATIONS.**

1. In Recognition of Parks Make Life Better Month - July 2014
2. In Recognition of outgoing Poet Laureate, Lois Requist
3. In Recognition of Benicia Old Town Theatre Group's 50th Year of Providing Community Theatre

**C. APPOINTMENTS.**

1. Appointment of Nancy Craig-Schram to the Arts & Culture Commission for a four year term ending January 31, 2018.

**D. PRESENTATIONS.**

1. TULA SISTER CITIES PRESENTATION REGARDING TULA DELEGATION VISIT JULY 2-7, 2014

**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 JUNE 17, 2014 CITY COUNCIL MEETING. (City Clerk)**
- B. BAY AREA CHARGE AHEAD PROJECT TWO (BAYCAP 2) - ELECTRIC VEHICLE CHARGING STATIONS. (City Manager)**

The California EV Alliance applied for and was awarded a California Energy Commission (CEC) grant (\$474,052) to install 37 Level 2 electric chargers at 18 sites in the North and East Bay of the San Francisco Bay Area. Three of those Level 2 stations will be installed in Benicia, one at the Community Center, and two at the planned Industrial Park Bus Hub provided Council approves participation in this program. The grant agreement has been signed between the CEC and EV Alliance and now Benicia is required to sign an Approval to Proceed agreement with ABM, the contractor responsible for installing the stations at all 37 sites in the Bay Area. The stations are free of charge to the City, but the City will be responsible for the first two years of annual Network Services Charges (\$460 per station, 3 stations) totaling \$2,760.

**Recommendation: Adopt the resolution authorizing the City Manager to execute the Approval to Proceed agreement between the City and ABM to install three electric vehicle charging stations in Benicia.**

- C. AWARD OF CONSTRUCTION CONTRACT FOR THE SAFE ROUTE TO SCHOOL PROJECT AND APPROVAL OF AN AGREEMENT WITH THE SOLANO TRANSPORTATION AUTHORITY TO SECURE THE GRANT FUNDING. (City Manager)**

This grant-funded project will eliminate gaps in the sidewalk network on routes to Robert Semple Elementary School; install pedestrian safety improvements on Dempsey Drive for school children crossing from Matthew Turner Elementary School to the Community Park parking lot and Southampton area beyond; and install flashing beacons on Southampton Road for students from the Benicia Middle School.

**Recommendation: Adopt resolutions:**

- 1) Approving a One Bay Area Grant (OBAG) Funding Agreement between the Solano Transportation Authority (STA) and City of Benicia for the Benicia Safe Route To School Project, and authorizing the City Manager to execute the agreement on behalf of the City subject to minor revisions by the City Attorney; and**
- 2) Accepting bids for the Benicia Safe Route to School (SR2S) Project, awarding the construction contract to JJR Construction, Inc. in the amount of \$123,910, and authorizing the City Manager to execute the contract on behalf of the City.**

**D. ESTABLISHMENT OF THE ANNUAL APPROPRIATIONS LIMIT PURSUANT TO ARTICLE XIIB OF THE CALIFORNIA STATE CONSTITUTION FOR FISCAL YEAR 2014-15. (Interim Finance Director)**

Article XIIB of the State Constitution requires cities to limit their growth in appropriations to a formula with options based upon the increase in their city or county population and the increase in non-residential construction or California per capita income. The resolution established the formula options and appropriations limit for Fiscal Year 2014-15. The City currently has a \$52.1 million margin between the appropriations limit and the approved appropriations budget for FY14-15.

**Recommendation: Adopt the resolution establishing the maximum allowable appropriations limit for Fiscal Year 2014-15 in the amount of \$79,332,036.**

**E. RESOLUTION SETTING THE FISCAL YEAR 2014-15 SECURED TAX RATE FOR BONDED INDEBTEDNESS FOR THE REFUNDING GENERAL OBLIGATION BONDS, SERIES 2012. (Interim Finance Director)**

Each year, the City is required to adopt a resolution setting the bonded indebtedness secured tax rates for placement on the Solano County property tax roll. Due to a slight increase in Assessed Valuation, the rate for each homeowner will have a decrease from last year's .01433 to .0137 per hundred dollars of assessed valuation. The total amount to be collected on the property tax roll for Fiscal Year 2014-15 is \$640,932, which will be used to pay the principal and interest payments on the 2012 Refunding General Obligation Bonds.

**Recommendation: Adopt the resolution setting the Fiscal Year 2014-15 bonded indebtedness tax rate for the Refunding General Obligation Bonds, Series 2012.**

**F. ACCEPTANCE OF THE CITY CEMETERY DRAINAGE PROJECT. (Parks and Community Services Director)**

On October 29, 2013 construction plans and specifications were made available for public bidding. On November 18, 2013 the bidding period closed and the City received and opened nine (9) bids. The contractor, Team Ghilotti, Inc., was low bid. City Council awarded the project on January 7, 2014. Construction began on March 10, 2014 and consisted of trenching, pipe and rip rap installation and hydro-seeding to help stabilize the hillside. The work was completed on April 10, 2014 to the satisfaction of staff.

**Recommendation: Adopt the resolution accepting the City Cemetery Drainage Project, along with change orders as complete and authorizing**

**the City Manager to sign the notice of completion on behalf of the City, and authorizing the City Clerk to file said notice with the Solano County Recorder.**

**G. AMEND CONTRACT WITH WATTZON FOR RESIDENTIAL WATER/ENERGY SAVINGS PROGRAM. (City Manager)**

In June 2012, the City entered into a contract with WattzOn for a residential water/energy program. This program is funded through Valero/Good Neighbor Steering Committee Settlement Agreement funds. Given the drought, WattzOn has proposed program changes to reassign funds which will provide for additional home assessments, personalized reports for high water users and more. No additional funds are being requested.

**Recommendation: Adopt a resolution amending the contract between the City and WattzOn for residential water/energy savings program.**

**H. APPROVE 2014-2015 CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BENICIA AND BENICIA MAIN STREET. (Economic Development Manager)**

Staff is proposing a contract for services for a term of one year (July 6, 2014-July 5, 2015) between the City and Benicia Main Street. The contract is for a sum of \$100,000 to provide services that support community activities, atmosphere, and visitor attraction.

**Recommendation: Adopt proposed Resolution approving an agreement with Benicia Main Street ("BMS") for 2014-15 for Downtown activity / support services.**

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

**VIII. BUSINESS ITEMS (7:45 PM):**

**A. LIGHTING AND LANDSCAPING (LLD) PUBLIC HEARING AND ADOPTION. (City Manager)**

The items scheduled for consideration at this meeting will complete the process for levying assessments for Fiscal Year 2014-15 through the Solano County Auditor-Controller's Office for collection of the assessments with the property tax bills. Should the City Council conclude, after receiving comments from interested persons during the public hearing, that any assessment should be amended, no action should be taken on the resolution ordering the maintenance of existing improvements. Staff would then modify the report as

directed and bring the matter back for final approval on July 15, 2014. However, this matter must be concluded by August 1, 2014 to meet the filing deadline with the Solano County Auditor-Controller's Office.

**Recommendation: 1. Conduct a public hearing to receive oral statements and written comments concerning the City of Benicia Landscape and Lighting Assessment District for the 2014-15 fiscal year. At the conclusion of the public hearing,**  
**2. Adopt the resolution ordering the maintenance of existing improvements in all five zones of the District, confirming the Assessment Diagram, approving the Engineer's Report and ordering the levy and collection of certain assessments for the City of Benicia Landscape and Lighting District for Fiscal Year 2014-15.**

**B. FILLING THE VACANCY IN THE OFFICE OF CITY TREASURER. (City Attorney)**

The Government Code provides that the City Council may fill a vacancy in the office of City Treasurer by either appointing someone to the office or calling a special election to fill the office. It was decided at the Council's May 27, 2014 meeting to ask for applications with the intent to appoint someone to fill the vacancy. The applications received by the June 10, 2014 deadline are attached. In case the Council would like to call a special election, those documents are attached as well.

**Recommendation: Review the applications, interview the applicants and appoint a City Treasurer to fill the vacancy created by the passing of City Treasurer H.R. Autz. This should be done by adopting a resolution. In addition, resolutions are attached to have the people elect a treasurer in November and/or to place a ballot measure to make the position appointed.**

**C. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA OF INTENTION TO LEVY REASSESSMENTS AND TO ISSUE REFUNDING BONDS UPON THE SECURITY THEREOF, RELATING TO THE BENICIA MCALLISTER AREA ASSESSMENT DISTRICT  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING REASSESSMENT REPORT FOR THE CITY OF BENICIA, BENICIA MCALLISTER AREA ASSESSMENT DISTRICT, CONFIRMING AND ORDERING THE REASSMENTS AND AUTHORIZING AND DIRECTING ACTIONS WITH RESPECT THERETO  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE ISSUANCE OF LIMITED OBLIGATION REFUNDING BONDS, PROVINGING FOR EXECUTION OF A FISCAL AGENT AGREEMENT, AND APPROVING AND AUTHORIZING OTHER MATTERS**

## **RELATED THERETO. (Interim Finance Director)**

The City, in 2004, issued \$11,700,000 principal amount of Limited Obligation Improvement Bonds for the Benicia McAllister Area Assessment District in order to finance various public improvements and to refund a portion of certain outstanding assessment bonds. The 2004 bonds are payable from special assessments levied on properties in the Assessment District. The current outstanding principal amount of the 2004 bonds is \$8,495,000.

Due to the current low interest rates in the tax-exempt bond market, an opportunity exists for the City to issue bonds to refund the 2004 bonds, and thereby lower the annual assessments on properties in the Assessment District. On June 17, 2014, the City Council adopted a resolution directing staff to proceed with the preparation of documents for the refunding bonds, and designating the consultants necessary to assist City Staff with that effort.

The actions needed to complete the refunding of the 2004 bonds include (a) adoption of a resolution of intention to levy reassessments on properties in the Assessment District and to issue refunding bonds, which directs Willdan Financial Services to prepare a report for the reassessment proceedings and provides notice that the City Council intends to issue refunding bonds payable from the reassessments; (b) adoption of a resolution adopting the reassessment report, confirming the reassessments that will supplant the current assessments on parcels in the Assessment District, and directing recordings and other actions related to the reassessments; and (c) adoption of a resolution authorizing the issuance and sale of limited obligation refunding bonds and approving a fiscal agent agreement and a bond purchase and rate lock agreement in connection therewith.

**Recommendation: 1) Adopt resolution of intention to levy reassessments and to issue refunding bonds upon the security thereof for the Benicia McAllister Area Assessment District.**

**2) Adopt resolution adopting reassessment report for the assessment district, confirming and ordering the reassessments and authorizing and directing actions with respect thereto.**

**3) Adopt resolution authorizing the issuance of limited obligation refunding bonds, providing for execution of a Fiscal Agent Agreement, and approving and authorizing other matters related thereto.**

## **D. REVIEW OF JUNE WATER REPORT AND ADOPTION OF EMERGENCY OUTDOOR WATER RESTRICTIONS ORDINANCE. (City Manager)**

The City has been able to utilize more State Water Project (SWP) water than anticipated earlier this year. Over the three month period from March 1st through May 31st, 2014, the community has conserved 10% percent as compared to the same period in 2012. In order to meet the 20% conservation goal over the course of the year established by the Council and minimize the need to purchase water, the staff is recommending that the Council adopt, as

an urgency measure, an ordinance that would limit outdoor watering. This has the potential to save significant amounts of water during the peak, dry, hot summer months. The ordinance, if approved, will take effect immediately. The ordinance should also be adopted as a non-urgent ordinance because urgency measures are only in effect for a limited period of time and the need for water conservation will extend beyond a couple months.

**Recommendation: 1. Receive the City’s water supply and usage update; 2. Adopt, by a 4/5th vote, an emergency outdoor water restrictions ordinance; and 3. Introduce an outdoor water restrictions ordinance.**

**E. DISCUSSION AND DIRECTION ON PROPOSED DROUGHT SURCHARGE AND METER REPLACEMENT PROGRAM. (City Manager)**

The financial integrity of the water system and the ability to deliver water in a sustained and equitable manner are of paramount importance. The drought and related impacts are having a significant impact on the Water Enterprise Fund. A surcharge to cover costs and revenue losses is proposed to keep the Water Enterprise Fund in a sustainable financial position. Council direction on the structure of the surcharge is sought. An action item will be scheduled for July 15 to initiate the Proposition 218 process.

Twenty-six percent of the City’s treated water is unaccounted for. This is the difference between the amount of water that leaves the treatment plant and the amount that is billed. A major component of this problem is the 30+ year age of the water meters which under-read as they age. Staff is recommending that the Council direct the creation of a meter replacement program.

**Recommendation: Discuss and provide direction on proposed drought surcharge and meter replacement program.**

**IX. ADJOURNMENT (10:00 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](http://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.





# PROCLAMATION

IN RECOGNITION OF

## July 2014 as Parks Make Life Better!® Month

**WHEREAS**, Parks and Recreation makes lives and communities better now and in the future; and

**WHEREAS**, it is established through statewide public opinion research, 98% of California households visit a local park at least once a year; two in three households visit a park once a month; 50% of households participate in an organized recreation program; and most park use is with family and friends; and

**WHEREAS**, residents value recreation as it provides positive alternatives for children and youth to reduce crime and mischief especially during nonschool hours; it promotes the arts, it increases social connections; aids in therapy; and promotes lifelong learning; and

**WHEREAS**, residents value their parks for access to outdoor spaces for children and adults to play and be active; exercise and group sports; and

**WHEREAS**, parks provide access to the serenity and the inspiration of nature and outdoor spaces as well as preserve and protect the historic, natural and cultural resources in our community; and

**WHEREAS**, the residents of Benicia including children, youth, families, adults, seniors, businesses, community organizations, and visitors benefit from the wide range of parks, trails, open space, sports fields, tennis courts, facilities and programs including the Benicia Community Park, James Lemos Swim Center, Benicia Senior Center and the Benicia Community Center provided by the Benicia Parks & Community Services; and

**WHEREAS**, the City of Benicia urges all its residents to recognize that parks and recreation enriches the lives of its residents and visitors as well as adding value to the community's homes and neighborhoods; and

**WHEREAS**, July is celebrated across the nation as Parks and Recreation Month.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia, on behalf of the City Council, hereby proclaims that the City of Benicia hereby proclaims July 2014 as Parks Make Life Better!® Month and in doing so, urges all its citizens to use and enjoy its parks, trails, open space, facilities, and recreation opportunities.

Elizabeth Patterson, Mayor  
July 1, 2014







# PROCLAMATION

## IN RECOGNITION OF THE COMPLETION OF LOIS REQUIST'S TERM AS BENICIA'S FOURTH POET LAUREATE, 2012-2014

**WHEREAS**, Benicia is a community known for the vitality of its arts and culture and vibrant quality of life; and

**WHEREAS**, poetry is an art form that provides pleasure and expression for many citizens of Benicia and our entire region; and

**WHEREAS**, a Poet Laureate is a symbol of the important role that art and culture play in the lives of our community members; and

**WHEREAS**, the position of Poet Laureate honors an outstanding poet whose work has enriched our community; and

**WHEREAS**, Lois Requist served the City as its fourth Poet Laureate from July 2012- June 2014, promoting the appreciation and dissemination of poetry in Benicia and acting as a spokesperson for the growing number of poets and writers in Benicia.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia on behalf of the City Council, do hereby recognize and appreciate the work that Ms. Requist achieved to enhance and promote poetry during her term as Poet Laureate of Benicia.

---

Elizabeth Patterson, Mayor  
July 1, 2014







# PROCLAMATION

## IN RECOGNITION OF BENICIA OLD TOWN THEATRE GROUP'S 50<sup>TH</sup> YEAR OF PROVIDING COMMUNITY THEATRE

**WHEREAS**, the mission of Benicia Old Town Theatre Group, or BOTTG, is to promote community theatre in the City of Benicia, Solano County, and surrounding communities by providing a wide variety of high-quality theatrical entertainment; and

**WHEREAS**, BOTTG also strives to promote training in all aspects of theatrical arts, allowing aspiring performers and behind-the-scenes volunteers to learn, practice, and perfect their craft; and

**WHEREAS**, BOTTG provides Benicia with award-winning live theatre and is a precious community resource, as every vibrant society has theatre as a reflection of its artistic core and a mirror of its history; and

**WHEREAS**, the BOTTG is celebrating its 50<sup>th</sup> year of community theatre and has produced nearly 100 shows; and

**WHEREAS**, the BOTTG consistently honors its commitment to excellence in theatre, producing a variety of performances in a wide gamut of genres.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia on behalf of the City Council, do hereby recognize the cultural value of Benicia Old Town Theatre and its mission of bringing community theatre to Benicia.

---

Elizabeth Patterson, Mayor  
July 1, 2014





**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF NANCY CRAIG-SCHRAM TO THE ARTS & CULTURE COMMISSION FOR A FOUR YEAR TERM ENDING JANUARY 31, 2018**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Nancy Craig-Schram to the Arts & Culture Commission by Mayor Patterson is hereby confirmed.

\*\*\*\*\*

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 1st day of July 2014 and adopted by the following vote:

Ayes:

Noes:

Absent:

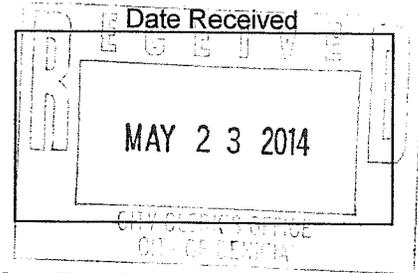
\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date





### City of Benicia Board/Commission/Committee Application

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Arts and Culture Commission
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Civil Service Commission
- Economic Development Board
- Finance, Audit & Budget Committee
- Historic Preservation Review Commission
- Human Services & Arts Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sustainability Commission
- Sky Valley Open Space Committee
- Uniform Code Board of Appeals

Name Nancy Craig-Schram

Address: [REDACTED]

Phone: (Work) [REDACTED] (Home) [REDACTED]

(Cell) [REDACTED] Fax: [REDACTED]

Email: [REDACTED] Years as Benicia resident: 8 months

Occupation/Employer: Reception/Office Clerk

Please note your most recent community or civic volunteer experience: N/A

Please describe any applicable experience/training: I was a European Studies major with an Art History Concentration. I also worked briefly for an art gallery in San Francisco.

*All applications are considered public records and will be retained in an active file for at least one year from date of receipt.*

Signature: Nancy Craig Schram Date: 5-21-14



## Arts and Culture Commission Application

In addition to completing the City of Benicia Board/Commission/Committee Application form, please respond to the following questions:

1. What interests you about this Commission?

Simply put, my love of art and culture is what interests me in this Commission. I think Benicia is a fascinating community because of its love for the arts. Exposing people to art and culture is of great importance because it enriches one's life, brings joy and broadens one's mind.

2. Please describe any background or experience you may have in the arts (e.g., visual arts, cultural and/or performing arts, etc.)?

I was a European Studies major with an Art History concentration. The arts, the study of art, music and culture has always been of interest to me. My parents made a point of exposing me to culture when I was growing up, and I tried to do the same for my children.

3. Are you currently on any other City boards or commissions, and/or on the board of other organized arts or cultural groups? (The ordinance establishing this commission indicates that members shall not be on other city boards or commissions or a board member of other organized arts or cultural groups.)

No.

4. How do you see the Arts and Culture Commission supporting arts and culture in the Benicia community?

In any way they can, and as often as they can, by continuing to have an array of different exhibits and different activities as allowed in the budget.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
June 17, 2014

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

**I. CALL TO ORDER:**

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

All Council Members were present. (Mayor Patterson attended via telephone from Washington D.C.)

**II. CLOSED SESSION:**

- A. CONFERENCE WITH LABOR NEGOTIATOR  
(Government Code Section 54957.6 (a))  
Agency negotiators: City Manager, Assistant City Manager, Senior HR Analyst  
Employee organizations: Senior Managers, Middle Management, Local 1, Benicia Public Service Employees' Association (BPSEA), Benicia Police Officers Association (BPOA), Benicia Firefighters Association (BFA), Benicia Dispatchers Association (BDA), Police Management, Unrepresented.**
- B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9  
Number of potential cases: 1**

**III. CONVENE OPEN SESSION:**

Vice Mayor Campbell called the Open Session to order at 7:09 p.m.

**A. ROLL CALL**

All Council Members were present. Mayor Patterson attended via telephone from Washington D. C.

**B. PLEDGE OF ALLEGIANCE**

Vice Mayor Campbell led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC**

**IV. ANNOUNCEMENTS/PROCLAMATIONS/APPOINTMENTS/PRESENTATIONS:**

**A. ANNOUNCEMENTS**

Vice Mayor Campbell stated that Mayor Patterson was in Washington, D.C. attending a Makers Fair.

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

Heather McLaughlin, City Attorney, announced the following actions taken during Closed Session:

II.A - Council received information from Staff and gave direction to Staff.

II.B - Council received information from Staff and gave direction to Staff.

**2. Openings on Boards and Commissions:**

Arts and Culture Commission

1 full term

Open until filled

Historic Preservation Review Commission

1 unexpired term

Open until filled

Economic Development Board

1 unexpired term

Open until filled

Finance Committee

1 unexpired term

Open until filled

**3. Boards & Commissions - Council Subcommittee**

**Recommendations:**

**Subcommittee recommendation to Mayor of Nancy Craig-Schram to the Arts & Culture Commission for a four-year term ending January 31, 2018**

**4. Mayor's Office Hours:**

**5. Benicia Arsenal Update**

Update from City Attorney

Ms. McLaughlin reported that she checked in with DTSC last week and they thought we might have information in the next few weeks.

**B. PROCLAMATIONS**

**C. APPOINTMENTS**

**D. PRESENTATIONS**

**1. Every 15 Minutes Presentation**

**V. ADOPTION OF AGENDA:**

Vice Mayor Campbell clarified action being taken on item VII.H.

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

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

Six items received (copies on file).

**B. PUBLIC COMMENT**

- 1. Marilyn Bardet - Ms. Bardet discussed the letter she submitted to Council (copy on file) regarding Benicians For a Safe and Healthy Community's (BSHC) concerns regarding the Valero Crude by Rail Project.

**VII. CONSENT CALENDAR:**

Council pulled items VII.G and VII.H for discussion.

On motion of Council Member Hughes, seconded by Council Member Schwartzman, Council adopted the Agenda, as amended, on roll call by the

following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge

Noes: (None)

- A. **APPROVAL OF THE MINUTES OF THE MAY 27, 2014 SPECIAL AND REGULAR CITY COUNCIL MEETINGS, AND THE JUNE 3, 2014 REGULAR CITY COUNCIL MEETING**
- B. **RESOLUTION PROVIDING FOR AND REQUESTING THE BOARD OF SUPERVISORS PERMIT THE REGISTRAR OF VOTERS TO PROVIDE SPECIFIED SERVICES IN CONNECTION WITH THE GENERAL MUNICIPAL ELECTION TO BE HELD NOVEMBER 4, 2014**

**RESOLUTION 14-51 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA PROVIDING FOR AND REQUESTING THE BOARD OF SUPERVISORS TO PERMIT THE GENERAL MUNICIPAL ELECTION TO BE HELD NOVEMBER 4, 2014**

- C. **RESOLUTION CALLING FOR THE GENERAL MUNICIPAL ELECTION NOVEMBER 4, 2014 AND FEES RELATED TO THAT ELECTION**

**RESOLUTION 14-52 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, FOR THE ELECTION OF TWO CITY COUNCIL MEMBERS (2) FOR THE CITY AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND WAIVING THE FEES FOR CANDIDATES**

- D. **DENIAL OF THE CLAIM AGAINST THE CITY BY JESSICA CARPINO AND REFERRAL TO INSURANCE CARRIER**
- E. **ACCEPTANCE OF KEARNEY STREET PRESSURE REDUCING STATION PROJECT**

**RESOLUTION 14-53 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE KEARNEY STREET PRESSURE REDUCING PROJECT AS COMPLETE, INCLUDING CHANGE ORDER NOS. 1-3, FOR A TOTAL COST OF \$152,815.50, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER**

**F. AWARD OF CHEMICAL CONTRACTS FOR THE TREATMENT OF WATER FOR FISCAL YEAR 2014/2015**

**RESOLUTION 14-54 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING BIDS AND AWARDDING CONTRACTS TO THE LOWEST RESPONSIBLE BIDDERS FOR FURNISHING CHEMICALS FOR WATER AND WASTEWATER TREATMENT FOR FISCAL YEAR 2014-2015 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACTS ON BEHALF OF THE CITY**

**G. RESPONSE TO 2013-2014 GRAND JURY REPORT "REGISTRAR OF VOTERS"**

Diane Smikahl, Library Director, stated that the outstanding bill to the Registrar of Voters had been paid.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the response to the 2013-2014 Grand Jury Report "Registrar of Voters", on roll call by the following vote:

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

**H. RESOLUTION AUTHORIZING THE COMMENCEMENT OF PROCEEDINGS FOR THE ISSUANCE OF LIMITED OBLIGATION REFUNDING BONDS FOR THE BENICIA MCCALLISTER AREA ASSESSMENT DISTRICT, DESIGNATING CONSULTANTS AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

Brenda Olwin, Interim Finance Director, briefly reviewed the staff report.

On motion of Council Member Schwartzman, seconded by Vice Mayor Campbell, Council adopted Resolution 14-60, on roll call by the following vote:

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

**I. APPROVE THE AMENDMENT TO THE CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BENICIA AND MANAGEMENT PARTNERS**

**RESOLUTION 14-55 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE CONTRACT WITH MANAGEMENT PARTNERS FOR INTERIM PUBLIC WORKS MANAGEMENT SERVICES**

**J. CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT FISCAL**

YEAR 2014-2015

RESOLUTION 14-56 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DESCRIBING IMPROVEMENTS AND DIRECTING PREPARATION OF ENGINEER'S REPORT FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2014-2015

RESOLUTION 14-57 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA PRELIMINARILY APPROVING THE ENGINEER'S REPORT FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2014-15

RESOLUTION 14-58 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA OF INTENTION TO ORDER THE LEVY AND COLLECTION OF ASSESSMENTS PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 AND THEREFORE SETTING A PUBLIC HEARING ON JULY 1, 2014 TO CONSIDER THE FISCAL YEAR 2014-15 CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT

**K. AWARD OF CONSULTANT CONTRACT FOR VULNERABILITY ASSESSMENT AND ADAPTATION PLAN**

RESOLUTION 14-59 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE PROPOSALS FOR THE BENICIA VULNERABILITY ASSESSMENT AND ADAPTATION PLAN, AND AWARDING THE CONSULTANT CONTRACT TO ICF INTERNATIONAL IN THE AMOUNT NOT TO EXCEED \$150,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

**L. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING THE BENICIA MUNICIPAL CODE TO INCORPORATE REGULATIONS TO INCREASE THE PUBLIC NOTICING REQUIREMENT FROM 300 FEET RADIUS TO 500 FEET RADIUS FOR SITE-SPECIFIC PROJECT**

ORDINANCE 14-2 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION B OF SECTION 16.04.060 (PUBLIC HEARINGS – NOTICE) OF CHAPTER 16.04 (GENERAL PROVISIONS) OF TITLE 16 (SUBDIVISIONS); SUBSECTION C.2 OF SECTION 17.104.040 (NOTICE AND PUBLIC HEARING) OF CHAPTER 17.104 (USE PERMITS AND VARIANCES), SUBSECTION B.2 OF SECTION 17.108.080 (NOTICE AND PUBLIC HEARING BY HISTORIC PRESERVATION REVIEW COMMISSION) OF CHAPTER 17.108 (DESIGN REVIEW), SUBSECTION C.2 OF SECTION 17.116.040 (PUBLIC HEARING REQUIRED) OF CHAPTER 17.116 (DEVELOPMENT AGREEMENTS), SUBSECTION C.2 OF SECTION 17.120.040 (PUBLIC HEARING SCOPE AND NOTICE) OF CHAPTER 17.120

**(AMENDMENTS), ALL WITHIN TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE, TO ESTABLISH A MINIMUM PUBLIC NOTICE RADIUS OF 500 FEET FOR SITE-SPECIFIC PROJECTS**

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

**VIII. BUSINESS ITEMS:**

**A. VALERO IMPROVEMENT PROJECT (VIP) ACCOUNT COMMUNITY SUSTAINABILITY COMMISSION GRANT FUNDING RECOMMENDATIONS**

Gina Eleccion, Management Analyst, and Brad Kilger, City Manager, reviewed the staff report.

Vice Mayor Campbell queried Council on a letter received tonight by Valero; whether it should be considered substantial information. Council unanimously agreed the information was not substantial and wished to proceed.

Council agreed to discuss Option #1 first, and then move on to discussing Option #2.

Council Member Schwartzman discussed concern regarding needing answers on Option #2 before he could discuss Option #1.

Council Member Schwartzman made a motion to reconsider the order of discussion, and discuss Option #2 first, then Option #1 second. The motion passed.

Mayor Patterson asked Staff to clarify why Option #2 and Option #1 were not connected.

**Option #2:**

Council Member Schwartzman and Staff discussed whether all conditions of the project (CRP 2) had been met, and concerns regarding whether a review had been done.

Council Member Hughes and Staff discussed the review, the presentations that were done.

Council Member Schwartzman and Staff discussed the issue of building permits, lack of a definition of 'review', and the lack of formal request for review.

Public Comment:

1. Constance Beutel, Chair, CSC - Ms. Beutel discussed the educational presentation Valero gave on September 19th, and CSC grant monies that were distributed.

Council Member Hughes, Ms. Beutel, and Staff discussed Valero's CRP 2.

2. Sue Fisher Jones, Valero - Ms. Fisher Jones discussed the timeline of the two projects, agendas and minutes from when both projects were discussed. She and Staff clarified that if all conditions were met, the \$1.6 million would have to go towards CRP 2. It was Valero's understanding that all conditions had been met.

Council Member Strawbridge and Ms. Fisher Jones discussed CRP 2.

Council Member Hughes and Ms. Fisher Jones discussed the understanding that they were not required to pull permits for CRP 1 or CRP 2.

Mayor Patterson discussed the issue of permits, the VIP Settlement Agreement,

3. Kathy Kerridge - Ms. Kerridge discussed the Good Neighbor Steering Committee's position on the funding.

Vice Mayor Campbell and Staff discussed CRP 2 and the remaining funds available for CRP 2 (\$1.6 million). After that, the total remaining available is \$847,000.

Staff and Council discussed Options #1 and #2.

Council Member Hughes and Staff discussed concern regarding the permit issue. He did not think there was enough information on this issue to make a decision tonight.

4. Jasmine Powell - Ms. Powell discussed concern regarding the list of projects that did not address water conservation

Council Member Strawbridge made a motion to continue the discussion on Option #2 (CRP 2) to a future meeting to allow staff to do more research.

Option #1:

Gina Eleccion, Management Analyst, reviewed the staff report.

Public Comment:

1. Deanne Miller, Benicia Community Gardens - Ms. Miller discussed the

- garden and why they need the funding.
2. Constance Beutel - Ms. Beutel discussed the grant applications the CSC received.
  3. Aaron Newcomb - Mr. Newcomb discussed the Benicia Makerspace grant application.
  4. Allison Fleck, Benicia Tree Foundation - Ms. Fleck discussed the foundation's grant application.
  5. Resident - the Resident spoke in support of Benicia Makerspace receiving grant funding.
  6. Sue Fisher Jones - Ms. Fisher Jones discussed the project list relating to water savings.
  7. Kathy Kerridge, CSC - Ms. Kerridge discussed the project list, and the projects that relate to water savings.
  8. Bob Livesay - Mr. Livesay discussed concerns regarding item #1 on the grant list - feasibility study.
  9. Mary Frances Kelly Poh - Ms. Kelly Poh discussed concerns regarding item #1 on the grant list.
  10. Resident - The resident discussed the issue of Community Choice Aggregation.
  11. Resident - The resident spoke in support of Benicia Makerspace receiving grant funding.
  12. Mike Dotson, Parks Director - Mr. Dotson discussed the City's requests for grant funding in the Parks Department.
  13. Mario Giuliani - Mr. Giuliani discussed the City's request for grant funding for the Economic Development Department.

Council Member Schwartzman and Valero Representatives discussed the water savings that CRP 2 and the boiler project would save. Council Member Schwartzman suggested the CRP 2 dollars come off the table, and that the City give Valero money for boiler project, as will produce greater water savings.

Mayor Patterson discussed the process that took place regarding the CSC's list of projects. She was concerned that the commission's recommendations were not being disrespected. She would stick with the recommendations made by the CSC.

Council Member Schwartzman discussed his respect for the boards and commissions recommendations to Council. He and Mayor Patterson discussed his suggestion to proceed with Valero's boiler project.

Council Member Hughes discussed the process of commissions making recommendations to Council. He discussed the need to fund projects that will conserve water because of the current dire water situation. He went through the list of projects and provided comments on each. He would like to see more of a focus on water conservation. He would like to consider Council Member Schwartzman's suggestion regarding the boiler project at Valero.

Council Member Strawbridge discussed the serious drought situation. She likes Council Member Schwartzman's suggestion regarding Valero's boiler project.

Mayor Patterson discussed the grant applications and the CSC's reasoning for recommending the grants. She was disappointed that some of the water savings and greenhouse gas savings were not being recognized in the discussion. She discussed the fact that there were several meetings where the Community Choice Aggregate issue was discussed. There needs to be a better communication between Council and the commissions as to what is being done.

Council Member Hughes discussed the CSC and Council Member Schwartzman's recommendations. It shouldn't be about the process, it should be about water savings and how the City can save more water.

Vice Mayor Campbell discussed concern regarding the Benicia Tree Foundation administrative costs. He went through the list of grants and provided feedback on each.

Council Member Schwartzman discussed a possible motion to approve Valero's boiler project, and at the same time, get some or all of the grants on the list approved. He discussed getting Valero, the City, and Good Neighbor Steering Committee together to discuss the CRP 2 money being allocated to water oriented projects, as well as other projects and grants. He would like Valero to release the CRP 2 dollars so they can go towards the CSC grant projects.

Council Member Hughes did not agree with having all CSC grants/projects approved, as he did not agree with them all. He suggested getting a commitment from Valero regarding putting the \$1.6 million back on the table, get the City, GNSC, and Valero to okay future projects being not just water related, but energy related as well. The CSC would still need to recognize that water is a high priority.

Council Member Schwartzman asked Mr. Hill (Valero) if Valero was adamant about wanting CRP 2. Mr. Hill discussed Valero's position of having satisfied all conditions of the project. If Valero had to choose one project over the other, they would choose the boiler project. Council Member Schwartzman asked Mr. Hill if his suggestion regarding proceeding with the boiler project was approved, Valero would be able to free up the CRP 2 dollars (\$1.6 million) in a reasonable amount of time. Mr. Hill confirmed that was possible.

Council Member Strawbridge discussed the CSC's recommendations regarding water and non-water savings.

Council Member Hughes clarified that the motion could be to approve Valero's boiler project tonight, freeing up the \$1.6 million in a reasonable time, and ask the three parties to agree on using/allowing the \$1.6 million to be used on other projects other than water related. Then, Council could send it back to the CSC to

reconvene and develop recommendations to present to Council on how they feel the \$1.6 million should be used.

Council Member Schwartzman was concerned about the possibility that the three parties of the agreement would not be able to agree.

Vice Mayor Campbell discussed the possibility that the parties involved might not agree on the direction Council seems to be going tonight.

Staff discussed the lack of guarantee that all parties would be able to agree in a reasonable amount of time. He discussed what would need to take place in order to make all of the suggestions work out.

Council Member Hughes and Schwartzman discussed how the \$1.6 million might be used.

Mayor Patterson discussed her preference of going with Option #1 and have a date certain with a meeting with Valero, GNSC, and perhaps the chair of the CSC to discuss the suggestion made by Council Member Schwartzman.

Council Member Schwartzman made a motion to approve the boiler project for \$829,000. The remaining \$18,000 would be available for the Community Choice Aggregation (CCA) study. If the CCA study is not approved, the remaining \$18,000 would go towards the boiler project. This would be subject to Valero releasing the CRP 2 dollars within 30 days. He would be very unhappy if the money is freed up and there isn't agreement about opening up that money, as goal is to ease up the money to go towards the other items. If Valero does not release the funds, Council would have to come back and vote on the Option #1 grants/projects.

Council Member Hughes clarified that if the motion is approved, there would be an additional \$1.6 million for the CSC to work with. He and Council Member Schwartzman discussed the proposed action on the CCA item.

Vice Mayor Campbell and Staff discussed concern regarding needing clear motion language.

Council Member Hughes seconded the motion made by Council Member Schwartzman.

Council Member Schwartzman clarified the motion was to approve the boiler project for \$829,000 and approve the \$18,000 for the CCA feasibility assessment. The \$829,000 for the boiler project is subject to Valero, within 30 days, releasing the CRP 2 money.

Mayor Patterson expressed concern that Valero would not be able to get that money released within 30 days. She suggested Council go with Option #1, and

call for a meeting with all the parties involved.

Mr. Hill motioned that he would be able to get the money released within 30 days. Council Member Schwartzman likened it to a 30-day waiting period.

Mr. Kilger expressed concern about including language in the motion regarding water conservation projects/non-water conservation projects.

Mayor Patterson suggested the language be that Valero 'withdraw' the CRP 2 in writing, and the money attached to it.

Ms. McLaughlin clarified the motion was to 'approve the boiler project in the amount of \$829,000, subject to Valero withdrawing the CRP 2 in writing within 30 days. If the parties can't agree that it would just be subject to water use, GNSC, City, and Valero, the parties will attempt to agree that the CRP 2 monies will be used for items such as in paragraph H. Council member Schwartzman clarified that there could not be anything in there about what the money should be used for.

Mr. Kilger clarified that the boiler project would be approved, and within 30 days, Valero would have to submit in writing their withdrawal of the CRP 2 project. That money is subject to the terms of the settlement agreement.

Vice Mayor Campbell expressed concern about voting on an important, costly, and convoluted motion at 11:30 p.m.

Mr. Kilger clarified that what was stated was the boiler project would be approved, subject to within 30 days, Valero would have to submit in writing that they are withdrawing the CRP 2 project. The boiler project is approved at \$829,000. The CCA would be approved for \$18,000 for the feasibility study. If the CCA is not approved, the \$18,000 would go back towards the boiler project.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council agreed the letter submitted by Valero tonight should not be considered as additional substantial information, on roll call by the following vote:

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

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the reconsideration of the order of discussion, discussing Option #2 first, then moving on to discuss Option #1, on roll call by the following vote:

Ayes: Schwartzman, Hughes, Strawbridge  
Noes: Patterson, Campbell

On motion of Council Member Strawbridge, seconded by Council Member Hughes, Council agreed to continue the discussion on Option #2 (CRP 2) to a future meeting, on roll call by the following vote:

Ayes: Patterson, Campbell, Hughes, Strawbridge  
Noes: Schwartzman

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the Boiler Project, subject to within 30 days, Valero submitting in writing that they are withdrawing the CRP 2 project. The boiler project approved at \$829,000. The CCA would be approved for \$18,000 for the feasibility study. If the CCA is not approved, the \$18,000 would go back towards the boiler project, on roll call by the following vote:

Ayes: Schwartzman, Hughes, Strawbridge  
Noes: Patterson, Campbell

## **B. COMMUNITY CHOICE AGGREGATION (CCA) - MARIN CLEAN ENERGY MEMBERSHIP & TECHNICAL STUDY**

Mr. Kilger recommended this item be continued to the next Council meeting. Ms. McLaughlin stated the public needed the opportunity to speak on item VIII.B.

Mayor Patterson suggested Council vote on a motion to continue the meeting.

Council Member Hughes made a motion to continue this item, which was seconded by Council Member Strawbridge.

### Public Comment:

1. Marilyn Bardet - Ms. Bardet discussed concern regarding the process on the previous item, and how it was handled.
2. Judy Sullivan - Ms. Sullivan discussed concern regarding the last agenda item.

Vice Mayor Campbell clarified that this discussion was on VIII.B - Community Choice Aggregation, and any public comment on the last item would not be tolerated.

Dawn Weisz, MCE Corporation, and Staff discussed concern regarding delaying this item. If it is delayed, the City might have to wait another year to join.

### Public Comment continued:

3. Constance Beutel - Ms. Beutel spoke in support of the proposed item.

Dawn Weisz, MCE, gave a brief presentation.

Public Comment continued:

4. Bob Livesay - Mr. Livesay discussed concerns regarding the deadline and process.
5. Kathy Kerridge - Ms. Kerridge spoke in support of this item. She expressed concern regarding a possible conflict of interest for Council Member Hughes, as a retired PG&E employee.

Council Member Hughes discussed concern regarding CCA. He would like to hear testimony from current CCA customers. He withdrew his motion to continue.

Council Member Schwartzman would like to have a workshop or formal presentation on this so Council can be more informed.

Council Member Strawbridge requested this item be discussed earlier in the evening when this item is brought back.

Mayor Patterson discussed support for approving this item. She would like Ms. Weisz to come back and make a more formal presentation.

Council Members Hughes and Strawbridge withdrew the motion and second to continue this item.

Council Member Hughes requested there be a balanced discussion on this issue prior to the next time it is brought back for action.

On motion of Mayor Patterson, seconded by Council Member Schwartzman, Council approved the Community Choice Aggregation membership & technical study, on roll call by the following vote:

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

**C. Council Member Committee Reports:**

1. **Mayor's Committee Meeting.(Mayor Patterson) Next Meeting Date: TBD**
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: June 27, 2014**

4. **League of California Cities. (Mayor Patterson and Vice Mayor Campbell) Next Meeting Date: July 24, 2014**
5. **School Liaison Committee. (Council Members Strawbridge and Council Member Hughes) Next Meeting Date: September 4, 2014**
6. **Sky Valley Open Space Committee. (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: TBD**
7. **Solano EDC Board of Directors. (Mayor Patterson and Council Member Strawbridge) Next Meeting Date: July 10, 2014**
8. **Solano Transportation Authority (STA). <http://www.sta.ca.gov/> (Mayor Patterson and Council Member Schwartzman) Next Meeting Date: July 9, 2014**
9. **Solano Water Authority-Solano County Water Agency and Delta Committee. <http://www.scwa2.com/>(Mayor Patterson and Council Member Hughes) Next Meeting Date: July 10, 2014**
10. **Traffic, Pedestrian and Bicycle Safety Committee. (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: July 17, 2014**
11. **Tri-City and County Cooperative Planning Group. (Mayor Patterson and Council Member Hughes) Next Meeting Date: September 8, 2014**
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: June 25, 2014**
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 19, 2014**

**IX. ADJOURNMENT:**

Vice Mayor Campbell led the Pledge of Allegiance.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**CONSENT CALENDAR**

**DATE** : June 11, 2014

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **BAY AREA CHARGE AHEAD PROJECT TWO (BAYCAP 2) -  
ELECTRIC VEHICLE CHARGING STATIONS**

**RECOMMENDATION:**

Adopt the resolution authorizing the City Manager to execute the Approval to Proceed agreement between the City and ABM to install three electric vehicle charging stations in Benicia.

**EXECUTIVE SUMMARY:**

The California EV Alliance applied for and was awarded a California Energy Commission (CEC) grant (\$474,052) to install 37 Level 2 electric chargers at 18 sites in the North and East Bay of the San Francisco Bay Area. Three of those Level 2 stations will be installed in Benicia, one at the Community Center, and two at the planned Industrial Park Bus Hub provided Council approves participation in this program. The grant agreement has been signed between the CEC and EV Alliance and now Benicia is required to sign an Approval to Proceed agreement with ABM, the contractor responsible for installing the stations at all 37 sites in the Bay Area. The stations are free of charge to the City, but the City will be responsible for the first two years of annual Network Services Charges (\$460 per station, 3 stations) totalling \$2,760.

**BUDGET INFORMATION:**

The stations are provided at no cost to the City. At the time the Agreement is signed, the City is responsible for paying the first two years of Network Services Charges (\$460 per station annually, three stations) in the amount of \$2,760 to ChargePoint (station provider). The CAP Coordinator consulted the Interim Finance Director and an Amended FY 2014-15 Budget will be presented to City Council and the fees will be appropriately budgeted at that time.

**ENVIRONMENTAL REVIEW:**

The City was required to conduct appropriate CEQA review and file the necessary documents with the County of Solano within 60 days of the Notice of Proposed Awards from the California Energy Commission; it filed a Notice of Exemption (NOE) on May 9, 2014. The City determined that an NOE is

appropriate for this project because charging station installation results in minor changes to existing facilities with no physical change of existing parking garage or parking lots. The grant application indicated that all three stations would be installed at the Community Center with the understanding that two of the stations would be installed at the planned Benicia Industrial Park Bus Hub site if the property was acquired and the stations installed no later than June 2016. City Staff stands by its initial determination that installation of these stations at the Bus Hub or other City-owned facility will result in minor changes to an existing facility and are exempt from CEQA analysis. Any additional CEQA documentation will be filed with the County in the future if needed.

#### **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 Issues and Strategies:

- Objective T-8: Reduce Reliance on Conventional Automobile Travel

#### **BACKGROUND:**

The Bay Area Charge Ahead Project 2 (BayCAP2) is a multi-jurisdictional project led by the California EV Alliance (CEVA) to procure and install Level 2 electric vehicle charging stations in specified locations throughout the greater Bay Area. The project is funded by the California Energy Commission (CEC) via the PON-13-606 solicitation award approved on May 14, 2014.

Upon completion, the Bay Area Charge Ahead 2 project will install a total of 38 dual port Level 2 chargers, for a total of 74 Level 2 charge ports, including **three charging stations (with a total of six charge ports)** located in Benicia. The grant application indicated that all three stations would be installed at the Community Center with the understanding that two of the stations would be installed at the planned Benicia Industrial Park Bus Hub site if the property was acquired and the stations installed no later than June 2016. If for some reason installation at the Bus Hub and/or Community Center is not possible, the CAP Coordinator will work with City Staff and project partners to identify alternate locations.

The City is not required to enter into any contractual agreement with the funding agency (CEC) and is not responsible for completing any grant documents. Instead, it must only sign the Approval to Proceed Agreement allowing ABM (installation company) to ship and install the CEC-funded Level 2 charging stations at the approved addresses identified by the Site Host.

Attachments:

- Resolution
- DRAFT Agreement to Proceed for BayCAP 2 Site Hosts
- Exhibit D ChargePoint Warranty Information
- Exhibit E ChargePoint Master Software Services Agreement
- Site Host Pricing Policy



**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT TO INSTALL ELECTRIC VEHICLE CHARGING STATIONS**

**WHEREAS**, the California Energy Commission (CEC) awarded funds via the PON-13-606 solicitation on May 14, 2014 for the Bay Area Charge Ahead Project (BayCAP), a partnership project with the Bay Area Climate Collaborative, California EV Alliance, ABM and ChargePoint to install electric vehicle (EV) charging stations in the Bay Area; and

**WHEREAS**, the City is participating in the BayCAP project for the deployment of three charging stations that will increase EV readiness; and

**WHEREAS**, the hardware and installation is fully covered by the grant with funds flowing directly to ABM for the hardware and installation services; and

**WHEREAS**, the City is only responsible for paying ChargePoint \$2,760 as required under a 2-year Network Services Agreement and then approximately \$460 per station on an annual basis thereafter.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia authorizes the City Manager to execute the ABM Approval to Proceed agreement for the installation of the charging stations, subject to minor changes as approved by the City Attorney.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, and 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 1<sup>st</sup> day of July 2014, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**Bay Area Charge Ahead Project – Approval to Proceed**

*Installation of Level 2 EV Supply Equipment (EVSE)  
Execution of ChargePoint Master Software Services Agreement*

<b>Date</b>	June __ , 2014
<b>Site Host Entity</b>	City of Benicia
<b>Address of Site Host Entity</b>	250 E. L Street, Benicia, CA 94510
<b>Primary Contact Name &amp; Title</b>	Alex Porteshawver, Consulting Climate Action Plan Coordinator
<b>Primary Contact Phone</b>	707-746-4276
<b>Primary Contact Email</b>	<a href="mailto:aporteshawver@ci.benicia.ca.us">aporteshawver@ci.benicia.ca.us</a>
<b>Authorizing Official Name &amp; Title</b>	Brad Kilger, City Manager
<b>Authorizing Official Phone</b>	707-746-4200
<b>Authorizing Official E-mail</b>	<a href="mailto:bkilger@ci.benicia.ca.us">bkilger@ci.benicia.ca.us</a>

**I. Project Summary**

The Bay Area Charge Ahead Project 2 (BayCAP2) is a multi-jurisdictional project led by the California EV Alliance (CEVA) to procure and install Level 2 Electric Vehicle Supply Equipment (EVSE) – a.k.a., EV chargers – in specified locations throughout the greater Bay Area. The project is funded by the California Energy Commission (CEC) via the PON-13-606 solicitation award approved on May 14, 2014. Upon completion, the Bay Area Charge Ahead 2 project will install a total of 38 dual port Level 2 chargers, for a total of 74 Level 2 charge ports, including **3 charging stations (with a total of 6 charge ports)** located in the **City of Benicia**.

**II. Purpose of this Approval to Proceed**

This document provides the approval for ABM to ship and install the CEC-funded Level 2 charging stations at the approved addresses identified by the Site Host; and identifies for each of the relevant parties (the California EV Alliance, the Site Host, ABM, and ChargePoint) the roles, responsibilities, terms, and conditions for installation, maintenance, and operation of the charging stations.

### III. Partner Roles

1. **The California EV Alliance (CEVA)** – a California nonprofit corporation, is the awardee of California Energy Commission grant support. CEVA will provide overall project management services, including contract oversight, fiscal administration, and reporting to the CEC. CEVA has contracted with ABM for charging installation services and with The Bay Area Climate Collaborative for project management support.
2. **Site Hosts:** Site hosts for the EV charging stations in the BayCAP2 project include the cities of Benicia, Berkeley, Fremont, Hayward, St. Helena, Yountville, Petaluma, San Leandro, the Napa County Transportation and Planning Authority, and Barker Pacific (a commercial property owner located in the Hamilton Landing area of Novato.)
3. **ABM**, a national leader in EV infrastructure and energy management services, will provide installation, commissioning, and maintenance services for the project charging stations, and will provide a portion of the required matching funds.
4. **ChargePoint** – a leading charging equipment manufacturer – will provide Level 2 networked chargers and network operating services, including payment processing, cloud-based charge station information services, and software upgrades.
5. **The Site Host Entity will:**
  - A. **Complete required CEQA documentation** specified by the California Energy Commission (CEC).
  - B. **Provide access to charge station locations in their jurisdiction** designated in the PON-13-606 application (or a suitable alternative in the event that the original site is deemed infeasible to install.)
  - C. **Provide all necessary permits for the project**
  - D. **Collaboratively identify the most appropriate location for the chargers within the designated site**, taking into account convenience for both the EV driver and other users of the facility, visibility, accessibility, and cost. (Please note that site cost guidelines are highlighted below in the Siting Requirements and Scope of Work sections.) In the event that a location preferred by the Site Host cannot be installed by ABM within the project budget, a new site will be selected which is responsive to the Siting Guidelines indicated below. The California EV Alliance will assist the parties in coming to consensus on final siting as needed.
  - E. **Provide charging station signage (per the requirements defined below) and striping (where needed to clearly designate the space for EV use).** A minimum of one sign per EVSE-equipped parking space is required by the California Energy Commission and CEVA, which shall indicate that the space is “reserved for EV charging.” The relevant signage must comply with the Manual on Uniform Traffic Control Devices (MUTCD) and California Vehicle Codes (CVC), ensuring that signs are high enough, easily visible, and provide clear and accurate information on parking and charging policies.
  - F. **Provide adequate electrical capacity** and any other items deemed necessary to complete the EVSE installation that are otherwise excluded from the standard ABM installation services as specified in the Siting Requirements and Scope of Work sections of this Agreement. Any such items or services, if needed, will be further specified in this agreement (following the joint site inspection by ABM and the Site Host). Additional items (if any) to be provided for by the Site Host shall be summarized in Exhibit C. Items (if any) that are contracted for with ABM for an additional fee are summarized in the form of a work order in Exhibit B, subject to the terms listed in Exhibit B.
  - G. **Oversee installation with ABM**, and assign an administrative contact authorized to set up the ChargePoint online station management account before the stations are activated.

- H. **Contract with ChargePoint to provide charge station network operating services** during the 2014-2016 project performance period – as defined in the attached Master Software Services Agreement (“MSSA”) and in fulfillment of CEC local match requirements affirmed in the Site Host Letter of Participation included as part of the CEC PON-13-606 grant submittal. The ChargePoint MSSA needs to be “accepted” online as part of the EV station activation process after payment is made. As a reference, a copy of the ChargePoint MSSA is attached as Exhibit E of this document. The City has already signed a MSSA with ChargePoint for an existing station and may amend this agreement to include the 3 additional stations referenced in this Agreement.
- I. **Maintain public accessibility for all chargers** at the Community Center from 8:00a.m. until 8:30p.m. If alternative sites are selected, stations may be available 24/7.
- J. **Maintain stations in good operating condition** during the 2014-2016 project operating period.
- K. **Provide adequate insurance** per CEC requirements.
- L. **Operate the chargers in compliance with a *Site Host Pricing Policy*** that meets grant requirements defined in the California EV Alliance response to PON-13-606 and summarized herein.

#### IV. Siting Requirements

ABM will install Level 2 ChargePoint charging stations at the designated sites identified through collaboration between the Site Host and ABM. In the event that these sites are deemed by ABM to be cost-prohibitive, or pose other obstacles to effective installation, maintenance, or operation, a new site will be identified that meets the selection criteria identified by the CEC and by the California EV Alliance (CEVA), and which is mutually satisfactory to the Site Host, CEC, CEVA, and ABM. Alternatively, the Site Host may choose to perform or contract additional services as outlined below in Section V/Additional Services:

- **Location:** Select a high-demand, high-visibility location that conforms to CEC criteria for safety, ease of access/ingress, shelter, safety, lighting, and ADA access.
- **Electricity:** Select a location where AC Level 2 (240V/40A) electrical supply is or can be made available with relative ease and minimal cost. (Note that the average cost of installation is projected at a market value of approximately \$4500 per site, which will limit panel upgrades and conduit runs.) More cost details are available in the ABM Scope of Work (Section V below).
- **Equipment Protection:** EV chargers should be placed where they can be best protected from physical damage by such measures as curbs, wheel stops, setbacks, bumper guards, and concrete-filled steel bollards, while simultaneously taking into consideration ease of access to the charger, mobility of users, and foot traffic in the area.
- **Public Safety:** Chargers should be located in areas with proper ventilation and away from potential hazards including traffic, explosive materials, flammable vapors, liquids and gases, combustible dust or fibers, materials that ignite spontaneously on contact with air, flood-prone areas, and areas that might be prone to vandalism.
- **Duration of Use:** AC Level 2 charger sites should focus on locations where PEV owners will be parked for significant, though shorter, periods of time (e.g., one to six hours).
- **Shelter:** When possible, choose locations with nearby shelter to protect users from weather when connecting their vehicle to the charger. (However, chargers are designed to be safely operated in exposed locations in the rain, with no danger of electrical shock.)
- **Accessibility:** To the extent feasible, EV charger locations within a site will be accessible in accordance with the draft Governor’s Office of Planning & Research guidelines on ADA access.

- **Security:** Locations should be selected that are secure for users at all times of day and night and relatively secure from vandalism (e.g., in well-lighted, well-traveled areas.)
- **Cell Coverage:** Chargers require cell phone signals for networked operation and repeaters may be installed to provide signals if the site does not have coverage.

If no qualifying site is identified within the Site Host jurisdiction that satisfies the requirements of all parties, then the California EV Alliance, with the concurrence of the California Energy Commission, may propose a new site in another jurisdiction.

## V. Overview of ABM Scope of Work

Under contract with the California EV Alliance, ABM will provide the following installation services at designated Site Host locations:

- Turn-key EVSE installation project management
- Delivery, installation and activation of ChargePoint stations
- Site analysis, station placement recommendation (in collaboration with Site Hosts), engineering, and installation management
- Quarterly maintenance (see description herein)
- ChargePoint warranty support
- Provide proper insurance and liability coverage information to Site Hosts as per standard contractor requirements.

ABM installation services funded by the BayCAP2 program will be provided within the parameters outlined below for each Site Host. All chargers in the program are ChargePoint dual-port Level 2 stations (see illustration below). Station configuration and installation profile options are listed below:

- **Wall-Mount vs. Pedestal-Mount Configurations:** ChargePoint CT4023 Wall-Mount OR CT4021 Bollard-Mount units will be provided as appropriate to siting circumstances. Please note that the “bollard-mount” units are also interchangeably referred to as “pedestal mount.” These units are NOT to be confused with *protective bollards*, which are separate devices such as a metal or concrete pole or blocking device, which may be installed separately to prevent damage to the charging station.
- **“Gateway” vs. “Drone” Charging Station Models:** Each ChargePoint CT 4000 series model is available as either: a) a “Gateway” unit, which includes the internal cellular communications equipment to connect to the public network; or, b) as a “Drone” unit that wirelessly communicates to the Gateway when installed within appropriate proximity and line-of-site locations. Multiple Drone units are typically added near one Gateway unit to form a multi-station charging group or array. Note that slight variations in the maximum length of conduit indicated in the scenarios below (Options 1-3) may be accommodated in limited situations at the sole discretion of ABM and CEVA. Standard installation options include:
  - **Installation Profile Option #1: Surface Mount Installation**  
*Install Pedestal (“Bollard”) or Wall-Mounted dual charging station on existing concrete with anchors.* Two (2) 40 Amp Standard Circuit Breakers will be provided and installed in existing electrical panel with available space and amperage. Two (2) 60 Amp Disconnects will serve as local disconnecting means. A maximum of eighty (80) feet of ¾” Electrical Metallic Tubing (EMT) surface mount conduit and wire will be provided and installed.
  - **Installation Profile Option #2: Underground Installation**

**Install Pedestal (“Bollard”) dual charging station on new concrete base.** One (1) new concrete base will be constructed per charger. Two (2) 40 amp standard circuit breakers will be provided and installed in existing electrical panel with available space and amperage. Two (2) 60 Amp Disconnects will serve as local power disconnecting means. A maximum of forty-five (45) feet of underground trenching in planter and ¾” PVC underground conduit and wire will be provided and installed from existing electrical panel to new concrete base.

▪ **Installation Profile Option #3: Partial Surface and Underground Installation**

**Install Pedestal (“Bollard”) dual charging station on new concrete base.** One (1) new concrete base will be constructed. Two (2) 40 amp standard circuit breakers will be provided and installed in existing electrical panel with available space and amperage. Two (2) 60 Amp Disconnects will serve as local disconnecting means. A maximum of forty (40) feet of ¾” EMT surface mount conduit and wire will be provided and installed onto the existing structure with straps in surface mounted configuration -- and a maximum of up to twenty-five (25) feet of underground trenching will be provided in planter and ¾” PVC underground conduit and wire will be installed from structure to new concrete base of EVSE.

**Illustrations of ChargePoint 4000 Series Charging Stations:**



▪ **Additional ABM or Site Host Provided Services**

- a) The Site Host may also opt to self-perform additional scope beyond Installation Profile Option #1, #2, or #3. This additional scope, if needed, is referenced as Exhibit C of this document.
- b) If upon the site survey conducted by ABM, it is determined that there is additional required work beyond the scope detailed in Installation Profile Options #1, #2, or #3 above, ABM will provide an additional estimate for costs to complete the EVSE installation. These proposals, if desired, will be added as Exhibit B to this Agreement, while Site Host approval is included as Exhibit A of this document.
- c) In the event that the Site Host’s site does not have sufficient electrical infrastructure to support the addition of EV charging infrastructure, ABM may offer options or potential solutions that would help reduce or balance current electrical loads within a facility. Some options are designed to free up electrical capacity while others are designed to minimize peak load spikes and their resulting demand fees. Any such solutions will be implemented only upon Site Host approval.
- d) In the case of additional services by either party, ABM will cooperate with the Site Host to coordinate satisfactory completion of the installation of the EVSE pursuant to the requirements of the project.

- **ABM Exclusions and Qualifications**

Unless specifically noted otherwise:

- a) Electrical design work to accommodate non-standard configurations is excluded and will be charged as additional as required, with agreement of Site Host.
- b) Electrical permit, plan check fees, and utility charges are excluded and must be paid by Site Host where required.
- c) Pricing is based on existing electrical system having adequate physical space and amperage available.
- d) Excludes any underground work such as excavating, concrete or asphalt cutting and patching.
- e) Excludes cellular signal booster for equipment without adequate cellular connection.
- f) Excludes concrete coring of walls, floor, ceiling of building or parking structures
- g) Excludes x-ray or radar detection of concealed obstacles within a concrete slab in either a post tension slab or rebar supported slab.
- h) Excludes protective barriers i.e. post barriers (bollards) or wheel stops.
- i) Excludes pull boxes or intermediate junction boxes for primary electrical feeds to EV chargers or any low voltage or signal wiring.
- j) Excludes landscape repair or restoration.
- k) Excludes any cosmetic enhancements such as paint or parking lot striping.
- l) Excludes any parking lot, access ramp or access path re-configuration or leveling that may be required to create ADA accessible spaces.

## **VI. ABM Warranty, Installation Services, and Limitations**

- **Warranty:** ChargePoint provides a one-year manufacturer's equipment warranty. ABM labor and construction material are under warranty for one year after installation; all new work is done to local NEC code requirements. ABM is not responsible for the condition or capacity of the existing electrical systems. ABM is not responsible for any vandalism that occurs during or after the installation of materials. The cost of City permits and electrical engineering and engineered drawings (if applicable) are not included as part of the CEC-funded installation, although regular construction drawings are included. The CEC prohibits use of its funds for permitting. Local site hosts must cover permit costs.
- ☐ **Signal Boosting Equipment:** At times, signal boosting antennae may be required for the wireless features of ChargePoint EV charging stations to function properly. Due to the nature of wireless signals, possible interference, line of sight obstructions, etc., one or more antennae could be needed. During the original site visit, ABM will make efforts to determine the need for signal boosting equipment, and will provide such equipment to the extent feasible within the overall project cost framework. However, it is possible that supplementary signal boosting equipment may be needed in the future. If the need should arise, or if the cost exceeds what is feasible within the CEC grant cost parameters, ABM will provide a separate written proposal to Site Host that explains required signal boosting equipment.
- ☐ **ADA and Accessibility Requirements:** All ADA requirements determined by municipal or state agencies are the responsibility of the Site Host. ABM is responsible for the installation of the electrical system(s) necessary to the specific scope outlined for the EV chargers specified. It does not include surface modifications, striping removal, re-striping, etc. that may be necessary to comply with ADA or Accessibility Requirements. Also, any material changes to the electrical

scope caused by ADA or Accessibility requirements are considered as additional to ABM services provided through CEC funding. The guidelines to be followed are the draft “Plug-In Electric Vehicles: Universal Charging Access Guidelines and Best Practices” published by the State of California, Governor’s Office of Planning and Research, at: [http://opr.ca.gov/docs/PEV\\_Access\\_Guidelines.pdf](http://opr.ca.gov/docs/PEV_Access_Guidelines.pdf). In the event that the state issues new guidelines prior to installation, the new guidelines will be used to define ADA requirements.

- ☐ **Wheel Stops and Bollards:** Reasonable measures will be taken to install stations in a safe location set back to avoid contact from vehicles. As noted above, protective bollards and wheel stops are not included in the standard ABM work scope. If additional protection is desired or required by the City, bollards or wheel stops can be procured and installed with the city’s own resources or a proposal can be provided by ABM.

## VII. ABM Terms and Conditions

- A. Contractor Access to Site:** The Site Host shall permit ABM (“Contractor”), free and timely access to areas and equipment, and allow Contractor to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during Contractor’s normal working hours.
- B. Workmanship & Warranty:** Contractor warrants that the workmanship hereunder shall be free from defects for one year from date of installation. If any replacement part or item of equipment proves defective, Contractor will extend to Customer the benefits of any warranty Contractor has received from the manufacturer. Removal and reinstallation of any equipment or materials repaired or replaced not under a manufacturer’s warranty will be at Customer’s expense and at the rates then in effect.
- C. Alteration to Scope of Work:** Any alteration to, or deviation from, the scope of work in this Agreement involving extra work, cost of material or labor will become an extra charge (fixed-price amount or on a time-and-material basis at Contractor’s rates then in effect) over the sum stated in this Agreement. Site Host shall be notified in writing of any extra charge prior to completing any additional work or purchasing additional material.
- D. Liability for Delay:** Contractor shall not be liable for any delay, loss, damage, or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Contractor’s employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.
- E. Hold Harmless:** To the fullest extent permitted by law, ABM shall indemnify and hold harmless Site Host, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by any active or passive act or omission of Site Host, anyone directly or indirectly employed by Site Host, or anyone for whose acts Site Host may be liable, regardless of whether it is caused in part by the negligence of Contractor.
- F. OSHA Provisions:** Site Host shall make available to Contractor’s personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA’s Hazard Communication Standard Regulations.
- G. Toxic and Hazardous Substances:** Site Host’s obligation under this proposal; and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes, or materials are encountered, Contractor’s sole obligation will be to notify the Site Host of their existence. Contractor shall have the right thereafter to suspend its

work until such substances, wastes, or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.

**H. Damage Limitation:** UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL CONTRACTOR BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF SITE HOST’S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

**VIII. ABM Preventive Maintenance Program and Funding**

The California Energy Commission requires that applications for funding under PON-13-603 “must include a maintenance plan for continued reliable operation and unforeseen breakdowns of the electric vehicle supply equipment.” (Application Guidelines, p. 9) To fulfill this requirement, the California EV Alliance has negotiated a maintenance plan with ABM that will cover Site Host charging stations for a two year period following their installation. (Note that the formal term of the CEC project is anticipated to be from the date of execution of the CEC contract with the California EV Alliance through June 30, 2016.) To cover Year 1 of the project period, ABM will donate (as local match) the entire value of the maintenance plan based on its Manufacturers’ Suggested Retail Price (MSRP), which is \$200 per charge port for the year. In Year 2, ABM will discount the Plan by 50%, providing \$100 per charge port as match, while CEC funds will provide the balance of \$100 per port to ensure continuity of maintenance across all charging stations in the Project. The following chart outlines the funding commitments of ABM and the CEC.

BayCAP2 Maintenance Plan: Discount Pricing in Program Years 1 - 2					
Program Year	Annual MSRP Maintenance Plan (per Charge Port for quarterly inspection)	ABM Local Match (50% discount for BayCAP Quarterly Plan)	Site Host Contribution	CEC Funding	% Discount to Site Host
Year 1	\$200	\$200	\$0	\$0	100%
Year 2	\$200	\$100	\$0	\$100	100%

**ABM Maintenance Scope of Work**

- **Software Monitoring:** ABM will monitor on a daily basis the ChargePoint network software to detect failure modes and promptly address the problem, either through software adjustments or dispatch of a technician to the site, if authorized by the site host.
- **Software Upgrades:** ABM will work with ChargePoint to ensure rapid and seamless deployment of software upgrades.
- **Monitoring and re-programing of pricing:** ABM will assist Site Hosts in monitoring (and re-programming as necessary) their pricing approach to EV parking and charging services.
- **Monitor and report key EVSE data:** ABM will monitor and report key EVSE utilization data, including charge session frequency, length, energy utilization, and payment history.
- **Quarterly On-site Maintenance Scope of Work:** An ABM technician will visit Site Host locations in person on a quarterly basis to undertake the following maintenance activities:

**Maintain equipment finishes:** ABM will clean the display, head and pedestal/base unit with ABM Green Care cleanser and microfiber cloth; inspect and clean cord and J-1772 receptacle, apply cable protective Green Care coating, and clean all aluminum and plastic parts with microfiber cloths and Green Care cleansers. (Note that ABM Green Care products are LEED certified for green maintenance processes.)

**Activate "ChargePoint" session** and perform visual inspection of electrical components and initiate the charging station self-test processes. Minor repairs and recalibration can often be done on site while technician is performing service to eliminate return trips and minimize down time of the equipment.

- **ChargePoint warranty repair work:** All charging station warranty related repair work will be processed through ChargePoint if such repairs are the responsibility of the manufacturer.
- **Non-Warranty work – option of pre-authorized work:** All non-warranty work such as vandalism repair or damage to EVSE equipment shall be estimated prior to repairs. At the option of the Site Host, this work could be immediately addressed under a “Not to Exceed” threshold of \$750.00 (or other amount) pre-approved by the site host. If authorized, ABM will perform work on a time and materials basis. Any agreement for pre-authorized repairs (if so desired) will be executed by ABM and the Site Host independently of this Notice to Proceed.

#### **IX. Network Services Fees**

The ChargePoint network services fee is \$230 per year per port, and covers software upgrades, station programming, cellular connections, and 24/7 driver support. THE TWO-YEAR NETWORK SERVICES FEE MUST BE PAID IN FULL PRIOR TO THE COMMISSIONING OF CHARGING STATIONS. ABM will invoice the Site Host on behalf of ChargePoint, and shall provide proof of Site Host payment within 30 days to the California EV Alliance in fulfillment of CEC project reporting requirements.

#### **X. ChargePoint One Year Warranty and Optional Extended Warranty**

The first year ChargePoint warranty is included free with all charging stations included in the Project. An optional extended warranty covers one or two additional years (parts only) for \$660 per Charging Station per year. If a Site Host wishes to extend the ChargePoint warranty, it must be specified at the time of equipment order and paid within 30 days.

#### **XI. Site Host Pricing Policy Requirements**

The California Energy Commission requires Site Hosts to implement a plan to optimize the use of the charging site to allow multiple EVs to use the charging equipment during a typical day, and to prohibit utilization of a charging station “beyond a reasonable period of time.” In alignment with this goal, the Site Host shall implement the Pricing Plan identified in their Letter of Participation included in response to the CEC solicitation PON-13-603. The standard (default) Plan developed for all BayCAP project participants calls for the following elements to be administered by the Site Host. (Note that variations from this Plan may be acceptable, but need to be discussed and approved by the California EV Alliance and included as part of this Notice to Proceed.)

- A. Fee-Based Charging:** Site hosts shall set charging rates between \$1.00 and \$1.50 per hour for use of the charger. This may or may not include separate charges for parking per the jurisdiction’s usual parking policies. Fees may be calculated based on duration of stay, energy consumed (kWh), or a combination of the two.
- B. Graduated Pricing Based on Duration of Stay:** Site hosts shall raise the fee for occupying the EVSE-equipped space by a sufficient increment to encourage turnover of the space and thus greater availability and utilization (in charging mode) for EV drivers. It is recommended that this

approach be implemented after approximately four hours of charging at the lower cost rate – particularly in cases where utilization rates are observed to be very high (70% or more) and available alternative charging facilities are limited. Site hosts may also consider a lower evening or weekend rate for EVs (similar to most existing parking policies) to encourage responsible off-peak use. (In particular, lots proximate to multi-unit residential buildings could provide a lower-cost overnight rate with a higher daytime rate that incentivizes overnight EVSE users to make way for daytime visitors and commuters.)

- C. EVSE Revenue and Cost Monitoring:** Pricing strategies should be reviewed on a semi-annual basis to ensure that expenses for sustaining charger operations are covered to the maximum extent feasible and appropriate. In most cases, fees for charger operations set in the \$1/hr. range (or equivalent kWh) should be adequate to cover energy costs, transaction fees, the ChargePoint network services fee, and (beginning with Year 3 of the Project) the (optional) continuation of the ABM Maintenance Plan. In rare cases where the charger is not yet being well-utilized, there may be a modest operating subsidy required.

**XII. Disposition of Equipment:** The California Energy Commission solicitation terms and conditions only addresses the disposition of equipment purchased with grant funds if they have a unit cost greater than \$5,000 and a useful life of greater than one year. The ChargePoint EV charging stations have a unit cost LESS than \$5,000. In the event that the charging stations DID cost more than \$5,000, the CEC indicates that “recipients may continue to utilize equipment purchased with Energy Commission funds as long as the use is consistent with the intent of the original Grant Agreement.” Please note that there are no disposition requirements for equipment purchased with match share funding.

**XIII. Summary of Equipment and Services Provided Under This Agreement:**

<b>CITY OF BENICIA</b>	
<b>Summary of Charging Station Installation and for ChargePoint (CPI) Network Services and ABM Maintenance</b>	<b>Agreements</b>
<b>Description</b>	<b>Cost</b>
<b>A. Quantity/Type of Charging Stations:</b> <b>3 ChargePoint CT 4000 dual port Level 2 Charging Stations</b> <b>Total Number of Charging Ports: 6 Ports</b>	Paid by CEC with CPI discount as local match
<b>B. Location of Charging Stations:</b> <ol style="list-style-type: none"> <li>1. 2 Charging Stations at (370 E. L Street, Benicia, 94510, side of parking lot; 3 designated spots.)</li> <li>2. 1 Charging Stations at (Park Road at Industrial Way, Benicia, 94510, specific location unknown.)</li> </ol>	\$0
<b>C. <u>Required</u> Two-Year ChargePoint Network Services Agreement:</b> (\$230 per port x 2 years x total number of ports = total price)	\$2,760

<b>D. <u>Included</u> Two-Year ABM Cleaning and Maintenance Service</b> (\$200 per year per charge port – included as local match)	Paid by ABM & included as local match
<b>E. Optional: 2<sup>nd</sup> or 2<sup>nd</sup>/3<sup>rd</sup> Year ChargePoint Extended Warranty</b> (parts only): (# of Charging Stations x \$660 per year x # of years = total price)	\$0
<b>F. Additional (optional) installation or equipment upgrades specified in Exhibit B below</b> (including parts and services):	\$0
<b>Total Costs Paid by Site Host</b> (sum of Sections C-F above):	\$2,760

**Billing Information**

Billing Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Authorization:** We instruct **ABM Electrical Power Solutions, LLC** or subsidiaries to proceed with scheduling and performing the work described in the attached proposal.

**Proposed date to begin work:** \_\_\_\_\_

**Host Entity Name** (for billing and payment purposes): \_\_\_\_\_

**Amount:** (Insert "total costs paid by site host" itemized above): \_\_\_\_\_

**Payment will be made to ABM by:** (check one option below)

\_\_\_\_ **Company check** before project start date: Check number: \_\_\_\_\_

\_\_\_\_ **Purchase or Service order:** P.O. Number: \_\_\_\_\_

\_\_\_\_ **Credit or Debit card:** \_\_\_ Visa \_\_\_ Master Other: \_\_\_\_\_

**Card Number:** \_\_\_\_\_

**Billing Address:** \_\_\_\_\_

**Exhibit B: Optional Additional Infrastructure Services Provided by ABM**

**Sample Additional Electrical Upgrade & Installation Infrastructure Services**

(to be customized by ABM and Site Host)

<ul style="list-style-type: none"> <li>▪ Install _____ Wheel Stop(s)</li> <li>▪ Install _____ Protective Bollard(s)</li> <li>▪ Transformer _____ KVA</li> <li>▪ Wall Core Qty _____</li> <li>▪ Floor Core Qty _____</li> </ul>	<ul style="list-style-type: none"> <li>▪ J - Box Qty _____</li> <li>▪ Trenching _____ ft</li> <li>▪ Concrete Cut/Patch _____ ft</li> <li>▪ Asphalt Cut/Patch _____ ft</li> <li>▪ Landscape Repair _____ ft</li> </ul>
--	---

Description of Work to be Performed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Materials List: \_\_\_\_\_

\_\_\_\_\_

Materials \$: \_\_\_\_\_

Labor \$: \_\_\_\_\_

Tax \$: \_\_\_\_\_

Total \$: \_\_\_\_\_

*Note: All work performed to local and NEC requirements by California State Certified Electricians.*

**ABM Electrical Power Services, LLC (ABEPS) Terms and Conditions**

The following items are in addition to Section VII – ABM Terms and Conditions within this BayCAP Approval to Proceed document. Authorization to proceed with the work outlined in this quotation shall constitute Site Host (“Buyer’s”) acceptance of these terms and conditions in full. Oral authorizations to proceed must be confirmed to ABMEPS in writing (Fax or e-mail) within 24 hours. If there is a conflict or discrepancy between terms and conditions in the Buyer’s purchase authorization and this quotation, this quotation shall prevail unless specifically authorized, in writing, by ABM Electrical Power Services, LLC

**Terms of Payment:** **1.** Terms are net thirty (30) days. Any invoice not paid within thirty (30) days from the date of invoice will be subject to a service charge equal to the lesser of One and One-half percent (1.5%) per month on account balances or the maximum percentage permitted by law. **2.** At ABMEPS’s option, customers may be invoiced on a monthly basis for services provided over more than one month. **3.** All pricing and payment terms

contained herein are contingent upon a favorable Credit Report for the customer/client to whom this quotation is provided. Upon receipt of a less than favorable credit report ABMEPS reserves the right to withdraw this proposal, modify the pricing, or require payment when services are rendered, or advance payment of the total job quotation before providing services. **4.** For material purchases in excess of \$50,000, ABMEPS reserves the option to invoice 50% of the total at the time of material order and the remaining 50% at the time of material delivery. **5.** Customer agrees to pay ABMEPS, to the extent permitted by applicable law, all costs and expenses, including but not limited to reasonable attorney's fees, incurred by ABMEPS in connection with any collection activities or actions to collect unpaid invoices under this quotation.

**Delays:** ABMEPS shall not be liable for delays or performance resulting from causes beyond its reasonable control, acts of God, acts or omissions of Buyer, fire, strike or other labor difficulty. Should there be a delay, the date of delivery or performance shall be extended.

**Cancellation:** Notice of cancellation of services to be performed must be received thirty-six (36) hours prior to the agreed upon date and time. Unless such notification is provided, charges will be incurred. These charges will be ABMEPS's cost plus ten percent (10%) and will include any rental equipment for the Project.

**Disclaimer:** ABMEPS assumes no responsibility for any damage or injury to any property caused directly or indirectly as a result of ABMEPS performing its duties under this agreement except such damage or injury that may be held to result solely and directly from or out of: Any grossly negligent performance by ABMEPS in its obligations under this Agreement or any willful misconduct on the part of ABMEPS, its agents or employees.

**Responsibility:** All services are performed in accordance with industry standards, project specifications and/or NETA specifications. Where remediation is beyond the scope of normal reliability testing, and where corrective action is required, such services will be quoted separately.

**Assignment:** ABMEPS reserves the right to assign this project in part or in total to an affiliated entity.

**Termination:** An order may be terminated only by mutual written agreement between Buyer and ABMEPS and only upon payment of costs and expenses already incurred by ABMEPS

**Safety:** ABMEPS agrees to comply with all applicable federal, state, local, National Electric Codes and project safety rules and regulations. ABMEPS reserves the right not to perform work that in its opinion violates OSHA Electrical Safety-Related Work Practices; Final Rule or other safety rules and regulations.

**Standby Time:** When ABMEPS service personnel are on the job site but unable to perform services requested because of circumstances beyond ABMEPS control, the customer may be charged standby time at the applicable rate for each such ABMEPS service person (up to a maximum of eight (8) hours per day per person).

**Liability:** ABM Electrical Power Services, LLC. and its contractors and suppliers of any tier, shall not be liable in contract, in tort or otherwise for damage or loss of property or equipment, loss of profits or revenue, loss of use of equipment or power system, cost of capital, cost of purchased or replacement power or temporary equipment (including additional expenses incurred in using existing facilities), claims of customers of Buyer, or for any special, indirect, incidental, or consequential damages of any kind, whether arising in or based on contract, tort, statute, strict liability, warranty or otherwise.

**Warranties:** All material and equipment delivered and/or installed will be the products of reputable manufacturers. ABMEPS MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY EXCLUDED, CONCERNING MATERIAL AND EQUIPMENT MANUFACTURED BY OTHERS. ABMEPS sells and delivers all materials and equipment not manufactured by it "AS IS," but ABMEPS will use its best reasonable efforts to obtain from the manufacturer, in accordance with the manufacturer's customary practices, the repair or replacement of any material or equipment which may prove defective in workmanship or material. The foregoing shall be the exclusive remedy of Buyer and the sole obligation of ABMEPS with respect to material and equipment manufactured by others. Further, ABMEPS warrants its labor for one (1) year.

**Exhibit C: Site Host Commitment to Perform Site Preparation Services**

**NOTE:** This Exhibit is needed ONLY if the Site Host and ABM mutually determine that additional services must be performed by the Site Host to enable successful installation of EVSE.

**Project(s):** \_\_\_\_\_

**Site Addresses:** \_\_\_\_\_

**Site Addresses:** \_\_\_\_\_

**Site Addresses:** \_\_\_\_\_

**Site Host Contact Name & Title:** \_\_\_\_\_

**Site Host Phone:** \_\_\_\_\_ **Site Host E-mail:** \_\_\_\_\_

**Acknowledgement:** We hereby acknowledge that the following additional work is required to meet the terms and conditions of the CEC-funded charging station installation project described herein, and that this work shall be conducted by the Site Host, at the Host's own expense, using the Host's own resources, contractors (if applicable), and personnel.

**Scope of Work:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Proposed date to begin work:** \_\_\_\_\_

**Proposed date to complete work:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title (Please Print):** \_\_\_\_\_

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

**Exhibit D: ChargePoint Warranty Information**

(See attached)

**Exhibit E: ChargePoint Master Software Services Agreement**

(See attached)

**APPROVAL TO PROCEED**

**(inclusive of Exhibits A, B, C, D, and E above – as applicable)**

The signatures below indicate agreement by all named parties with this Approval to Proceed (including Exhibits A, B, C, D, and E above – as applicable) with the installation of charging equipment and related services under the terms and conditions outlined in this document and in the Bay Area Charge Ahead Project grant application and award from the California Energy Commission.

Please note that this agreement is contingent upon and only goes into force after execution of all necessary agreements between the CEC and the California EV Alliance (CEVA), and the subsequent execution of valid agreements between the CEVA and ABM. If in the event that these superior agreements are not completed successfully with mutual consent between the parties, then ABM is not obligated to provide the equipment nor services identified in this agreement.

\_\_\_\_\_  
**Site Host Authorized Signature** **Brad Kilger, City Manager**  
**Printed Name & Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**ABM Authorized Signature** **Printed Name & Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Approved as to form**

\_\_\_\_\_  
**Date**



## Limited Product Warranty

### Our Promise

This Limited Product Warranty applies to you, the original purchaser of one or more new CHARGEPOINT, INC. (“CHARGEPOINT”) Charging Stations (the “Product”) from CHARGEPOINT or one of its authorized resellers for your own use and not for resale. This warranty is not transferrable and is valid for U.S.A. and Canada only.

1. **LIMITED ONE-YEAR WARRANTY:** Subject to the exclusions from warranty coverage set forth below, CHARGEPOINT warrants that the Product will be free from any defects in materials and/or workmanship (the “Limited Product Warranty”) for a period (the “One-Year Warranty Period”) ending on the earlier of (i) one (1) year commencing on the date your charging station is activated on the ChargePoint network or (ii) one (1) year commencing on the sixth month anniversary of the date the Product was shipped to you. If, during the One-Year Warranty Period, the Product becomes defective in breach of the Limited Product Warranty, CHARGEPOINT will, upon written notice of the defect received during the One-Year Warranty period, either repair or replace, at CHARGEPOINT’s election, the Product.
2. **EXTENDED WARRANTY:** Subject to the exclusions from warranty coverage set forth below, if you have purchased an extended warranty (“Extended Warranty”), available in two (2), three (3), four (4) or five (5) year terms, and if the Product becomes defective in breach of the Limited Warranty above at any time during the term of your Extended Warranty commencing on the earlier of (i) the date the Product is activated on the ChargePoint network or (ii) the sixth month anniversary of the date the Product was shipped to you, (the “Extended Warranty Period”), CHARGEPOINT will, upon written notice of the defect received during the Extended Warranty Period, either repair or replace, at CHARGEPOINT’s election, the Product.

### Follow These Easy Steps to Obtain Warranty Service

1. Activate your warranty on-line during the installation and activation process for your charging station. This starts the “clock” on the term of your warranty.
2. If at any time during the term of your warranty you believe you have a defective product, contact Customer Service at 1-877-850-4562 or [support@chargepoint.com](mailto:support@chargepoint.com), or for customers outside the U.S., contact 001-408-841-4548, and notify CHARGEPOINT of the nature of the defect.
3. If the Defect appears to be covered by your Warranty and your Warranty is still in effect you will be provided a Returned Material Authorization number (RMA number) to reference when returning the defective product for repair or replacement.
4. Ship the defective product to CHARGEPOINT and reference the RMA number in the shipping documentation.
5. CHARGEPOINT will either repair or replace the defective product at no charge to you and ship the repaired or replaced product back to you at CHARGEPOINT’s expense.

### IMPORTANT

1. You are responsible for the proper installation and maintenance of the Product including the de-installing of any defective product and the installation of repaired or replacement product.
2. Any service or repairs beyond the scope of the Limited Warranty or the Extended Warranty above are subject to. Any service or repairs beyond the scope of the Limited Warranty or the Extended Warranty above are subject to

CHARGEPOINT's then prevailing current labor CHARGEPOINT's then prevailing current labor rates and other applicable charges.

3. Products that are found by CHARGEPOINT to be out-of-warranty or otherwise ineligible for warranty service will be repaired or replaced at CHARGEPOINT's standard charges at your expense.
4. Please read carefully through the detailed descriptions of the Limited Product Warranty, the EXCLUSIONS FROM LIMITED PRODUCT WARRANTY, and the LIMITATIONS ON WARRANTY AND LIABILITY on the following pages to assure that the Product is eligible for warranty service without additional cost to you.

## Limited Product Warranty

This Limited Product Warranty and, if purchased, the Extended Warranty on your Product applies to you, the original purchaser of one or more new Products from CHARGEPOINT or one of its authorized resellers for your own use and not for resale. This warranty is not transferrable.

All warranty services under this Agreement shall be performed by CHARGEPOINT or an authorized CHARGEPOINT installer or service provider. The performance of warranty services by any other party shall void this Limited Product Warranty.

You acknowledge that replacement parts or products provided by CHARGEPOINT under each of the Limited Warranty and the Extended Warranty may be remanufactured or reconditioned parts or Products or, if the exact Product is no longer manufactured by CHARGEPOINT, a Product with substantially similar functionality ("Replacement Products"). All replaced parts, whether under warranty or not, become the property of CHARGEPOINT.

Any Replacement Products so furnished will be warranted for the remainder of the original Warranty Period or ninety days from the date of delivery of such Replacement Product, whichever is later. Should CHARGEPOINT be unable to repair or replace the Product, CHARGEPOINT will refund the purchase price of the Product.

## EXCLUSIONS FROM LIMITED PRODUCT WARRANTY AND EXTENDED WARRANTY

**IMPORTANT:** The Limited Warranty and, if purchased, the Extended Warranty on your Product shall not apply to defects or service repairs resulting from the following:

- Improper site preparation or maintenance, cosmetic damage such as scratches and dents, or normal aging.
- Abuse, vandalism, damage or other problems caused by accidents or negligence (including but not limited to physical damage from being struck by a vehicle), or use of the Products in a way other than as specified in the applicable CHARGEPOINT documentation.
- Installation, alteration, modification or relocation of the Product that was not approved in writing by CHARGEPOINT or performed by CHARGEPOINT or by an authorized CHARGEPOINT installer or service provider.
- Use of the Product with software, interfacing, parts or supplies not supplied by CHARGEPOINT.
- Damage as a result of extreme power surge, extreme electromagnetic field or any acts of nature.
- Any other causes beyond the control of CHARGEPOINT.

THIS WARRANTY APPLIES ONLY TO YOUR CHARGING STATION AND NOT TO ANY CHARGEPOINT SERVICE PLAN. CHARGEPOINT SPECIFICALLY DOES NOT WARRANT THAT ANY CHARGEPOINT SERVICES WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION.

## LIMITATIONS ON WARRANTY AND LIABILITY

NO AGENT OF CHARGEPOINT IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF CHARGEPOINT. THE REMEDIES IN THIS LIMITED PRODUCT WARRANTY ARE YOUR SOLE AND EXCLUSIVE

REMEDIES. CHARGEPOINT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OTHER THAN THE LIMITED PRODUCT WARRANTY SET FORTH ABOVE. ALL OTHER WARRANTIES RESPECTING THE PRODUCT AND DOCUMENTATION AND SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF CHARGEPOINT OR DISTRIBUTOR HAS BEEN INFORMED OF SUCH PURPOSE) OR AGAINST INFRINGEMENT, ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN SUCH IMPLIED WARRANTY SHALL BE LIMITED IN DURATION TO THE ONE-YEAR WARRANTY PERIOD DESCRIBED ABOVE. NO WARRANTIES APPLY AFTER EXPIRATION OF THE ONE-YEAR WARRANTY PERIOD, OR, IF APPLICABLE, THE EXTENDED WARRANTY PERIOD.

Some states or jurisdictions do not allow the exclusion of express or implied warranties or limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

CHARGEPOINT IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS, LOST DATA, LOSS OF USE, OR COST OF COVER INCURRED BY YOU ARISING OUT OF OR RELATED TO YOUR PURCHASE OR USE OF, OR INABILITY TO USE, THE PRODUCT, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF CHARGEPOINT KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE CUMULATIVE LIABILITY OF CHARGEPOINT FOR ALL CLAIMS WHATSOEVER RELATED TO THE PRODUCT WILL NOT EXCEED THE PRICE YOU PAID FOR THE PRODUCT. THE LIMITATIONS SET FORTH HEREIN ARE INTENDED TO LIMIT THE LIABILITY OF CHARGEPOINT AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Some states or jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

## ADDITIONAL INFORMATION

This Limited Product Warranty shall be governed by and construed in accordance with the laws of the State of California, U.S.A., exclusive of its conflict of laws principles. The U.N. Convention on Contracts for the International Sale of Goods shall not apply.

This Limited Product Warranty is the entire and exclusive agreement between you and CHARGEPOINT with respect to its subject matter, and any modification or waiver of any provision of this statement is not effective unless expressly set forth in writing by an authorized representative of CHARGEPOINT.



**CHARGEPOINT®**  
**MASTER SERVICES AND SUBSCRIPTION AGREEMENT**

**IMPORTANT: THIS MASTER SERVICES AND SUBSCRIPTION AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU OR THE CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY YOU REPRESENT (“SUBSCRIBER”) AND CHARGEPOINT, INC., A DELAWARE CORPORATION (“CPI”). PLEASE READ IT CAREFULLY. BY USING ANY OF THE CHARGEPOINT SERVICES, YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS AND CONDITIONS, DO NOT USE ANY CHARGEPOINT SERVICES.**

**IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY, THAT ENTITY REPRESENTS THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, YOU MAY NOT ENTER INTO THIS AGREEMENT AND SUCH ENTITY MAY NOT USE THE CHARGEPOINT SERVICES.**

**1. AGREEMENT.**

**1.1 SCOPE OF AGREEMENT.** This Agreement governs the following activities:

- (a) Provisioning of Subscriber’s Charging Station(s), if any, on ChargePoint;
- (b) Activation and use of the ChargePoint Services on Subscriber’s Charging Station(s), if any;
- (c) Subscriber’s use of the APIs as part of the ChargePoint Services;
- (d) Each grant of Rights by Subscriber; and
- (e) Each grant of Rights by a third party to Subscriber.

**1.2 EXHIBITS AND PRIVACY POLICY.** This Agreement includes the CPI [Privacy Policy](#), as amended from time to time, and the following Exhibits, which are made a part of, and are hereby incorporated into, this Agreement by reference.

- Exhibit 1: Flex Billing Terms
- Exhibit 2: API Terms
- Exhibit 3: Terms Regarding Granting and Receipt of Rights

In the event of any conflict between the terms of this Agreement on the one hand, and the Privacy Policy or any Exhibit on the other hand, this Agreement shall govern. Capitalized terms not otherwise defined in any Exhibit or the Privacy Policy shall have the same meaning as in this Agreement.

**2. DEFINITIONS.** The following terms shall have the definitions set forth below when used in this Agreement:

**2.1 “Affiliate”** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control”, for purposes of this definition, means direct or indirect ownership or control of fifty percent (50%) or more of the voting interests of the subject entity.

**2.2 “APIs”** means, individually or collectively, the application programming interfaces which are made available to Subscriber from time to time, as and when updated by CPI.

**2.3 “ChargePoint Connections”** shall have the meaning ascribed to it in the applicable data sheet. The term ChargePoint Connections shall also mean any successor service provided by CPI.

**2.4** *“ChargePoint®”* means the open-platform network of electric vehicle charging stations and the vehicle charging applications the network delivers, that is operated and maintained by CPI (as defined below) in order to provide various services to, among others, Subscriber and its employees.

**2.5** *“ChargePoint Services”* means, collectively, the various cloud services offerings (including, without limitation, APIs and application service plans) made available for subscription by CPI.

**2.6** *“ChargePoint Application”* means any of the applications established and maintained by CPI which will allow Subscriber to access ChargePoint Services.

**2.7** *“Charging Station”* means the electric vehicle charging station(s) purchased by Subscriber, whether manufactured by CPI or by a CPI authorized entity, which are registered and activated on ChargePoint.

**2.8** *“Content”* means all data collected or maintained by CPI in connection with the operation of ChargePoint.

**2.9** *“CPI Marks”* means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used in connection with ChargePoint and/or CPI manufactured Charging Stations, including without limitation, ChargePoint.

**2.10** *“CPI Property”* means (i) ChargePoint, (ii) the ChargePoint Services (including all Content), (iii) all data generated or collected by CPI in connection with the operation of ChargePoint and ChargePoint Services, (iv) the CPI Marks, (v) the ChargePoint Cards, and (vi) all other CPI-supplied material developed or provided by CPI for Subscriber use in connection with the ChargePoint Services.

**2.11** *“Documentation”* means written information (whether contained in user or technical manuals, product materials, specifications or otherwise) pertaining to ChargePoint Services and/or ChargePoint and made available from time to time by CPI to Subscriber in any manner (including on-line).

**2.12** *“Effective Date”* means the earlier of (a) the date that Subscriber electronically accepts this Agreement, or (b) the date of Subscriber’s first use of the ChargePoint Services.

**2.13** *“Intellectual Property Rights”* means all intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, Subscriber lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

**2.14** *“Malicious Code”* means viruses, worms, time bombs, Trojan horses and all other forms of malicious code, including without limitation, malware, spyware, files, scripts, agents or programs.

**2.15** *“Party”* means each of CPI and Subscriber.

**2.16** *“PII”* means personally identifiable information regarding Subscriber or a User (e.g., name, address, email address, phone number or credit card number) that can be used to uniquely identify, contact or locate Subscriber or such User.

**2.17** *“Provisioning”* means activating Charging Stations, warranties and Service Plans on ChargePoint

**2.18** *“Rights”* means the rights, authorizations, privileges, actions, information and settings within the ChargePoint Services which a Rights Grantor grants to an Rights Grantee, to enable such Rights Grantee to access, obtain and use certain portions of the ChargePoint Services and certain

information available therein in the course of providing services to or on behalf of such Rights Grantor in connection with one or more of the Rights Grantor's Charging Stations. A Rights Grantor shall be deemed to have granted Rights to the entity that will be responsible for creating Subscriber's account and Provisioning Subscriber's Charging Stations. Such deemed grant may be terminated by Subscriber at any time.

**2.19 "Service Plan(s)"** means subscription plans to the ChargePoint Services which are offered and sold by CPI from time to time, which vary according to their features, privileges and pricing.

**2.20 "Subscriber Content and Services"** means any content and/or services that a Subscriber provides or makes available to Users and/or the general public in connection with the ChargePoint Services, other than Content, ChargePoint Services and CPI Property.

**2.21 "Subscriber Marks"** means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used by Subscriber in connection with its business and/or Charging Stations.

**2.22 "Subscription Fees"** means the fees payable by Subscriber for subscribing to any ChargePoint Services.

**2.23 "Taxes"** shall mean all present and future taxes, imposts, levies, assessments, duties or charges of whatsoever nature including without limitation any withholding taxes, sales taxes, use taxes, service taxes, value added or similar taxes at the rate applicable for the time being imposed by any national or local government, taxing authority, regulatory agency or other entity together with any penalty payable in connection with any failure to pay or any delay in paying any of the same and any interest thereon.

**2.24 "Token(s)"** means the serialized proof of purchase of a Service Plan that is used by CPI in connection with enabling Services and/or provisioning Charging Stations.

**2.25 "User"** means any person using a Charging Station.

**3. AVAILABLE CHARGEPOINT SERVICES & SERVICE PLANS.** A description of the various ChargePoint Services and Service Plans currently available for subscription is located on the CPI website. CPI may make other ChargePoint Services and/or Service Plans available from time to time, and may amend the features or benefits offered with respect to any ChargePoint Service or Service Plan at any time and from time to time. Subscription Fees are based on Subscriber's choice of Service Plan and not on actual usage of the Subscription.

**4. CPI'S RESPONSIBILITIES AND AGREEMENTS.**

**4.1 OPERATION OF CHARGEPOINT.** CPI agrees to provide and shall be solely responsible for: (i) provisioning and operating, maintaining, administering and supporting ChargePoint and related infrastructure (other than Subscriber's Charging Stations and infrastructure for transmitting data from Charging Stations to any ChargePoint operations center); (ii) provisioning and operating, maintaining, administering and supporting the ChargePoint Applications; and (iii) operating ChargePoint in compliance with all applicable laws. CPI will protect the confidentiality and security of PII in accordance with all applicable laws and regulations and the CPI Privacy Policy.

**4.2 LIMITATIONS ON RESPONSIBILITY.** CPI shall not be responsible for, and makes no representation or warranty with respect to the following: (i) specific location(s) or number of Charging Stations now, or in the future, owned, operated and/or installed by persons other than Subscriber, or the total number of Charging Stations that comprise ChargePoint; (ii) continuous availability of electrical service to any of Subscriber's Charging Stations; (iii) continuous availability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by

CPI of ChargePoint; (iv) availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; and/or (v) charging stations that are not registered with and activated on the ChargePoint Network.

## **5. SUBSCRIBER'S RESPONSIBILITIES AND AGREEMENTS.**

### **5.1 GENERAL.**

(a) All use of ChargePoint and ChargePoint Services by Subscriber, its employees and agents and its grantees of Rights shall comply with this Agreement and all of the rules, limitations and policies of CPI set forth in the Documentation. All ChargePoint Services account details, passwords, keys, etc. are granted to Subscriber solely for Subscriber's own use (and the use of its grantees of Rights), and Subscriber shall keep all such items secure and confidential. Subscriber shall prevent, and shall be fully liable to CPI for, any unauthorized access to or use of ChargePoint or ChargePoint Services via Subscriber's Charging Stations, ChargePoint Services account(s) or other equipment. Subscriber shall immediately notify CPI upon becoming aware of any such unauthorized use.

(b) Subscriber shall be solely responsible for: (i) Provisioning of its Charging Stations, if any; (ii) keeping Subscriber's contact information, email address for the receipt of notices hereunder, and billing address for invoices both accurate and up to date; (iii) updating on the applicable ChargePoint Application, within five (5) business days, the location to which any of Subscriber's Charging Stations are moved; (iv) the maintenance, service, repair and/or replacement of Subscriber's Charging Stations as needed, including informing CPI of the existence of any Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber; and (v) compliance with all applicable laws.

(c) Subscriber shall deliver in full all benefits promised to Users by Subscriber in exchange for such Users connecting with Subscriber using ChargePoint Connections.

**5.2 REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER.** Subscriber represents and warrants to CPI that: (i) it has the power and authority to enter into and be bound by this Agreement and shall have the power and authority to install the Charging Stations and any other electrical vehicle charging products which are registered and activated on the ChargePoint Network); (ii) the electrical usage to be consumed by Subscriber's Charging Stations will not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement including, without limitation, any lease, to which Subscriber is a party; and (iii) it has not installed or attached and will not install or attach Charging Stations on or to infrastructure not owned by Subscriber without proper authority, or in a manner that will block any easement or right of way.

**5.3 CHARGEPOINT CARDS.** Subscriber may be permitted by CPI, in CPI's sole discretion, to obtain CPI-provisioned radio-frequency identification cards ("ChargePoint Cards") which enable the individual card recipients to access and use ChargePoint. Subscriber may distribute such ChargePoint Cards to individuals, and each individual ChargePoint Card recipient is responsible for activating his or her ChargePoint Card on ChargePoint directly with CPI on the CPI web site. In no event will Subscriber create any separate ChargePoint accounts for any ChargePoint Card recipients or other third parties, nor will Subscriber create anonymous ChargePoint accounts associated with any ChargePoint Card.

**5.4 USE RESTRICTIONS AND LIMITATIONS.** Subscriber shall not:

(a) sell, resell, license, rent, lease or otherwise transfer the ChargePoint Services or any Content therein to any third party;

(b) interfere with or disrupt the ChargePoint Services, servers, or networks connected to the ChargePoint Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the ChargePoint Services;

(c) restrict or inhibit any other user from using and enjoying the ChargePoint Services or any other CPI services;

(d) attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or related systems or networks or any data contained therein, or access or use ChargePoint or ChargePoint Services through any technology or means other than those provided or expressly authorized by CPI;

(e) create any ChargePoint Services user account by automated means or under false or fraudulent pretenses, or impersonate another person or entity on ChargePoint, or obtain or attempt to obtain multiple keys for the same URL;

(f) reverse engineer, decompile or otherwise attempt to extract the source code of the ChargePoint Services or any part thereof, or any Charging Station, except to the extent expressly permitted or required by applicable law;

(g) create derivative works based on any CPI Property;

(h) remove, conceal or cover the CPI Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Charging Stations or any peripheral equipment for use in connection with Subscriber's Charging Stations;

(i) except as otherwise expressly permitted by this Agreement or in any applicable data sheet relating to a ChargePoint Service, copy, frame or mirror any part of the ChargePoint Services or ChargePoint Content, other than copying or framing on Subscriber's own intranets or otherwise solely for Subscriber's own internal business use and purposes;

(j) access ChargePoint, any ChargePoint Application or the ChargePoint Services for the purpose of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose, or for any improper purpose whatsoever, including, without limitation, in order to build a competitive product or service or copy any features, functions, interface, graphics or "look and feel;"

(k) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the ChargePoint Services or Content or collect information about ChargePoint users for any unauthorized purpose;

(l) upload, transmit or introduce any Malicious Code to ChargePoint or ChargePoint Services;

(m) use any of the ChargePoint Services if Subscriber is a person barred from such use under the laws of the United States or of any other jurisdiction; or

(n) use the ChargePoint Services to upload, post, display, transmit or otherwise make available (A) any inappropriate, defamatory, obscene, or unlawful content; (B) any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party; (C) any messages, communication or other content that promotes pyramid schemes, chain letters, constitutes disruptive commercial messages or advertisements, or is prohibited by applicable law, the Agreement or the Documentation.

## **5.5 CONTENT.**

(a) ChargePoint Content (including but not limited to Charging Station data and status) is provided for planning purposes only. Subscriber may find that various events may mean actual Charging Station conditions (such as availability or pricing) differ from what is set forth in the Content. In addition, certain Charging Station-related Content, including Charging Station name and use restrictions, is set by the Charging Station owner and is not verified by CPI. Subscriber should exercise judgment in Subscriber's use of the Content.

(b) Certain Content may be provided under license from third parties and is subject to copyright and other intellectual property rights of such third parties. Subscriber may be held liable for any unauthorized copying or disclosure of such third party-supplied Content. Subscriber's use of such Content may be subject to additional restrictions set forth in the Documentation.

(c) Subscriber shall not copy, modify, alter, translate, amend, or publicly display any of the Content except as expressly permitted by the Documentation. Subscriber shall not present any portion of the Content in any manner, that would (i) make such Content false, inaccurate or misleading, (ii) falsify or delete any author attributions or labels of the origin or source of Content, or (iii) indicate or suggest that the Charging Station locations provided as part of the Content are anything other than ChargePoint® Network Charging Stations.

(d) Subscriber shall not remove, obscure, or alter in any manner any proprietary rights notices (including copyright and trademark notices), warnings, links or other notifications that appear in the ChargePoint Service.

## **6. SERVICES FEES AND PAYMENT TERMS.**

**6.1 SERVICES FEES.** Subscriber shall pay all Services Fees within thirty (30) days of its receipt of CPI's invoice. All payments shall be made in U.S. Dollars by check, wire transfer, ACH payment system or other means approved by CPI. Customer may not offset any amounts due to CPI hereunder against amounts due to Customer under this Agreement or any other agreement. Fees payable to CPI do not include any Taxes, and Subscriber is responsible for any and all such Taxes. All payment obligations under this Agreement are non-cancelable and non-refundable.

**6.2 LATE PAYMENTS.** Late payments shall be subject to a charge equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law. Subscriber will reimburse CPI for attorneys' fees and other expenses reasonably incurred by CPI in the collection of any late payments. If any amount owing by Subscriber under this Agreement is more than thirty (30) days overdue, CPI may, without otherwise limiting CPI's rights or remedies, (a) terminate this Agreement, (b) suspend the use by Subscriber of the ChargePoint Services until such amounts are paid in full, and/or (c) condition future ChargePoint Service renewals and other Subscriber purchases on payment terms other than those set forth herein; provided that CPI shall not exercise any such rights if Subscriber has reasonably disputed such charges and is cooperating diligently in good faith to resolve the dispute.

## **7. INTELLECTUAL PROPERTY RIGHTS AND LICENSES.**

**7.1 CPI PROPERTY.** As between CPI and Subscriber, CPI retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to the CPI Property and any improvements thereto. No rights are granted to Subscriber in the CPI Property hereunder except as expressly set forth in this Agreement.

**7.2 SUBSCRIBER PROPERTY.** As between CPI and Subscriber, Subscriber retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to (i) all Subscriber Marks and (ii) all Subscriber Content and Services (collectively, the “Subscriber Property”). No rights are granted to CPI in the Subscriber Property hereunder except as expressly set forth in this Agreement.

**7.3 LIMITED LICENSE TO SUBSCRIBER.** CPI hereby grants to Subscriber a royalty-free, non-assignable, non-transferable, and non-exclusive license to use the CPI Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for Subscriber to access, use and receive the ChargePoint Services as permitted herein.

**7.4 LIMITED LICENSE TO CPI.** Subscriber hereby grants to CPI a non-assignable, non-transferable, and non-exclusive license to use the Subscriber Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for CPI to provide the ChargePoint Services. CPI may utilize the Subscriber Marks to advertise that Subscriber is using the ChargePoint Services. The foregoing license includes a perpetual and irrevocable right of CPI to reproduce, adapt, modify, translate, publicly perform, publicly display and distribute all Subscriber Content and Services submitted, posted or displayed by Subscriber in the ChargePoint Services, solely for the purpose of enabling CPI to operate, market and promote the ChargePoint Services, and to index and serve such Subscriber Content and Services as search results through ChargePoint Services. CPI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or Subscriber Rights Grantees relating to the ChargePoint Services.

**7.5 ADDITIONAL TERMS REGARDING CPI MARKS.**

**(a) USE LIMITATIONS.** Subscriber shall display the CPI Marks in connection with Subscriber Charging Stations as required in this Agreement during the term of Subscriber’s Service Plan. Subscriber shall not use any of the CPI Marks for or with any products other than its Charging Stations. From time to time, CPI may provide updated CPI Mark usage guidelines on the ChargePoint Application or elsewhere in the Documentation, and Subscriber shall thereafter comply with such updated guidelines. For any use of the CPI Mark not authorized by such guidelines, or if no such guidelines are provided, then for each initial use of the CPI Mark, Subscriber must obtain CPI’s prior written consent, which shall not be unreasonably withheld or delayed, and after such consent is obtained, Subscriber may use the CPI Mark in the approved manner. All use by Subscriber of CPI’s Marks (including any goodwill associated therewith) will inure to the benefit of CPI.

**(b) PROHIBITIONS.** Subscriber shall not use or display any CPI Mark (or any likeness of a CPI Mark):

(i) as a part of the name under which Subscriber’s business is conducted or in connection with the name of a business of Subscriber or its Affiliates;

(ii) in any manner that (x) implies a relationship or affiliation with CPI other than as described under the Agreement, (y) implies any sponsorship or endorsement by CPI, or (z) can be reasonably interpreted to suggest that any Subscriber Content and Services has been authored by, or represents the views or opinions of CPI or CPI personnel;

(iii) in any manner intended to disparage CPI, ChargePoint, or the ChargePoint Services, or in a manner that is misleading, defamatory, infringing, libelous, disparaging, obscene or otherwise objectionable to CPI;

(iv) in any manner that violates any law or regulation; or

(v) that is distorted or altered in any way (including squeezing, stretching, inverting, discoloring, etc.) from the original form provided by CPI.

**(c) NO REGISTRATION OF CPI MARKS.** Subscriber shall not, directly or indirectly, register or apply for, or cause to be registered or applied for, any CPI Marks or any patent, trademark, service mark, copyright, trade name, domain name or registered design that is substantially or confusingly similar to a CPI Mark, patent, trademark, service mark, copyright, trade name, domain name or registered design of CPI, or that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Subscriber by CPI. At no time will Subscriber challenge or assist others to challenge the CPI Marks (except to the extent such restriction is prohibited by law) or the registration thereof by CPI.

**(d) TERMINATION AND CESSATION OF USE OF CPI MARKS.** Upon termination of this Agreement, Subscriber will immediately discontinue all use and display of all CPI Marks.

## **8. LIMITATIONS OF LIABILITY.**

**8.1 DISCLAIMER OF WARRANTIES.** CHARGEPOINT AND THE CHARGEPOINT SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” FOR SUBSCRIBER’S USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, CPI DOES NOT WARRANT THAT (A) SUBSCRIBER’S USE OF THE CHARGEPOINT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, FREE FROM ERROR, OR MEET SUBSCRIBER’S REQUIREMENTS; (B) ALL CONTENT AND OTHER INFORMATION OBTAINED BY SUBSCRIBER FROM OR IN CONNECTION WITH THE CHARGEPOINT SERVICES WILL BE ACCURATE AND RELIABLE; (C) ALL DEFECTS IN THE OPERATION OR FUNCTIONALITY OF THE CHARGEPOINT SERVICES WILL BE CORRECTED. ALL CONTENT OBTAINED THROUGH THE CHARGEPOINT SERVICES IS OBTAINED AT SUBSCRIBER’S OWN DISCRETION AND RISK, AND SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER’S COMPUTER SYSTEM OR OTHER DEVICE, LOSS OF DATA, OR ANY OTHER DAMAGE OR INJURY THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY SUCH CONTENT.

**8.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CPI BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGEPOINT NETWORK, ANY CHARGEPOINT SERVICES, THIS AGREEMENT, A GRANT OR RECEIPT OF RIGHTS OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SUBSCRIBER NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT.

**8.3 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS.** Neither CPI nor Subscriber shall have any liability whatsoever to the other with respect to damages caused by: (i) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions, whatever the cause; (ii) interruptions in wireless or cellular service linking Charging Stations to ChargePoint; (iii) interruptions attributable to unauthorized ChargePoint Network intrusions; (iv) interruptions in services provided by any Internet service provider not affiliated with CPI; or (v) the inability of a Charging Station to access ChargePoint as a result of any change in product offerings (including, without limitation, the any network upgrade or introduction of any “next

generation” services) by any wireless or cellular carrier. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

**8.4 LIMITATION OF LIABILITY.** CPI’s aggregate liability under this Agreement shall not exceed aggregate Services Fees paid by Subscriber to CPI in the twelve (12) calendar months prior to the event giving rise to the liability.

**8.5 CELLULAR CARRIER LIABILITY.** IN ORDER TO DELIVER THE CHARGEPOINT SERVICES, CPI HAS ENTERED INTO CONTRACTS WITH ONE OR MORE UNDERLYING WIRELESS SERVICE CARRIERS (THE “UNDERLYING CARRIER”). SUBSCRIBER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING CARRIER AND SUBSCRIBER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN CPI AND THE UNDERLYING CARRIER. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO SUBSCRIBER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. SUBSCRIBER AGREES TO INDEMNIFY AND HOLD HARMLESS THE UNDERLYING CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS SERVICES EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF THE AGREEMENT. SUBSCRIBER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED. SUBSCRIBER UNDERSTANDS THAT CPI AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE CHARGEPOINT SERVICES.

**8.6 ADDITIONAL RIGHTS.** BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES AND/OR THE DISCLAIMER OF IMPLIED WARRANTIES AS SET FORTH IN THIS SECTION 8, ONE OR MORE OF THE ABOVE LIMITATIONS MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES, CPI’S LIABILITY AND/OR IMPLIED WARRANTIES GRANTED IN SUCH CASES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **9. TERM AND TERMINATION.**

**9.1 TERM OF AGREEMENT.** This Agreement shall become effective on the Effective Date and shall continue until the expiration of all of Subscriber’s Service Plans.

**9.2 SERVICE PLAN TERM.** (a) Each Service Plan acquired by Subscriber shall commence as follows: Each Service Plan acquired for use with a new Charging Station will commence on the earlier to occur of (i) the date of Provisioning such new Charging Station, or (ii) one year from the date the Token(s) necessary for Provisioning such new Charging Station is made available to Subscriber or its installer. Renewals of Service Plans will commence on the date of the expiration of the Subscription being renewed. All other Service Plans will commence on the date of activation of such Service Plans, but in no event more than one year after the date the Token(s) necessary for such activation is made available to Subscriber. Each Subscriber Service Plan shall continue for the applicable duration thereof, unless this Agreement is terminated earlier in accordance with its terms.

### **9.3 TERMINATION BY CPI.**

(a) This Agreement may be immediately terminated by CPI: (i) if Subscriber is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days (or within five (5) days in the case of any payment default) of Subscriber’s receipt of written notice thereof; (ii) Subscriber becomes the subject of a petition in bankruptcy or any other

proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors; (iii) upon the determination by any regulatory body that the subject matter of this Agreement is subject to any governmental regulatory authorization or review that imposes additional costs of doing business upon CPI; or (iv) as otherwise explicitly provided in this Agreement. Regardless of whether Subscriber is then in breach, CPI may, in its reasonable discretion, determine that it will not accept any renewal by Subscriber of its subscription to ChargePoint Services. In such case, this Agreement shall terminate upon the later of the expiration of all of Subscriber's subscriptions to ChargePoint Services.

(b) CPI may in its discretion suspend Subscriber's continuing access to the ChargePoint Services or any portion thereof if (A) Subscriber has breached any provision of this Agreement, or has acted in manner that indicates that Subscriber does not intend to, or is unable to, comply with any provision of this Agreement; (B) such suspension is required by law (for example, due to a change to the law governing the provision of the ChargePoint Services); or (c) providing the ChargePoint Services to Subscriber could create a security risk or material technical burden as reasonably determined by CPI.

#### **9.4 TERMINATION BY SUBSCRIBER.**

This Agreement may be immediately terminated by Subscriber without prejudice to any other remedy of Subscriber at law or equity: (i) if CPI is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days of the date of its receipt of written notice thereof, or (ii) CPI becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors.

**9.5 REFUND OR PAYMENT UPON TERMINATION.** Upon any termination of this Agreement for cause by Subscriber pursuant to Section 9.4(i) or by CPI pursuant to Section 9.3(a)(iii), CPI shall refund to Subscriber a pro-rata portion of any pre-paid Subscription Fees based upon the remaining Service Plan term. Upon any termination for any other reason, Subscriber shall not be entitled to any refund of any Subscription Fees as a result of such termination. In no event shall any termination relieve Subscriber of any unpaid Subscription Fees due CPI for the Service Plan term in which the termination occurs or any prior Service Plan term.

**9.6 SURVIVAL.** Those provisions dealing with the Intellectual Property Rights of CPI, limitations of liability and disclaimers, restrictions of warranty, Applicable Law and those other provisions which by their nature or terms are intended to survive the termination of this Agreement will remain in full force and effect as between the Parties hereto regardless of the termination of this Agreement.

**10. INDEMNIFICATION.** Subscriber hereby agrees to indemnify, defend and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Claims") suffered or incurred by such indemnified parties resulting from or arising out of Subscriber's actual or alleged use (directly, or through a grantee of Rights by Subscriber) of the ChargePoint Services, ChargePoint or Subscriber Content and Services. Subscriber will cooperate as fully as reasonably required in the defense of any claim. CPI reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by Subscriber.

#### **11. GENERAL.**

**11.1 AMENDMENT OR MODIFICATION.** CPI reserves the right to modify this Agreement from time to time. CPI will provide notice of each such modification to Subscriber. Subscriber's

continued use of the ChargePoint Services following such notice will constitute an acceptance of the modified Agreement.

**11.2 WAIVER.** The failure of either Party at any time to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such Party to thereafter enforce that provision or any other provision or right.

**11.3 FORCE MAJEURE.** Except with respect to payment obligations, neither CPI nor Subscriber will be liable for failure to perform any of its obligations hereunder due to causes beyond such party's reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of such Party's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits a Party from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.

**11.4 ARBITRATION.** This Agreement is to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Except with respect to any matter relating to Subscriber's violation of the intellectual property rights of CPI, any dispute arising from or relating to this Agreement shall be arbitrated in Santa Clara, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. All claims shall be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. With respect to any matter relating to the intellectual property rights of CPI, such claim may be litigated in a court of competent jurisdiction. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs..

**11.5 NOTICES.** Any notice required or permitted by this Agreement shall be sent (a) if by CPI, via electronic mail to the address indicated by Subscriber in Subscriber's ChargePoint Services account; or (b) if by Subscriber, via electronic mail to [mssa@chargepoint.com](mailto:mssa@chargepoint.com).

**11.6 INJUNCTIVE RELIEF.** Subscriber acknowledges that damages for improper use of the ChargePoint Services may be irreparable; therefore, CPI is entitled to seek equitable relief, including but not limited to preliminary injunction and injunction, in addition to all other remedies.

**11.7 SEVERABILITY.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

**11.8 ASSIGNMENT.** Subscriber may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CPI (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section, CPI shall be entitled, at its sole discretion, to terminate this Agreement upon written notice given to Subscriber. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. CPI may assign its rights and obligations under this Agreement.

**11.9 NO AGENCY OR PARTNERSHIP.** CPI, in the performance of this Agreement, is an independent contractor. In performing its obligations under this Agreement, CPI shall maintain complete control over its employees, its subcontractors and its operations. No partnership, joint venture or agency relationship is intended by CPI and Subscriber to be created by this Agreement. Neither Party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

**11.10 ENTIRE AGREEMENT.** This Agreement (including the attached Exhibits) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. All purchase orders issued by Subscriber shall state that such purchase orders are subject to all of the terms and conditions of this Agreement, and contain no other term other than the type of Service Plan, the number of Charging Stations for which such Service Plan is ordered, the term of such Service Plans and applicable Subscription Fees. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, the Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

**11.11 COPYRIGHT POLICIES.** It is CPI's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, in the United States, the Digital Millennium Copyright Act) and to terminate the accounts of repeat infringers.

**11.12 THIRD PARTY RESOURCES.** The ChargePoint Services may include hyperlinks to other websites or resources. CPI has no control over any web sites or resources that are provided by companies or persons other than CPI. Subscriber acknowledges and agrees that CPI is not responsible for the availability of any such web sites or resources, CPI does not endorse any advertising, products or other materials on or available from such web sites or resources, and CPI is not liable for any loss or damage that may be incurred by Subscriber as a result of any reliance placed by Subscriber on the completeness, accuracy or existence of any advertising, products, or other materials on, or available from, such websites or resources.

**11.13 COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

**11.14 ENGLISH LANGUAGE AGREEMENT GOVERNS.** Where CPI has provided Subscriber with a translation of the English language version of this Agreement, Subscriber agrees that the translation is provided for Subscriber's convenience only and that the English language version of this Agreement governs Subscriber's relationship with CPI. If there is any conflict between the English language version of this Agreement and such translation, the English language version will prevail.

**EXHIBIT 1**  
**FLEX BILLING TERMS**

**This Exhibit sets forth certain additional terms and conditions (“Flex Billing Terms”) pursuant to which Subscriber may charge Users fees for the use of Subscriber’s Charging Stations. In order to charge such fees, Subscriber must subscribe to a Service Plan that includes CPI’s management, collection and/or processing services related to such fees (“Flex Billing”).**

**1. DEFINITIONS.** The following additional defined terms shall apply to these Flex Billing Terms:

**1.1 “CPI Fees”** means a fee, currently equal to ten percent (10%) of Session Fees, charged for a particular Session. CPI Fees are charged by CPI in exchange for its collection and processing of Session Fees on behalf of Subscriber. CPI will provide Subscriber with thirty (30) days prior written notice (which may include, without limitation, notice provided by CPI through its regular newsletter to Subscriber) of any increase in CPI Fees.

**1.2 “Net Session Fees”** means the total amount of Session Fees collected on behalf of the Subscriber by CPI, less CPI Fees and Taxes, if any, required by law to be collected by CPI from Users in connection with the use of Charging Stations. Except as required by law, Subscriber shall be responsible for the payment of all Taxes incurred in connection with use of Subscriber’s Charging Stations.

**1.3 “Session” or “Charging Session”** means the period of time during which a User uses Subscriber’s Charging Station to charge his or her electric vehicle for a continuous period of time not less than two (2) minutes commencing when a User has accessed such Charging Station and ending when such User has terminated such access.

**1.4 “Session Fees”** means the fees set by the Subscriber for a Charging Session, inclusive of any applicable Taxes.

**2. FLEX-BILLING SERVICE FOR CHARGING STATIONS.**

**2.1. SESSION FEES.** Subscriber shall have sole authority to determine and set in real-time Session Fees. Subscriber shall be solely responsible for determining and charging Session Fees in compliance with all applicable laws and regulations (including without limitation any restriction on Subscriber’s use of per-kWh pricing). Subscriber acknowledges that CPI is not responsible for informing Subscriber of applicable laws or changes thereto, and CPI will not be liable to Subscriber or any third party for any alleged or actual failure of Subscriber to comply with such applicable laws and regulations.

**2.2 DEDUCTIONS FROM SESSION FEES.** In exchange for CPI collecting Session Fees on behalf of the Subscriber, the Subscriber hereby authorizes CPI to deduct from all Session Fees collected: (i) CPI Fees and (ii) to the extent required by Section 3, applicable Taxes.

**2.3 PAYMENT TO SUBSCRIBER OF NET SESSION FEES.** CPI shall remit Net Session Fees to Subscriber not more than thirty (30) days after the end of each calendar month as directed by Subscriber from time to time through the applicable ChargePoint Services. Notwithstanding the foregoing, no such payment will be required if at the end of any calendar month the amount due to Subscriber hereunder is less than fifty U.S. Dollars (\$50), except in connection with the expiration or termination of this Agreement. In no event shall CPI remit amounts due to Subscriber, regardless of the amount then due, later than thirty (30) days following the end of each calendar quarter.

**3. TAXES.** Subscriber is responsible for the payment of all Taxes incurred in connection with Session Fees; provided that CPI is solely responsible for all Taxes assessable based on CPI's income, property and employees. Where CPI is required by law to collect and/or remit the Taxes for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber and deducted by CPI from Session Fees, unless Subscriber has otherwise provided CPI with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

**EXHIBIT 2**  
**API TERMS**

This Exhibit sets forth certain additional terms and conditions (“API Terms”) governing Subscriber’s use of the APIs in connection with Subscriber’s use of the ChargePoint Services. The API Terms are part of the Agreement, and all such use of the APIs remains subject to the Agreement terms.

1. **ADDITIONAL DEFINITIONS.** The following additional definitions shall apply to the API Terms.

1.1 **“API Implementation”** means a Subscriber software application or website that uses any of the APIs to obtain and display Content in conjunction with Subscriber Content and Services.

1.2 **“API Documentation”** means all Documentation containing instructions, restrictions or guidelines regarding the APIs or the use thereof, as amended and/or supplemented by CPI from time to time.

1.3 **“CPI Site Terms”** means the Terms and Conditions displayed on CPI’s website, governing use of CPI’s website and the ChargePoint Services by visitors who are not Service Plan subscribers.

2. **API USE.** Subscriber may use the APIs as and to the extent permitted by Subscriber’s Service Plan and the API Documentation, subject to the terms and conditions of the Agreement.

2.1 **AVAILABLE APIs AND FUNCTION CALLS.** The APIs give Subscriber access to information through a set of function calls. The particular APIs and API function calls made available by CPI from time to time (and the Content available through such APIs and function calls) will be limited by Subscriber’s Service Plan, and Subscriber’s particular Service Plan may not include all APIs and function calls then available from CPI.

2.2 **USE AND DISPLAY OF CONTENT.** Subscriber is permitted to access, use and publicly display the Content with Subscriber Content and Services in Subscriber’s API Implementation, subject to the following requirements and limitations.

(a) All Charging Station locations provided to Subscriber as part of the Content shall be clearly identified by Subscriber in Subscriber’s API Implementation as ChargePoint® Network Charging Stations and shall contain the Brand Identifiers required by the API Documentation. In no event shall Subscriber’s API Implementation identify or imply that any Charging Station is a part of any network of charging stations other than ChargePoint.

(b) Subscriber shall keep the Content used by Subscriber’s API Implementation current with Content obtained with the APIs to within every forty eight (48) hours.

(c) Content provided to Subscriber through the APIs may contain the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of CPI’s business partners and/or other third party rights holders of Content indexed by CPI, which may not be deleted or altered in any manner.

(d) Subscriber shall not:

(i) pre-fetch, cache, or store any Content, except that Subscriber may store limited amounts of Content for the purpose of improving the performance of Subscriber's API Implementation if Subscriber does so temporarily, securely, and in a manner that does not permit use of the Content outside of the ChargePoint Service;

(ii) hide or mask from CPI the identity of Subscriber's service utilizing the APIs, including by failing to follow the identification conventions listed in the API Documentation; or

(iii) defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

**2.3 REQUIRED INFORMATION.** Subscriber must:

(a) display to all viewers and users of Subscriber's API Implementation the link to the CPI Site Terms and Conditions as presented through the ChargePoint Services or described in the Documentation;

(b) explicitly state in the use terms governing Subscriber's API Implementation that, by using Subscriber's API Implementation, such viewers and users are agreeing to be bound by the CPI Site Terms; and

(c) include in Subscriber's API Implementation, and abide by, a privacy policy complying with all applicable laws; and

(d) comply with all applicable laws designed to protect the privacy and legal rights of users of Subscriber's API Implementation.

**2.4 REPORTING.** Subscriber must implement reporting mechanisms, if any, that CPI requires in the API Documentation.

**3. CPI BRANDING REQUIREMENTS AND RESTRICTIONS.**

**3.1 MANDATORY CPI BRANDING.** Subject to Section 3.2 below and the restrictions on use of CPI Marks set forth in the Agreement, Subscriber agrees that each page comprising Subscriber's API Implementation will include a ChargePoint logo and will state that Subscriber's application or website is provided, in part, through the ChargePoint Services.

**3.2 RESTRICTIONS.** Subscriber shall not:

(a) display any CPI Mark as the most prominent element on any page in Subscriber's API Implementation or Subscriber's website (except as used in connection with the display of Charging Stations); or

(b) display any CPI Mark anywhere in Subscriber's API Implementation or on Subscriber's website if Subscriber's API Implementation or website contains or displays adult content or promotes illegal activities, gambling, or the sale of tobacco or alcohol to persons under twenty-one (21) years of age.

**EXHIBIT 3**  
**TERMS REGARDING GRANTING OF RIGHTS**

This Exhibit sets forth certain additional terms and conditions applicable to Rights Grantors and Rights Grantees regarding the granting of Rights (“Rights Terms”). The Rights Terms are part of the Agreement, and all use of the ChargePoint Services permitted pursuant to the Rights Terms remains subject to the Agreement.

1. **ADDITIONAL DEFINITIONS.** The following additional definitions shall apply.

1.1 **“Rights Grantor”** means a Subscriber that has granted Rights.

1.2 **“Rights Grantee”** means a Subscriber that is granted Rights. For purposes of this Agreement, a Subscriber shall be deemed to have granted Rights to the entity assisting Subscriber with creating its account and initiating Subscriber’s access to Services.

2. **TERMS.** This Section governs Subscriber’s granting of Rights as a Rights Grantor.

2.1 **LIMITED RIGHTS.** A Rights Grantee’s right to access and use the ChargePoint Services for and on behalf of a Rights Grantor is limited to the specific Rights granted by such Rights Grantor to such Rights Grantee. Such Rights may be limited according to the Service Plan(s) subscribed to by Subscriber. Subscriber may revoke Rights, or any portion thereof, it has granted to a Rights Grantee at will and such Rights will. In no event may Subscriber grant Rights in excess of those provided to it through the Service Plan(s) to which it has subscribed.

2.2 **RESPONSIBILITY FOR AUTHORIZED USER.** All use of the ChargePoint Services by a Rights Grantee exercising Rights granted by Subscriber shall be subject to the terms and conditions of the Agreement (including without limitation Subscriber’s indemnification obligation pursuant to Section 10 thereof). Subscriber shall be responsible for the actions, omissions, or performance of such Rights Grantee while exercising any such Rights, as if such action, omission or performance had been committed by Subscriber directly.

2.3 **NO AGREEMENT.** Subscriber acknowledges and agrees that the ChargePoint Services merely enable a Rights Grantor to extend Rights to Rights Grantees. The mere extension of such Rights by a Rights Grantor to a Rights Grantee does not constitute an agreement between Rights Grantor and the Rights Grantee with respect to the granted Rights or the exercise of such Rights by the Rights Grantee. CPI does not, either through the terms of the Agreement or the provision of ChargePoint Services undertake to provide any such agreement. It is the responsibility of the Rights Grantor and the Rights Grantee to enter into such an agreement on terms mutually acceptable to each. CPI expressly undertakes no liability with respect to such an agreement and Rights Grantor fully and unconditionally releases CPI from any liability arising out of such an agreement. Further Rights Grantor agrees to indemnify and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys’ fees) (collectively, “Claims”) suffered or incurred by such indemnified parties resulting from or arising out of such agreement.



## **XI. Site Host Pricing Policy Requirements**

The California Energy Commission requires Site Hosts to implement a plan to optimize the use of the charging site to allow multiple EVs to use the charging equipment during a typical day, and to prohibit utilization of a charging station “beyond a reasonable period of time.” In alignment with this goal, the Site Host shall implement the Pricing Plan identified in their Letter of Participation included in response to the CEC solicitation PON-13-603. The standard (default) Plan developed for all BayCAP project participants calls for the following elements to be administered by the Site Host. (Note that variations from this Plan may be acceptable, but need to be discussed and approved by the California EV Alliance and included as part of this Notice to Proceed.)

- A. Fee-Based Charging:** Site hosts shall set charging rates between \$1.00 and \$1.50 per hour for use of the charger. This may or may not include separate charges for parking per the jurisdiction’s usual parking policies. Fees may be calculated based on duration of stay, energy consumed (kWh), or a combination of the two.
  
- B. Graduated Pricing Based on Duration of Stay:** Site hosts shall raise the fee for occupying the EVSE-equipped space by a sufficient increment to encourage turnover of the space and thus greater availability and utilization (in charging mode) for EV drivers. It is recommended that this approach be implemented after approximately four hours of charging at the lower cost rate – particularly in cases where utilization rates are observed to be very high (70% or more) and available alternative charging facilities are limited. Site hosts may also consider a lower evening or weekend rate for EVs (similar to most existing parking policies) to encourage responsible off-peak use. (In particular, lots proximate to multi-unit residential buildings could provide a lower-cost overnight rate with a higher daytime rate that incentivizes overnight EVSE users to make way for daytime visitors and commuters.)
  
- C. EVSE Revenue and Cost Monitoring:** Pricing strategies should be reviewed on a semi-annual basis to ensure that expenses for sustaining charger operations are covered to the maximum extent feasible and appropriate. In most cases, fees for charger operations set in the \$1/hr. range (or equivalent kWh) should be adequate to cover energy costs, transaction fees, the ChargePoint network services fee, and (beginning with Year 3 of the Project) the (optional) continuation of the ABM Maintenance Plan. In rare cases where the charger is not yet being well-utilized, there may be a modest operating subsidy required.



**AGENDA ITEM  
CITY COUNCIL MEETING DATE - JULY 1, 2014  
CONSENT CALENDAR**

**DATE** : June 19, 2014

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **AWARD OF CONSTRUCTION CONTRACT FOR THE SAFE ROUTE TO SCHOOL PROJECT AND APPROVAL OF AN AGREEMENT WITH THE SOLANO TRANSPORTATION AUTHORITY TO SECURE THE GRANT FUNDING**

**RECOMMENDATION:**

Adopt resolutions:

- 1) Approving a One Bay Area Grant (OBAG) Funding Agreement between the Solano Transportation Authority (STA) and City of Benicia for the Benicia Safe Route To School Project, and authorizing the City Manager to execute the agreement on behalf of the City subject to minor revisions by the City Attorney; and
- 2) Accepting bids for the Benicia Safe Route to School (SR2S) Project, awarding the construction contract to JJR Construction, Inc. in the amount of \$123,910, and authorizing the City Manager to execute the contract on behalf of the City.

**EXECUTIVE SUMMARY:**

This grant-funded project will eliminate gaps in the sidewalk network on routes to Robert Semple Elementary School; install pedestrian safety improvements on Dempsey Drive for school children crossing from Matther Turner Elementary School to the Community Park parking lot and Southampton area beyond; and install flashing beacons on Southampton Road for students from the Benicia Middle School.

**BUDGET INFORMATION:**

The proposed project budget is outlined below:

**Project Budget**

Proposed Budget

One Bay Area SR2S Grant Fund (Acct. #048-3148-7549) .....	\$100,000
Gas Tax (Acct. #017-8705-9711) .....	<u>\$36,310</u>
Total Project Budget .....	\$136,310

A summary of the anticipated construction expenditures is outlined below:

**Project Expenditures**

Construction Contract .....	\$123,910
Construction Contingency (10%) .....	\$12,400
<b>Total Project Expenditures .....</b>	<b>\$136,310</b>

**GENERAL PLAN:**

Relevant General Plan Goal:

- Goal 2.28: Improve and maintain public facilities and services

**STRATEGIC PLAN:**

Relevant Strategic Plan Issue and Strategies include:

- Strategic Issue #4: Preserving and Enhancing Infrastructure
  - Strategy #4: Provide adequate funding for ongoing infrastructure needs
- Strategic Issue #1: Provide safe, functional and complete streets
  - Strategy #1: Fund street maintenance at a level that will improve pavement management index rating.

**ENVIRONMENTAL REVIEW:**

This project is Categorically Exempt per CEQA Section 15301 (c), which applies to minor alteration of existing roadways and sidewalks involving no expansion of use.

**BACKGROUND:**

Award of Construction Contract

On June 12, 2014, two bids were received and opened for the Benicia Safe Route to School Project as summarized below:

<b>RANK</b>	<b>BIDDER'S NAME AND CITY</b>	<b>BASE BID</b>	<b>ALTERNATE BID</b>
1	JJR Construction, Inc., San Mateo	\$123,910	\$35,932.50
2	JA Gonsalves & Son Construction, Inc., Napa	\$203,163	\$17,725
--	<i>Engineer's Estimate</i>	<i>\$108,000</i>	<i>\$20,000</i>

The low base bid of \$123,910 submitted by JJR Construction, Inc., of San Mateo was reviewed and determined to be responsive. JJR Construction, Inc. has

successfully completed similar work for other public agencies in the Bay Area and is considered a responsible bidder.

The base bid includes constructing safety improvements on routes to three Benicia schools. Sidewalks will be installed on El Bonito Way and Linda Vista to eliminate gaps in the pedestrian network leading to Robert Semple School. Pedestrian activated flashing beacons will be placed on both sides of Southampton Road at Turner Drive, in front of the Benicia Middle School, to assist students crossing this four lane arterial. Lastly, sidewalk bulbouts, landings, and high visibility crosswalks will be placed on Dempsey Drive to enhance safety for school children crossing from Matthew Turner School to the Community Park parking lot and Kearney Drive area. These projects are included in the Solano Transportation Authority's Countywide SR2S Plan Update and were approved by Council on June 18, 2013 and the Governing Board of the Benicia Unified School District on August 15, 2013.

The bid alternate is to install a stamped, colored crosswalk across Dempsey Drive, in addition to the high visibility markings. Given the asphalt concrete surfacing there is not new, it would need to be ground out and then repaved before being stamped and colored. This has resulted in a fairly high cost, especially when compared to the backlog of basic repairs needed to City streets at other locations, so staff is not recommending award of the alternate.

Staff is therefore recommending a construction contract in the amount \$123,910 to JJR Construction, Inc. from San Mateo.

Construction is scheduled to be completed before school starts in late August.

#### OBAG Funding Agreement

STA is the congestion management agency for the county on behalf of the Metropolitan Transportation Commission. In this role they are required to implement MTC's OBAG program policies and procedures. The funding agreement ensures this will occur by specifying STA's role in programming the funding and the City's responsibility to construct the project in a timely manner.

#### Attachments:

- Proposed Resolution Authorizing the Execution of the OBAG Funding Agreement
- Exhibit A- OBAG Funding Agreement
- Proposed Resolution Awarding the Construction Contract
- Location Map



**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A ONE BAY AREA GRANT (OBAG) FUNDING AGREEMENT BETWEEN THE SOLANO TRANSPORTATION AUTHORITY (STA) AND CITY OF BENICIA FOR THE BENICIA SAFE ROUTE TO SCHOOL (SR2S) PROJECT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO MINOR REVISIONS BY THE CITY ATTORNEY**

**WHEREAS**, the City of Benicia is eligible to receive \$100,000 in federal grant funding for SR2S improvements under the OBAG program; and

**WHEREAS**, as the designated OBAG program administrator for Solano County, STA is required by the Metropolitan Transportation Commission to implement their policies and procedures; and

**WHEREAS**, the OBAG Funding Agreement between STA and the City for the SR2S Project (Exhibit A) defines the roles and responsibilities required of each agency to satisfy MTC's policies and procedures and is required for the funding to be dispersed to Benicia.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the OBAG funding agreement (Exhibit A) between STA and the City of Benicia for the Benicia SR2S Project.

**BE IT FURTHER RESOLVED THAT** the City Manager is hereby authorized to execute the agreement on behalf of the City, subject to minor revisions by the City Attorney.

\*\*\*\*\*

On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, 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 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**ONE BAY AREA GRANT (“OBAG”) FUNDING AGREEMENT  
BETWEEN  
THE SOLANO TRANSPORTATION AUTHORITY  
AND  
THE CITY OF BENICIA  
FOR THE BENICIA SAFE ROUTE TO SCHOOL PROJECT**

**THIS ONE BAY AREA GRANT (OBAG) FUNDING AGREEMENT (“Agreement”)** is entered into as of \_\_\_\_\_, 2014 between the SOLANO TRANSPORTATION AUTHORITY (“STA”), a joint powers authority organized under Government Code section 6500 et seq. consisting of the County of Solano and the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun, Vacaville and Vallejo, and the City of Benicia (“City”), a municipal corporation. Unless identified, the public agencies may be commonly referred to individually as “Party” or collectively as “Parties”.

**RECITALS**

WHEREAS, STA was created in 1990 through a Joint Powers Agreement between the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun City, Vacaville, Vallejo and the County of Solano to serve as the Congestion Management Agency (CMA) for Solano; and

WHEREAS, STA, as the CMA for the Solano area, partners with various transportation and planning agencies, such as the Metropolitan Transportation Commission (MTC) and Caltrans District 4 and is responsible for countywide transportation planning, programming transportation funds, managing and providing transportation programs and services, delivering transportation projects, and setting transportation priorities; and

WHEREAS, MTC has established the One Bay Area Grant (OBAG) funding program to integrate the Bay Area region’s federal transportation program with California’s climate law (Senate Bill 375, Steinberg, 2008) and the Sustainability Communities Strategy; and

WHEREAS, MTC has authorized CMAs to program OBAG funds to projects that meet the eligibility requirements of any one of the following six transportation categories: 1) Local Streets and Roads Preservation, 2) Bicycle and Pedestrian Improvements, 3) Transportation for Livable Communities, 4) Safe Routes to Schools, 5) Priority Conservation Areas, and 6) CMA Planning Activities; and

WHEREAS, in order to qualify for OBAG funds, a jurisdiction must have adopted a Complete Streets Policy Resolution or have adopted a general plan that complies with the California Complete Streets Act of 2008 as well have a general plan housing element adopted and certified by the State Department of Housing and Community Development for 2007-14 RHNA prior to January 31, 2013; and

WHEREAS, MTC has established the Project Selection Policies (“Policies”) to govern the use of OBAG funds; and

WHEREAS, STA has issued a Call for Projects in accordance with the Policies and has determined that THE City of Benicia meets the requirements for OBAG Funds.

**AGREEMENT**

**NOW, THEREFORE,** in consideration of the mutual promises set forth in this Agreement, the Parties agree:

**Part I**  
**Description of Project**

This project consists of pedestrian improvements within or serving Robert Semple Elementary School, Benicia Middle School and Matthew Turner Elementary School: 1) Robert Semple Elementary School - Construct new sidewalk along Linda View Street and El Bonito 2) Benicia Middle School – Install advanced flashing beacons and accessible curb ramps at Southampton Road and Turner Drive 3) Install bulbout and accessible ramps on Dempsey Drive.

**Part II**  
**Respective Roles and Responsibilities**

**A. City’s Role and Responsibilities.**

City agrees to meet the requirements of MTC Resolution No. 3606 which governs project delivery deadlines for all federal funding shown in the Transportation Improvement Program (TIP) for the Bay Area’s federally funded transportation projects.

**B. STA’s Role and Responsibilities.**

STA agrees to provide:

1. Process and approve OBAG funding requests, as appropriate.
2. Assistance with programming and submittal of project Transportation Improvement Program (TIP) listings to MTC.
3. Review project design and monitor implement of project to ensure it is consistent with OBAG guidelines.

**C. Anticipated Schedule.**

Time is of the essence with regard to this Project. Due to project funding requirements, the Parties agree to the following schedule:

<b>Actions/Milestones</b>	<b>Date</b>	<b>Duration in Months</b>	<b>Deadlines</b>
STA Board Approval	3/13/2013	0	Complete
OBAG Planning Requirements Met	9/13/2013	6	Complete
TIP Programming	11/13/2013	2	Complete
Request PE Authorization		N/A	

Receive PE Authorization		N/A	
Field Review	02/20/2014	1	Complete
Federal Environmental Type		CE	CE
Technical Reports to Caltrans	02/20/2014	1	Complete
Environmental Circulation/Permits		N/A	
Environmental Adopted		N/A	
Request PS&E Authorization		N/A	
Receive PS&E Authorization		N/A	
Final Design	03/25/2014	6	Complete
Request ROW Authorization	03/13/2014	0	Complete
Receive ROW Authorization	03/14/2014	1	Complete
Need ROW Acquisition		N/A	
Need Utilities Relocation		N/A	
ROW Certification	03/14/2014	1	Complete
Request CON Authorization	03/25/2014	1	Complete
Receive CON Authorization	04/14/2014	2	Complete
Advertise Date	06/30/2014	1	
Contract Award Date	08/05/2014	1	
Project Completion	09/29/2014	3	
Project Closeout	11/15/2014	3	

As outlined in STA's project delivery policies, failure to adhere to this project delivery schedule may result in rescoping the project, funding swaps or reprogramming of funding to other eligible projects

#### **D. Mutual Responsibilities.**

1. Parties agree to abide by MTC Resolution No. 4035, incorporated into this Agreement as Exhibit A by this reference, and its implementing instructions, as provided by MTC during the term of this Project.
2. The Parties agree to communicate information in a timely format and provide direction as needed so as to not impact the Project Schedule. To the extent that any Party is not performing its duties under this Agreement in such a manner as to impact either the schedule and/or Project funding, the Parties agree to meet and confer to resolve any dispute.

**Part III**  
**Funding**

STA has programmed OBAG Funds in the amount of \$100,000 in FY 2013-14 for this Project.

**Part IV**  
**General Terms and Conditions**

*A. Term of Agreement*

This Agreement shall remain in effect through the filing of the Notice of Completion on the Project or the completion of the reimbursement to City, whichever is later, unless it is terminated or amended earlier as stipulated in this Agreement. This Agreement may also be terminated due to Project funding shortfalls or other unforeseen event(s), as mutually agreed to by the Parties. In the event of loss of funding, the Parties agree to work collaboratively to redirect the Project funds or other OBAG projects eligible for such funding.

*B. Indemnification*

*1. STA to indemnify City*

STA agrees to indemnify, defend, protect, hold harmless, and release City, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as ‘City’), from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of STA. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve STA of any obligation imposed by this Section. City shall notify STA within thirty (30) days of any claim, action or proceeding and cooperate fully in the defense. Notwithstanding the foregoing, City’s failure to notify STA within said thirty (30) day time limit shall not relieve STA of any obligation imposed by this Section unless STA has been actually prejudiced by such delay.

*2. City to indemnify STA*

City agrees to indemnify, defend, protect, hold harmless, and release the STA, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as ‘STA’) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of City. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

At its sole discretion, STA may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this Section. STA shall notify City within thirty (30) days of any claim, action or proceeding and cooperate fully in the defense. Notwithstanding the foregoing, STA’s failure

to notify City within said thirty (30) day time limit shall not relieve City of any obligation imposed by this Section unless City has been actually prejudiced by such delay.

*3. Each Party to defend itself for concurrent claims*

STA agrees to defend itself, and City agrees to defend itself, from any claim, action or proceeding arising out of the negligent act or omission or willful misconduct of STA and City in the performance of this Agreement. In such cases, STA and City agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in subparagraph 5 below.

*4. Joint Defense*

Notwithstanding subparagraph 3 above, in cases where STA and City agree in writing to a joint defense, STA and City may appoint joint defense counsel to defend the claim, action or proceeding arising out of the negligent act or omission or willful misconduct of City and STA in the performance of this Agreement. Joint defense counsel shall be selected by mutual agreement of STA and City. STA and City agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in subparagraph 5 below. STA and City further agree that neither Party may bind the other to a settlement agreement without the written consent of both STA and City.

*5. Reimbursement and/or Reallocation*

Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, STA and City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

*C. Insurance*

1. Each Party agrees to maintain its status as a legally self-insured public entity for general, auto and professional liability insurance coverage with limits of no less than \$1,000,000 per occurrence and no less than twenty-five million dollars (\$25,000,000) aggregate. Each Party's insurance will be considered primary for all claims arising out of acts of that Party. Each Party agrees to endorse the other Party, its officials, employees and agents, using standard ISO endorsement No. CG2010 or its equivalent for general liability coverage. Each Party also agrees to require all consultant, contractors and subcontractors engaged to work on this Project to name the other Party as an additional insured as well.

2. Each Party will maintain Workers' Compensation as required by law for all its employees with limits not less than \$1,000,000 per occurrence. Neither Party's insurance shall be called upon to satisfy any claim for workers' compensation filed by an employee of the other Party. Each Party will provide the other with a Waiver of Subrogation endorsement for Workers Compensation. Each Party also agrees to require all consultants, contractors and subcontractors engaged to work on this Project to carry the same Workers Compensation insurance limits and endorsements.

3. Each Party will require all consultants, contractors, and subcontractors engaged to work on this Project to carry insurance in levels commensurate with the exposure of the respective work provided by the consultant, contractor or subcontractor.

*D. No Waiver*

The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

*E. Assignability*

No Party to this Agreement shall assign or transfer any interest nor performing any duties or obligations, without the prior written consent of the other Parties, and any attempt by a Party to so assign or transfer this Agreement or any rights, duties or obligations arising shall be void and of no effect.

*F. Governing Law and Venue*

The construction and interpretation of this Agreement and the rights and duties of the Parties shall be governed by the laws of California with venue residing in Solano County.

*G. Force Majeure*

No Party shall be liable or deemed in default for any delay or failure in performance under this Agreement or for any interruption of services, directly or indirectly, from acts of god, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Party.

*H. Notices*

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that a Party desires to give to the other Parties shall be addressed to the other Parties at the addresses set forth below. A Party may change its address by notifying the other Parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

SOLANO TRANSPORTATION  
AUTHORITY  
Janet Adams, Director of Projects  
Solano Transportation Authority  
One Harbor Center, Suite 130  
Suisun City, CA 94585

CITY OF BENICIA  
Steve Solomon, Contract Director of Public Works  
City of Benicia  
250 East "L" Street  
Benicia, CA 94510

*I. Subcontracts*

Within the funds allocated by the Parties under this Agreement, any Party may be authorized to contract for any and all of the tasks necessary to undertake the projects or studies contemplated by this Agreement. Agencies must follow federal procedures in selecting consultants.

*J. Prior Agreements and Amendments*

This Agreement represents the entire agreement of the Parties regarding the matter described, and no representation, warranties, inducements or oral agreements have been made by the Parties

except as expressly set forth in this Agreement. This Agreement may only be modified by a written amendment duly executed by the Parties.

*K. Severability*

If any provision or portion of this Agreement is found by any court of competent jurisdiction to be unenforceable or invalid such provision shall be severable and shall not impair the enforceability of any other provision of this Agreement.

*L. Compliance with all Laws*

The Parties shall observe and comply with all federal, state and local laws, ordinances, and codes including those of the Federal Highway Administration (FHWA) and Federal Transit Authority (FTA).

*M. Non-Discrimination Clause*

1. During performing this Agreement, the Parties and their subcontractors shall deny no benefits or privileges to any person on the basis of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation. Each Party shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. The Parties shall comply with Title VI of the Civil Rights Act of 1964, the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated under it (Title 2, California Code of Regulations, section 7285.0, et seq.), Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement the foregoing, as such statutes and regulations may be amended from time to time.

*N. Access to Records and Retention*

All Parties, acting through their duly authorized representative, and any federal or state grantor agency providing all or part of the funding associated with this Agreement, the State Controller, the Comptroller General of the United States, and the duly authorized representatives of the Parties, shall have access to any books, documents, papers and records of any Party directly pertinent to the matter of this Agreement to make audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, the Parties shall maintain all required records for three years after final payment for any work associated with this Agreement, or after all pending matters are closed, whichever is later.

This Agreement was executed by the Parties on the day and year first written above.

SOLANO TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Daryl K. Halls, Executive Director

By: \_\_\_\_\_  
STA Legal Counsel

CITY OF BENICIA

By: \_\_\_\_\_  
Brad Kilger, City Manager

By: \_\_\_\_\_  
City Attorney

Draft

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING BIDS FOR THE BENICIA SAFE ROUTE TO SCHOOL PROJECT, AWARDING THE CONSTRUCTION CONTRACT TO JJR CONSTRUCTION, INC. IN THE AMOUNT OF \$123,910, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, on May 20, 2014 the Public Works Department made available the construction plans and specifications for the Benicia Safe Route to School Project for public bidding; and

**WHEREAS**, on June 12, 2014, two bids were received and opened; and

**WHEREAS**, JJR Construction, Inc., of San Mateo, California was determined to be the bidder submitting the lowest responsive, responsible base bid in the amount of \$123,910 to construct sidewalks on routes to the Robert Semple Elementary School, improve the pedestrian crossing on Dempsey Drive for Matthew Turner Elementary School elementary students; and install flashing beacons on Southampton Road for the Benicia Middle School students; and

**WHEREAS**, this project is categorically exempt pursuant to Section 15301(c) of the CEQA guidelines; and

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the bids for Benicia Safe Route to School Project, and awards the construction contract in the amount of \$123,910 to JJR Construction, Inc.

**BE IT FURTHER RESOLVED THAT** the City Manager is hereby authorized to sign the contract on behalf of the City, subject to approval by the City Attorney.

\*\*\*\*\*

On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, 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 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

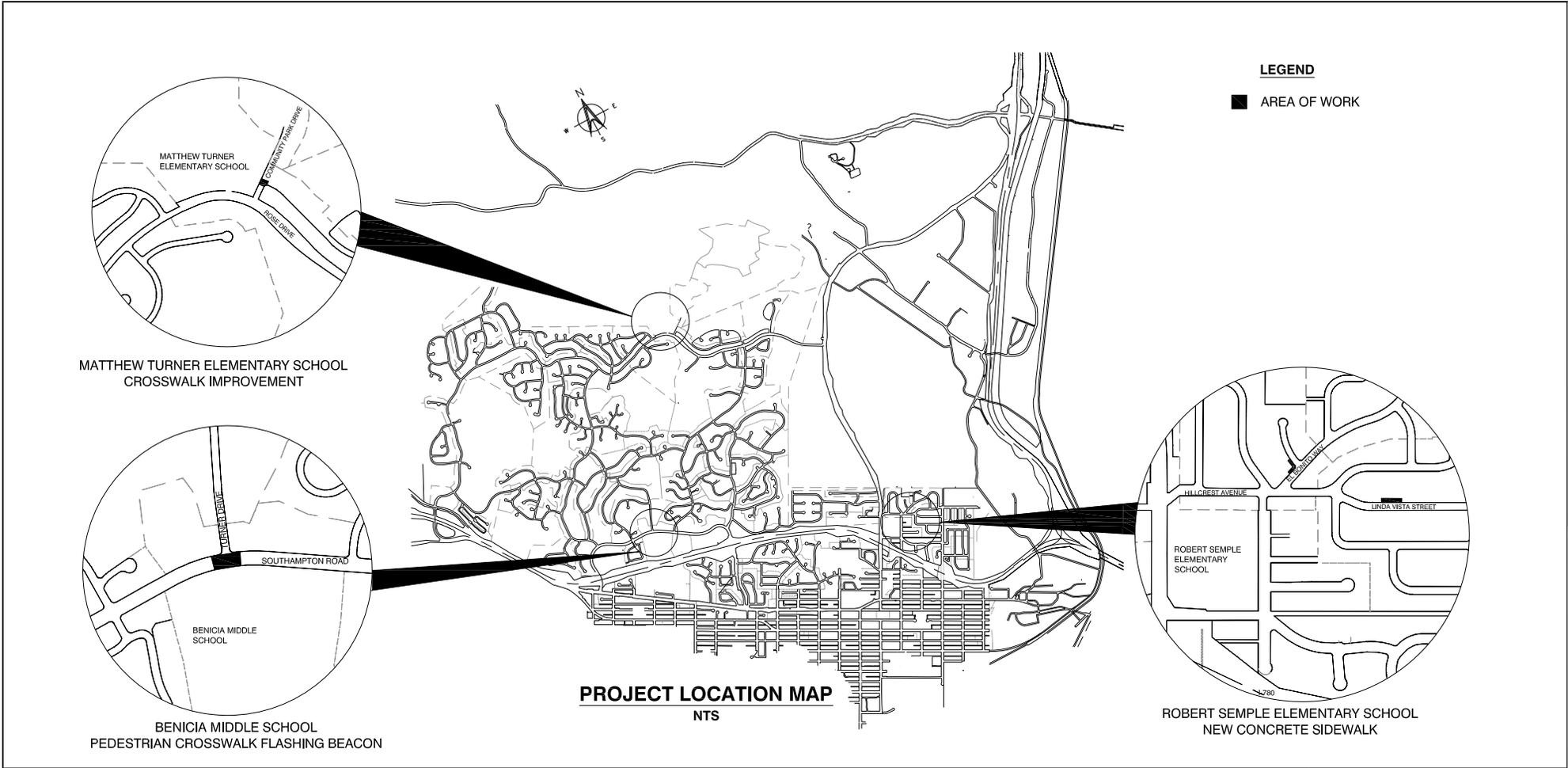
Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



**VII.C.17**

THE CITY OF  
**BENICIA**  
CALIFORNIA

# BENICIA SAFE TO SCHOOL PROJECT

## LOCATION MAP



THE CITY OF  
**BENICIA**  
CALIFORNIA



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**CONSENT CALENDAR**

**DATE** : June 5, 2014

**TO** : City Manager

**FROM** : Interim Finance Director

**SUBJECT** : **ESTABLISHMENT OF THE ANNUAL APPROPRIATIONS LIMIT PURSUANT TO ARTICLE XIII B OF THE CALIFORNIA STATE CONSTITUTION FOR FISCAL YEAR 2014-15**

**RECOMMENDATION:**

Adopt the resolution establishing the maximum allowable appropriations limit for Fiscal Year 2014-15 in the amount of \$79,332,036.

**EXECUTIVE SUMMARY:**

Article XIII B of the State Constitution requires cities to limit their growth in appropriations to a formula with options based upon the increase in their city or county population and the increase in non-residential construction or California per capita income. The resolution established the formula options and appropriations limit for Fiscal Year 2014-15. The City currently has a \$52.1 million margin between the appropriations limit and the approved appropriations budget for FY14-15.

**BUDGET INFORMATION:**

There is no budget impact to the City by adopting the resolution.

**GENERAL PLAN:**

There is no General Plan impact to the City by adopting the resolution.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Goal 3.00: Strengthening Economic and Fiscal Conditions
  - Strategy 4.00: Manage City finances prudently

**BACKGROUND:**

Each year the governing body of each local jurisdiction shall, by resolution, establish its appropriations limit and make other necessary determinations for the following fiscal year pursuant to Article XIII B at a regularly scheduled meeting or noticed special meeting.

Article XIII B of the State Constitution requires the Council to adopt “Cost of Living” factors to compute the City’s appropriations limit. Two factors are utilized for the computation and the City may choose whichever yields the greater increase in the limit. The first choice is the percentage change in population for either the City of Solano County. The second choice is comprised of the percentage change in the local assessment roll due to the addition of non-residential new construction or the percentage change in California per capita income.

Exhibit I illustrates how the City’s appropriations limit is calculated and the summary of the appropriations subject to limitation. The margin of \$52.1 million between the appropriations limit and the proposed appropriations budget indicates the City could increase budgeted appropriations by more than one and a half times before being required to reduce local tax rates or revenues.

Attachments:

- Resolution
- Exhibit I

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
ESTABLISHING AN APPROPRIATIONS LIMIT PURSUANT TO ARTICLE XIII B OF  
THE CALIFORNIA STATE CONSTITUTION FOR FISCAL YEAR 2014-15**

**WHEREAS**, Article XIII B of the Constitution of the State of California provides that the total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in said Article XIII B; and

**WHEREAS**, pursuant to said Article XIII B of the Constitution of the State of California, the City Council of the City of Benicia deems it to be in the best interests of the City of Benicia to establish an appropriations limit for the fiscal year 2014-15; and

**WHEREAS**, the Interim Finance Director of the City of Benicia has determined that the said appropriations limit for the fiscal year 2014-15 be established in the amount of \$79,332,036; and

**WHEREAS**, the Interim Finance Director of the City of Benicia has determined that the percentage change in per capita income and the county population is the preferred method of calculation in the cost of living adjustment.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby establishes an appropriations limit for fiscal year 2014-15 pursuant to Article XIII B of the Constitution of the State of California be established in the amount of \$79,332,036, as evidenced by Exhibit 1, attached to this Resolution and hereby incorporated herein.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above resolution was approved by the City Council of the City of Benicia at a regular meeting held on the 1<sup>st</sup> day of July, 2014, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**Exhibit I**  
**CITY OF BENICIA**  
**2014-15 Appropriations Limit Calculation**

<u>Description</u>	<u>Amount</u>
2013-14 Appropriations Limit	\$ 78,712,057
2014-15. County population	1.0102
2014-15. Decrease in per capita income	0.9977
<b>2014-15 Appropriations Limit</b>	<b>\$ 79,332,036</b>

**2014-15 Projected Tax Revenues**

<u>Description</u>	<u>Amount</u>
Property Taxes	\$ 14,937,910
Sales & Use Tax	6,990,000
Transient Occupancy Tax	345,000
Utility Users Tax	4,290,000
Business License Tax	480,000
Real Property Transfer Tax	100,000
Interest Earnings	54,448
<b>Appropriations Subject to Limitation</b>	<b>\$ 27,197,358</b>
<b>Margin</b>	<b>\$ 52,134,678</b>

F:\finance\abby\[GANN Limit FY14-15.xlsx]GANN



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**CONSENT CALENDAR**

**DATE** : June 20, 2014

**TO** : City Manager

**FROM** : Interim Finance Director

**SUBJECT** : **RESOLUTION SETTING THE FISCAL YEAR 2014-15 SECURED TAX RATE FOR BONDED INDEBTEDNESS FOR THE REFUNDING GENERAL OBLIGATION BONDS, SERIES 2012**

**RECOMMENDATION:**

Adopt the resolution setting the Fiscal Year 2014-15 bonded indebtedness tax rate for the Refunding General Obligation Bonds, Series 2012.

**EXECUTIVE SUMMARY:**

Each year, the City is required to adopt a resolution setting the bonded indebtedness secured tax rates for placement on the Solano County property tax roll. Due to a slight increase in Assessed Valuation, the rate for each homeowner will have a decrease from last year's .01433 to .0137 per hundred dollars of assessed valuation. The total amount to be collected on the property tax roll for Fiscal Year 2014-15 is \$640,932, which will be used to pay the principal and interest payments on the 2012 Refunding General Obligation Bonds.

**BUDGET INFORMATION:**

There is no budget impact for the City.

**GENERAL PLAN:**

There is no General Plan impact.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Strategy Issue #3: Strengthening Economic and Fiscal Conditions
  - Strategy 4.00: Manage City Finances prudently

**BACKGROUND:**

Each year at this time, the City Council adopts a resolution setting the secured tax rate for debt service on outstanding general obligation bonds for the coming fiscal year. This resolution is then forwarded to the Solano County Auditor-Controller for inclusion on the property tax roll for City of Benicia property owners.

The proposed resolution sets the tax rate for the Refunding General Obligation Bonds, Series 2012. The tax rate is calculated using the County's estimate of \$4.679 billion for the City of Benicia's secured assessed valuation for Fiscal Year 2014-15. The proposed Fiscal Year 2014-15 tax rate of \$.0137 per hundred dollars of assessed valuation will generate an estimated \$640,932 to fund the annual debt service payments on the outstanding bonds. The Fiscal Year 2014-15 tax rate of .0137 is approximately 4 percent less than the Fiscal Year 2013-14 tax rate of .01433. For Fiscal Year 2014-15, a property with assessed valuation of \$300,000 would receive an assessment of \$41.10 ( $\$300,000/100 \times .0137$ ).

Attachments:

- Resolution
- Attachment 1 – Calculation of Ad Valorem Secured Tax Rate

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA SETTING THE FISCAL YEAR 2014-15 SECURED TAX RATES FOR THE REFUNDING GENERAL OBLIGATION BONDS, SERIES 2012**

**WHEREAS**, the City is required to set tax rates on secured property for payment of the refunding general obligation bonds indebtedness.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby adopts the following secured tax rates required to pay the City of Benicia bonded indebtedness:

SECURED TAX RATES REQUIRED FOR FISCAL YEAR 2014-15

<u>BOND</u>	<u>AMOUNT</u>	<u>RATE PER \$100</u>
Refunding General Obligation Bonds	\$640,9327	0.0137

\*\*\*\*\*

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 1<sup>st</sup> day of July, 2014 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



**Attachment 1**

**City of Benicia Refunding General Obligation Bonds, Series 2012  
Calculation of Ad Valorem Secured Tax Rate for Fiscal Year 2014-15**

	<u>2012 Wastewater Bonds</u>	
Net Unsecured Tax Roll	\$	222,881,665
Adjusted Unsecured Tax Roll		2,228,817
FY 13-14 Secured Tax Rate		0.01433
		<u>31,943</u>
Principal and Interest		672,875
less amount paid by unsecured		<u>(31,943)</u>
<b>Total to be paid by Secured Tax Roll</b>		<b><u>\$640,932</u></b>
Net Local Secured		4,677,363,084
SBE values		<u>1,182,561</u>
Net Total Secured		4,678,545,645
Adjusted		46,785,456
Tax Rate for FY 14-15		<u>640,932</u> = <b>0.0137</b>
		46,785,456

**Tax on \$300,000 Assessed Value**

Balance Due:	\$	<u>2,950,000</u>
Total Tax Base	\$	49,014,273
Example based on \$300,000		300,000
Tax Rate for FY 14-15		<u>0.0137</u>
		4,110
		<u>100</u>
Total Tax on \$300,000 Assessed Value	\$	<u>41.10</u>

**2012 Refunding  
GO Bonds**

**Debt Requirements**

Interest	\$	18,438
Interest		14,438
Principal		<u>640,000</u>
Total Debt Requirement for FY	\$	<b><u>672,875</u></b>



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**CONSENT CALENDAR**

**DATE** : June 12, 2014  
**TO** : City Manager  
**FROM** : Parks and Community Services Director  
**SUBJECT** : **ACCEPTANCE OF THE CITY CEMETERY DRAINAGE PROJECT**

**RECOMMENDATION:**

Adopt the resolution accepting the City Cemetery Drainage Project, along with change orders as complete and authorizing the City Manager to sign the notice of completion on behalf of the City, and authorizing the City Clerk to file said notice with the Solano County Recorder.

**EXECUTIVE SUMMARY:**

On October 29, 2013 construction plans and specifications were made available for public bidding. On November 18, 2013 the bidding period closed and the City received and opened nine (9) bids. The contractor, Team Ghilotti, Inc., was low bid. City Council awarded the project on January 7, 2014. Construction began on March 10, 2014 and consisted of trenching, pipe and rip rap installation and hydro-seeding to help stabilize the hillside. The work was completed on April 10, 2014 to the satisfaction of staff.

**BUDGET INFORMATION:**

The total budget for the City Cemetery drainage project was \$54,216. This total consisted of a base bid of \$39,985 and alternate bid (for work that might be deemed necessary based on preliminary construction activities) of \$7,131. The total also included a 15% construction contingency of \$7,100, if needed. A summary of the expenditures is outlined below:

**Project Expenditures**

Total Budget	<b>\$54,216.00</b>
Construction Contract	\$39,985.00
Change Orders (see exhibit A)	<u>\$ 5,026.77</u>
<b>Total Project Expenditures</b>	<b>\$45,011.77</b>
<b>Total Remaining Balance</b>	<b>\$ 9,204.23</b>

The remaining balance of \$9,204.23 will be transferred back to account #032-9532-9608 (Cemetery Restoration Fund).

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Strategic Issue 4: Preserving and Enhancing Infrastructure
  - Strategy 4.4: Provide adequate funding for ongoing infrastructure needs
- Strategic Issue 5: Maintain and Enhance a High Quality of Life
  - Strategy 5.4: Preserve City-owned historic structures

**BACKGROUND:**

The City Cemetery was established in 1847 and has approximately 5,000 people interred in its 40 acres. The City took over the maintenance of the cemetery in the 1970's and continues to run all cemetery operations today.

In December of 2012, heavy rain storms caused 300 lineal feet of erosion on the southwest hillside of the City Cemetery. There was no damage to the gravesites located in the affected area. In an effort to control erosion during the winter months, staff installed temporary erosion control measures to try and help minimize any further damage to the area.

In an effort to provide a permanent solution, staff hired local civil engineering firm Cullen-Sherry & Associates. Upon receiving drawings, specifications, and engineers estimate from Cullen-Sherry & Associates, staff bid the project.

On October 29, 2013 construction plans and specification were made available for public bidding. On November 18, 2013 the bidding period closed and the City received and opened nine (9) bids. The contractor, Team Ghilotti, Inc., was low bid.

City Council awarded the project on January 7, 2014. Construction began on March 10, 2014 and consisted of trenching, pipe and rip rap installation and hydro-seeding to help stabilize the hillside. The work was completed on April 10, 2014 to the satisfaction of staff.

It is recommended that Council approve the \$5,026 of contract changes shown on Exhibit A, for additional work that the contractor needed to perform in order to complete the project.

Attachments:

- Proposed Resolution
- Exhibit A
- Notice of Completion

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE DIRECTOR OF PARKS & COMMUNITY SERVICE TO EXECUTE, ON BEHALF OF THE CITY, CONTRACT CHANGE ORDERS AFFIRMING STAFF-AUTHORIZED COSTS WITH TEAM GHILOTTI INC.OF PETALUMA, CALIFORNIA FOR CONSTRUCTION CONTRACT SERVICES FOR THE BENICIA CEMETERY DRAINAGE PROJECT, AND ACCEPTING THE BENICIA CEMETERY DRAINAGE PROJECT AT 100 RIVER HILL DR., AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION AND CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, on January 7, 2014, by Resolution No. 14- 01 the City Council awarded Team Ghilotti Inc., the construction contract for the Benicia Cemetery Drainage project in accordance with plans and specifications; and

**WHEREAS**, during construction various contract change orders and modifications were necessary due to unforeseen issues; and

**WHEREAS**, an appropriation of \$5,026.77 was required from the project contingency; and

**WHEREAS**, sufficient funds were available in the construction contingency to make this appropriation; and

**WHEREAS**, said work was completed to the satisfaction of City staff.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby authorizes the Director of Parks & Community Service to execute on behalf of the City those contract change orders with Team Ghilotti Inc., for the Benicia Cemetery Drainage project described in the attached Summary of Contract Changes Exhibit A.

**BE IT FURTHER RESOLVED** that the City Council of the City of Benicia appropriates \$5,026.77 from the construction contingency.

**BE IT FURTHER RESOLVED** that the City Council of the City of Benicia hereby accepts the Benicia Cemetery Drainage project at 100 River Hill Dr. as complete for final construction cost of \$45,011.77.

**BE IT FURTHER RESOLVED** that the City Council of the City of Benicia hereby authorizes the City Manager to sign the Notice of Completion and the City Clerk is authorized to file the same with the Solano County Recorder.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by \_\_\_\_\_, 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 1<sup>st</sup> day of July, 2014 and adopted by the following vote:

Ayes:

Noes:

Absent:

---

Elizabeth Patterson, Mayor

ATTEST:

---

Lisa Wolfe, City Clerk

---

Date

## EXHIBIT A—SUMMARY OF CONTRACT CHANGES

REFERENCE	DESCRIPTION	AMOUNT
<b>CONTRACT CHANGE ORDERS TO TEAM GHILOTTI INC. APPROVED BY STAFF AND AFFIRMED BY THIS RESOLUTION</b>		
CCO. 01	Alter heights of 3 inlets	\$2,800
CCO. 02	Alter depth of pipe line to match inlets	\$2,226.77
<b>Contract Changes Approved by Staff and Affirmed by This Resolution</b>		<b>\$5,026.77</b>



Recorded at the request of:

CITY OF BENICIA

After recording return to:

CITY OF BENICIA  
PARKS & COMMUNITY SERVICES  
370 EAST "L" STREET  
BENICIA, CA 94510

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The City of Benicia, 250 East "L" Street, Benicia, CA. 94510, is the owner of the property described as:  
  
Benicia City Cemetery, 100 River Hill Dr., Benicia, CA. 94510
2. The nature of City's owner to the property is fee simple.
3. A work of installing additional drainage system at the Benicia City Cemetery on the property herein above described was completed and accepted by the City Council of the City of Benicia at a regular meeting thereof on July 1, 2014.
4. The name of the contractor for such improvements was Team Ghilotti Inc.

CITY OF BENICIA

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

By: \_\_\_\_\_  
Brad Kilger, City Manager



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**CONSENT CALENDAR**

**DATE** : June 18, 2014

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **AMEND CONTRACT WITH WATTZON FOR RESIDENTIAL WATER/ENERGY SAVINGS PROGRAM**

**RECOMMENDATION:**

Adopt a resolution amending the contract between the City and WattzOn for residential water/energy savings program.

**EXECUTIVE SUMMARY:**

In June 2012, the City entered into a contract with WattzOn for a residential water/energy program. This program is funded through Valero/Good Neighbor Steering Committee Settlement Agreement funds. Given the drought, WattzOn has proposed program changes to reassign funds, which will provide for additional home assessments, personalized reports for high water users and more. No additional funds are being requested.

**BUDGET INFORMATION:**

Funds have previously been allocated from the Valero/Good Neighbor Steering Committee (V/GNSC) Settlement Agreement account in the amount of \$293,653. No General Fund money will be used, and no additional funds are being requested.

**GENERAL PLAN:**

Water conservation 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 #2: Implement new water conservation projects/programs.

### **CLIMATE ACTION PLAN:**

The Climate Action Plan includes an entire Focus Area related to Water and Wastewater. Relevant Climate Action Plan Objectives and Strategies include:

- Objective WW-1: Reduce the amount of water consumed 20% by 2020

Water demand management involves measures that promote the efficient use of water, including conservation, volume reduction, and timing of water usage. Reductions in water demand reduce emissions because less energy is used to pump, treat, deliver, and collect water. A residential water program would assist in achieving the goal of Objective WW-1 noted above.

### **BACKGROUND:**

Water conservation is a critical component of both the Climate Action Plan and the Valero/Good Neighbor Steering Committee Settlement Agreement. In July 2012, the City Council approved a contract with WattzOn for a residential water and energy program. This program is fully funded through Valero/Good Neighbor Steering Committee Settlement funds.

WattzOn is very aware of the urgent need to save water in Benicia. On May 19, 2014, WattzOn submitted a request to the Community Sustainability Commission (CSC) to amend its existing scope of work to provide additional home consultations, personalized reports for high water using residents and more. The CSC unanimously recommended City Council approval of this contract amendment.

WattzOn has successfully managed the BeniciaSavesWater Program.

- Since March 2010, WattzOn has conducted over 300 home energy and water audits in Benicia, resulting in 8% average water savings and 9% average energy savings.
- By providing extra support to high users, WattzOn achieved 12% water savings for Benicia residents consuming more than 14,000 gallons/month.
- With software connections to utilities reaching over 130 million people WattzOn has nationwide experience delivering behavioral efficiency programs.

The Community Sustainability Commission is in favor of WattzOn continuing its work in Benicia, particularly with a focus on water efficiency measures.

Attachments:

- Proposed Resolution
- Contract Amendment

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
APPROVING A CONTRACT AMENDMENT FOR WATTZON FOR A BENICIA  
RESIDENTIAL WATER SAVINGS PROGRAM AND AUTHORIZING THE CITY  
MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY**

**WHEREAS**, WattzOn submitted a grant funding request to the Community Sustainability Commission in the amount of \$293,653 for a Benicia Residential Water Savings Program; and

**WHEREAS**, the Community Sustainability Commission reviewed the grant-funding request at its May 21, 2012 meeting, found it consistent with both the Climate Action Plan and the Valero/Good Neighbor Steering Committee Settlement Agreement, and recommended City Council approval of this request; and

**WHEREAS**, the City Council held a public hearing on July 17, 2012 and reviewed the grant funding request and proposal for a Benicia Residential Water Savings Program, and approved the funding request; and

**WHEREAS**, given the current drought, WattzOn submitted a proposal to the Community Sustainability Commission to amend the scope of work of the existing contract to provide additional water assessments to Benicia residents; and

**WHEREAS**, the Community Sustainability Commission reviewed and recommended approval of this amendment at its May 19, 2014 meeting; and

**WHEREAS**, the City Council held a public hearing to review the requested contract amendment on July 1, 2014.

**BE IT HEREBY RESOLVED THAT** the City Council approves a contract amendment with WattzOn to modify the scope of work to provide additional water assessments for Benicia residents, and authorizes the City Manager to sign the contract amendment on behalf of the City, subject to approval of the City Attorney.

**BE IT FURTHER RESOLVED THAT** funds sufficient to cover the contract in the amount of \$293,653 have previously been allocated from the Valero/Good Neighbor Steering Committee Settlement Agreement funds and no additional funds are being requested.

\*\*\*\*\*

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 1<sup>st</sup> day of July 2014, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**AMENDMENT TO AGREEMENT**

This Amendment of the Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Benicia, a municipal corporation ("CITY") and Ennovationz Inc, dbaWattzOn, a Delaware corporation with its primary office located at 480 San Antonio Road, Suite 202, Mountain View, CA 94040 (hereinafter "CONSULTANT") (collectively, "the Parties"), is made with reference to the following:

RECITALS:

A. On September 12, 2012, an agreement was entered into by and between CITY and HomeZ dba Ennovationz, currently Ennovationz Inc., dba WattzOn, ("Agreement").

B. CITY and CONSULTANT desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. Exhibit A of the Agreement has been replaced in its entirety as attached.
2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

WATTZON

City of Benicia,  
A Municipal Corporation

By \_\_\_\_\_  
Martha Amram, CEO

By \_\_\_\_\_  
Brad Kilger, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Heather McLaughlin, City Attorney

## Revised Scope of Services (Exhibit A)

### **1. Planning, Summer/Fall 2012**

A series of coordinating meetings and document preparation to set up this program within the Eco Academy at Benicia High School (BHS). The goal is to establish a program and process for the three-year period.

Tasks are:

- 1.1. Development of administrative procedures for payment, insurance and time keeping - which will be reviewed with Benicia city staff.
- 1.2. Identify BHS coordination contacts
- 1.3. Curriculum development
- 1.4. Plans for demonstration projects
- 1.5. Plans for student recruitment into internships
- 1.6. Management of students placed in internships

### **2. Service Delivery Modules (Fall 2012 - Summer 2015)**

Services in this contract are delivered in 10-week modules each year. The modules are schedule for:

- Fall: Sept - early November
- Spring: April - mid-June
- Summer: mid-June - August

Tasks within each module are:

- 2.1 Classroom background training on energy and water issues
- 2.2 Specific energy and water audit training (preparation for home visits); three four-hour sessions
  - 2.2.1 Spreadsheets for energy and water home visits
  - 2.2.2 Recommendation analysis
  - 2.2.3 In-home practice sessions
  - 2.2.4 Home coaching practice sessions
- 2.3 Outreach plan for the 10-week module (developed by BHS staff, WattzOn and student interns)
  - 2.3.1 Media outlets identified, content prepared
  - 2.3.2 Messaging
  - 2.3.3 School groups contacted
  - 2.3.4 Farmer's Market booth staffed
  - 2.3.5 Other channels utilized as needed
- 2.4 20 homes scheduled and visited, with reports filed at WattzOn
- 2.5 Additional homes scheduled as residents request
- 2.6 Results tracked by WattzOn
- 2.7 Reporting
  - 2.7.1 Monthly reports to city staff
  - 2.7.2 Annual program review each year, prepared by WattzOn and sent to city staff
  - 2.7.3 End-of-module program review, including de-brief with students and staff
- 2.8 Student interns
  - 2.8.1 6 interns for home visits and 6 outreach interns, as needed
  - 2.8.2 Hold orientation
  - 2.8.3 Conduct training
  - 2.8.4 Develop recruiting plan for next module
  - 2.8.5 Recruit interns for next module.

### **3. Water Data Preparation & Reporting (June 2014)**

Tasks are:

- 3.1 Develop data processes and templates for handling resident water data
- 3.2 Develop database for analysis of resident water data
- 3.3 Create and maintain reports to track metrics of additional water services

### **4. Energy & Water Saving Services (June 2014 - August 2015)**

Tasks are:

- 4.1 Personalized Home Water Reports
  1. Includes home comparison, historic trends and actionable guidance on saving water
  2. Emailed monthly to highest water consumers
  3. For six months starting June 2014, top water consumers will receive USPS-mailed report every other month.
    - a. Continue as needed
- 4.2 Up to 120 Home Energy & Water Consultations, with reports
  1. Additional emphasis on reducing outdoor water use
  2. Provided in addition to current requirement of 20 per three month module
- 4.3 Water Consumption Reminders and Tips
  1. Emailed monthly to all residential water accounts



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**CONSENT CALENDAR**

**DATE** : June 25, 2014

**TO** : City Manager

**FROM** : Economic Development Manager

**SUBJECT** : **APPROVE 2014-2015 CONTRACT SERVICES AGREEMENT  
BETWEEN THE CITY OF BENICIA AND BENICIA MAIN STREET**

**RECOMMENDATION:**

Adopt proposed Resolution approving an agreement with Benicia Main Street ("BMS") for 2014-15 for Downtown activity / support services.

**EXECUTIVE SUMMARY:**

Staff is proposing a contract for services for a term of one year (July 6, 2014-July 5, 2015) between the City and Benicia Main Street. The contract is for a sum of \$100,000 to provide services that support community activities, atmosphere, and visitor attraction.

**BUDGET INFORMATION:**

This contract's funding is included in the proposed 2013-2015 Budget, "Downtown Programs", Account No. 010-2605-8252. The proposed funding for this Account is \$107,000. The proposed agreement with BMS is \$100,000.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

Strategic Issue 3: Strengthening Economic and Fiscal Conditions

- Strategy #3: Retain and Attract Business

**BACKGROUND:**

Due to the unique nature of services provided, including planning, organizing and staffing events such as Farmers Market, 4<sup>th</sup> of July festivities, holiday activities and being an on-site First Street liaison with residents, merchants and visitors to promote an inviting atmosphere on First Street, City staff is recommending contracting with BMS. While it is possible for City staff to ascertain and develop the skills necessary to perform the work provided by BMS, City staff is ill equipped to staff all the activities and work obligated to BMS by this agreement. Therefore, it is necessary to contract these services. Additionally, a continued partnership with Benicia Main Street is one of the key recommended actions for

Downtown in the Business Development Action Plan.<sup>1</sup>

The proposed contract is nearly identical to last year's agreement, save for some minor changes to paper weight for collateral material. The proposed Agreement builds upon the gains from recent agreements by including a line item for funding of publications, continued monthly invoices, which continue to note three major funding categories with eight total items.

The agreement continues to maintain funding for Benicia's most prominent events, "4<sup>th</sup> of July", holiday activities and Farmer's Market. In addition, it continues funding for a summer festival, i.e. Benicia's Waterfront Festival. The agreement also continues to have a line-item to support BMS to serve as a seven-day-a-week visitor center.

This agreement, like the one approved last year, continues to delineate specific services into categories and activities with specified dollar amounts. Illustrated by the table below, this Agreement attaches dollar amounts to eight specific services that fall under three categories.

**Table 1:**

Benicia Main Street Service Agreement – FY 2013-2014								
Category:	Community Activities & Atmosphere					Advertising	Operation / Expenses	
Activity:	"4 <sup>th</sup> of July"	Farmers Market	"Haunted Depot"	Holiday Activities	Summer Festival	Advertising & Publications	Seven-Day/Wk Visitor Center	Admin./ Expenses
<b>Total \$:</b>	<b>\$40,000</b>	<b>\$4,000</b>	<b>\$2,000</b>	<b>\$7,000</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$11,000</b>	<b>\$6,000</b>

<sup>1</sup> BDAP Recommended Actions for Downtown: 2.0 Benicia Main Street. p.50 (BDAP)

This contractual accounting has improved the overall understanding of the services BMS performs. It illustrates very clearly that the primary purpose for the Agreement with Benicia Main Street is to promote community activities and atmosphere. In fact 94% of the value of the Agreement goes to support and promote community activities and downtown atmosphere.

Attachments:

- Proposed Resolution
- Proposed Agreement For Downtown Services 2014-2015

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AWARDING A CONTRACT FOR DOWNTOWN SUPPORT AND ACTIVITIES TO BENICIA MAIN STREET, IN THE AMOUNT NOT TO EXCEED \$100,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, the City of Benicia has recognized that support for a vibrant Downtown is a key element of our economic development strategy; and

**WHEREAS**, the City Council adopted a Business Development Action Plan that recommends a continued partnership with Benicia Main Street to provide Downtown services; and

**WHEREAS**, Benicia Main Street has performed admirably and to the satisfaction of City in past agreements; and

**WHEREAS**, the City desires to continue the partnership with Benicia Main Street; and

**WHEREAS**, Benicia Main Street having served Benicia and its residents for over 26 years, celebrating 22 years of providing a Farmer's Market and other community events is superbly qualified to perform the duties within the Agreement; and

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia awards the contract for services to Benicia Main Street in the amount not to exceed \$100,000 and authorizes the City Manager to sign the contract on behalf of the City, subject to approval by the City Attorney.

**BE IT FURTHER RESOLVED THAT** the City Manager or his designee is authorized to review and approve all expenditures related to the delivery of goods and services outlined in the contract.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, and 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 1<sup>st</sup> day of July, 2014, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



## **AGREEMENT FOR DOWNTOWN SUPPORT SERVICES**

This agreement is entered into by and between the City of Benicia, a municipal corporation of the State of California (hereinafter "CITY"), and Benicia Main Street, a California non-profit corporation, with its primary office located at 90 First Street, Benicia, California, 94510 (hereinafter "BMS"), as of July 6, 2014.

### **RECITALS**

WHEREAS, CITY and BMS each desire to enter into an Agreement whereby BMS will perform services for CITY to support downtown's economic vitality.

NOW, THEREFORE, BE IT RESOLVED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. BMS shall perform downtown activities and business promotions within BMS' geographic program area, as further described in Exhibit A.
2. CITY agrees to pay BMS as full compensation for all services and duties performed, except as otherwise provided herein, the sum of \$100,000 of which \$63,000 is committed to community activities & atmosphere, \$20,000 for publications and advertising and \$17,000 for operations and expenses.
3. The term of this Agreement shall be from July 6, 2014 to July 5, 2015. Either party may terminate this Agreement by giving written notice to the other party. This Agreement shall be terminated one (1) month from and after the date of delivery or mailing of the notice, unless the notice specifies later. Any payment due at effective termination date shall be calculated pro-rata, billed by BMS, and paid within thirty (30) days upon its approval by CITY.
4. CITY's Economic Development Board, in its capacity as a citizens' advisory commission, shall receive semiannual reports from BMS.
5. BMS shall render a monthly invoice at the end of each month period to CITY, which shall be paid upon its approval by CITY.
6. CITY has no obligation to provide office space, supplies, equipment, nor support services connected with the services. BMS shall comply with all CITY policies regarding use of CITY resources.
7. In the performance of the services in this Agreement, BMS is an independent contractor and is not an agent or employee of CITY. BMS, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. BMS has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting BMS in the

performance of said service hereunder. BMS shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

8. Except as otherwise stated herein, any and all obligations of CITY and BMS are fully set forth and described in this Agreement. Any changes in this Agreement, including any increase or decrease in the amount of compensation or any change in the term, which shall be mutually agreed upon by and between CITY and BMS, shall be set forth in written amendments to this Agreement.

9. **NONDISCRIMINATION.**

(a) BMS shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with CITY's policy that harassment and discrimination are unacceptable employer/employee conduct, BMS agrees that harassment or discrimination directed toward a job applicant, a CITY employee, or a citizen by BMS or BMS' employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. BMS agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

10. BMS shall defend, indemnify, and hold harmless, CITY, its officers, employees and agents from and against any and all claims, lawsuits, damage, injury and liability for damages arising in the performance of BMS' services under this Agreement. CITY shall not be responsible for claims, losses, damage, injury or liability for damages resulting from BMS.

11. BMS shall take out and maintain at all times during the life of this contract, general liability, workers' compensation, and automobile liability insurance in an amount satisfactory to CITY. BMS' insurance shall be primary with respect to the CITY and shall list CITY as an additional insured. BMS shall submit to CITY an endorsement evidencing its required insurance signed by the insurance agent and companies named. Any deductible or self-insured retentions must be declared to and approved by CITY.

12. This agreement serves as a license to use the CITY's tourism branding logo on products for sale in BMS' retail store, subject to: a) Economic Development Manager's (or designee) prior approval of each new item for its suitability for the tourism message.

13. Written communications and invoices under this agreement shall be addressed as follows:

If to CITY:                      City of Benicia  
    Office of Economic Development  
    Attn: Mario Giuliani, Economic Development Manager  
    250 East L Street  
    Benicia CA 94510

If to BMS: Benicia Main Street  
Attn: Nancy Martinez, Executive Director  
90 First Street  
Benicia CA 94510

14. This Agreement shall be deemed to have been executed and entered into in the City of Benicia, County of Solano, State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date set opposite their respective names.

**CITY OF BENICIA**

A municipal corporation  
of the State of California

**BENICIA MAIN STREET**

By: \_\_\_\_\_  
BRAD KILGER                      DATE  
CITY MANAGER

\_\_\_\_\_  
HELAINÉ BOWLES              DATE  
PRESIDENT

\_\_\_\_\_  
NANCY MARTINEZ              DATE  
EXECUTIVE DIRECTOR

APPROVED AS TO FORM:

\_\_\_\_\_  
HEATHER C. McLAUGHLIN      DATE  
CITY ATTORNEY

**EXHIBIT A**

**SCOPE OF SERVICES/PERFORMANCE STANDARDS & RATES**

**General Goals:** Promote an inviting, community oriented and business friendly atmosphere for downtown, through events, activities, promotions and staff participation. Tangible goals are to increase visitors to downtown, both resident and tourist, and aid in sales tax growth.

BMS shall be responsible for the following activities in the downtown business district (defined as First Street and one block west and east of First Street, from Military south to waterfront):

**1. Organize community-oriented events/activities that enhance Benicia’s small town, “Main Street USA” charm, character and feel; which shall also generate foot traffic downtown, including, but not limited to:**

<p><b>A. 4<sup>th</sup> of July Festivities - Budget: \$40,000</b> BMS shall organize, coordinate and operate “4<sup>th</sup> of July” festivities that shall, among other things include:</p> <ol style="list-style-type: none"><li>1. 3<sup>rd</sup> of July Torchlight Parade</li><li>2. “Picnic in the Park” on July 4<sup>th</sup></li><li>3. Pyrotechnics display accompanied with amplified patriotic music before and during the pyrotechnic display on the evening of July 4<sup>th</sup>.</li></ol>
<p><b>B. “Haunted Depot” Halloween Activities – Budget \$2,000</b> BMS shall decorate the SP Depot into a “haunted house” to serve as a Halloween destination for residents and visitors.</p>
<p><b>C. “Christmas Tree Lighting / Holiday Activities – Budget: \$7,000</b> BMS shall organize and operate, with coordination with the City Department of Parks and Community Services, a Holiday Open House and Christmas Tree Lighting Celebration on the First Friday in December.</p>
<p><b>D. Farmers Market – Budget: \$4,000</b> This budget allocation is to serve to offset costs related to the operation of the farmers market, such as increased security and safety barriers.</p>
<p><b>E. Summer Festival – Budget: \$10,000</b> BMS shall organize and operate a two-day Summer Festival with the goal of drawing residents and visitors downtown.</p>

**2. Visitor Attraction Services:**

**A. Seven Day A Week Operation – Budget: \$11,000**

BMS shall use this allocation to support seven-day-a-week efforts to keep the BMS location as the primary visitor center for downtown.

**3. Administrative Services that shall include, but limited to, the following:**

**A. Implement Annual Advertising & Publications Plan (Exhibit B) – Budget: \$20,000**

BMS' Board may amend the approved Plan without prior notice to City until changes to any one part of Plan exceed \$500, which requires City approval by Economic Development Manager.

**B. Professional Costs and Administrative Reports – Budget: \$6,000**

BMS shall apply this allocation to offset professional costs associated with collecting information, drafting and presenting reports as well as costs for professional equipment including internet service, copy and printing costs. BMS shall submit to the City reports noting the performance goals set forth in this agreement, including:

1. Submit prorated monthly invoices noting costs associated with performing the duties assigned to BMS by this Agreement.
2. Submit semiannual reports documenting results and challenges in each task area. Report shall be in a form approved by CITY, and suitable for distribution to the City of Benicia and the community. Each report shall also be presented to Economic Development Board.
3. Keep current a First Street Business directory. Provide a monthly vacancy report noting the monthly vacancy rate, a list of addresses that are vacant, the square feet of the unoccupied space and a contact number, due on the 15<sup>th</sup> of each month.

**4. Other Provisions:**

A. BMS agrees that BMS may not make comments to the media on a speculative topic, on policies not adopted by CITY, or that reflect negatively on CITY or Downtown Benicia.

B. BMS staff will be available for regular monthly meetings with CITY staff.

**EXHIBIT B**

**ANNUAL ADVERTISING & PUBLICATIONS PLAN FOR DOWNTOWN**

The parties agree that consistent advertising is essential for business success, and share an understanding that Downtown businesses should benefit from an advertising plan that treats the area as a shopping district. The advertising should not benefit any particular business, including Benicia Main Street, more than another, but rather promote events and activities within the program area. To that end, the parties agree that Benicia Main Street will spend no less than \$16,000 on advertising in media such as Internet travel/tourism sites, newspapers (such as the *Contra Costa Times*, *Patch.com*), and magazines (such as *Benicia Magazine*, *Diablo*, and *San Francisco*) throughout the year as follows.

<u>Time of Year (examples of promotions)</u>	<u>Minimum Amount to be spent on Advertising/Publication</u>
July/August (Summer Festival, Back to School)	\$3,000
September/October (Fall Events, Halloween)	\$3,000
November/December (Holidays)	\$4,000
January/February (Valentine's Day)	\$2,000
March/April (Spring Events)	\$2,000
May/June (4th of July)	\$2,000
<u>Walking Tour Map</u>	<u>\$4,000</u>
<b>Total:</b>	<b>\$20,000</b>

The advertising placed under this Plan shall incorporate the City's tourism branding elements (waterfront, California history, art, dining, and shopping), and where practical, use the City's tourism logo to indicate the City's sponsorship.

Maintain and keep current the "Walking Tour Map", updating the date of publication and business list in January. The "Walking Tour Map" map shall be produced using 11x17 sized paper, printed full color on 70# Recycled stock and folded to 8.5x11.

Examples of the placed advertising/publication must be included in the semiannual reports.

**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**BUSINESS ITEMS**

**DATE** : June 19, 2014

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **PUBLIC HEARING FOR CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT FOR FISCAL YEAR 2014-15**

**RECOMMENDATION:**

1. Conduct a public hearing to receive oral statements and written comments concerning the City of Benicia Landscape and Lighting Assessment District for the 2014-15 fiscal year.

At the conclusion of the public hearing,

2. Adopt the resolution ordering the maintenance of existing improvements in all five zones of the District, confirming the Assessment Diagram, approving the Engineer's Report and ordering the levy and collection of certain assessments for the City of Benicia Landscape and Lighting District for Fiscal Year 2014-15.

**EXECUTIVE SUMMARY:**

The items scheduled for consideration at this meeting will complete the process for levying assessments for Fiscal Year 2014-15 through the Solano County Auditor-Controller's Office for collection of the assessments with the property tax bills. Should the City Council conclude, after receiving comments from interested persons during the public hearing, that any assessment should be amended, no action should be taken on the resolution ordering the maintenance of existing improvements. Staff would then modify the report as directed and bring the matter back for final approval on July 15, 2014. However, this matter must be concluded by August 1, 2014 to meet the filing deadline with the Solano County Auditor-Controller's Office.

**BUDGET INFORMATION:**

The total budget costs for Fiscal Year 2014-15 for all five zones of the District is \$566,727. After the Reserve Fund credits and interest earnings are applied to the budgets, the balance to levy is \$427,662. It is projected that at the end of fiscal year 2014-2015 each of the zones will continue to maintain a positive fund balance except Zone 1 Residential, which will require an estimated \$43K transfer from the General Fund.

## **STRATEGIC PLAN:**

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions
  - Strategy #4: Manage City finances prudently

## **BACKGROUND:**

The City of Benicia Landscaping and Lighting District was formed in the late 1970's. The City Council annually levies assessments on the parcels of land within the District to maintain the improvements that provide special benefits to properties within the District. The City of Benicia Landscaping and Lighting District consists of five separate zones with the largest being the residential zone. The other four zones are smaller commercial/industrial areas. Private properties within each zone are assessed annually to pay the cost to maintain landscaping along street rights of way, maintenance of open space areas and maintenance and energy costs of streetlights on a zone-by-zone basis.

The City Council, on June 17, 2014, initiated the annual process for levying assessments within the Landscaping and Lighting Assessment District. The Council adopted three resolutions which initiated proceedings for the levy and collection of assessments, gave preliminary approval to the Engineer's Report as required by the State of California Streets and Highways Code and finally set a public hearing for July 1, 2014 for consideration of a resolution to order the levy and collection of assessments for Fiscal Year 2014-2015. Conducting the public hearing and adoption of the resolution ordering the levy and collection of assessments for Fiscal Year 2014-2015 will complete the process for the coming fiscal year.

No increases to the assessment rates are proposed for fiscal year 2014-15 while the Community Sustainability Strategy is being completed. Therefore, the Zone 1 residential rate is recommended to remain at \$136.56 per parcel. The assessments rates for Zones 2 through 5 vary based upon parcel size, but remain unchanged from prior years. While the revenue from the assessments in each of the zones is no longer sufficient to fund the annual costs, each zone is projected to have a fund balance by the end of the fiscal year except Zone 1, which will need a \$43K transfer from the General Fund. Once the Community Sustainability Strategy has been completed and there is a clear picture of the City's future financial liability, new rates could be proposed in fiscal year 2015-16 as part of a comprehensive funding strategy that will ensure the City future financial sustainability.

Attachments:

- Resolution ordering Levy and Collection of Assessments
- Resolution Nos. 14-56, 14-57, 14-58
- Engineer's Report

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ORDERING THE MAINTENANCE OF EXISTING IMPROVEMENTS IN ALL FIVE ZONES OF THE DISTRICT, CONFIRMING THE ASSESSMENT DIAGRAM, APPROVING THE ENGINEER'S REPORT AND ORDERING THE LEVY AND COLLECTION OF CERTAIN ASSESSMENTS FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2014-15**

**WHEREAS**, on the 17<sup>th</sup> day of June, 2014, the City Council adopted its Resolution No. 14-56, Describing Improvements and Directing Preparation of Engineer's Report for Fiscal Year 2014-15 for the City of Benicia Landscaping and Lighting District ("District") pursuant to the Landscaping and Lighting Act of 1972, and directed the Engineer of Work to prepare and file with the Clerk of this City a written report called for under said Act and by said Resolution No. 14-56; and

**WHEREAS**, said report was duly made and filed with the Clerk of said City, whereupon said Clerk presented it to the City Council for its consideration; and

**WHEREAS**, said Council thereupon duly considered said report and each and every part thereof and found that it contained all the matters and things called for by the provisions of said Act and said Resolution No. 13-56, including (1) plans and specifications of the existing improvements; (2) estimate of costs for maintenance and servicing said improvements for Fiscal Year 2014-15; (3) diagram of the District; and (4) an assessment according to benefits; all of which were done in the form and manner required by said Act; and

**WHEREAS**, the City Council found that said report and each and every part thereof was sufficient in every particular and determined that it should stand as the report for all subsequent proceedings under said Act, whereupon the City Council, pursuant to the requirements of said Act, appointed Tuesday, the 1<sup>st</sup> day of July, 2014, at 7:00 p.m. of said day in the regular meeting place of said Council, City Hall, 250 East "L" Street, Benicia, California, as the time and place for hearing comments in relation to any proposed assessment upon an assessable lot or parcel of land within the District for maintenance or servicing of existing improvements for Fiscal Year 2014-15, and directing said Clerk to give notice of said hearing as required by said Act; and

**WHEREAS**, notices of said hearing were duly and regularly published and posted in the time, form and manner required by said Act, as evidenced by the Affidavits and Certificates on file with said Clerk, whereupon said hearing was duly and regularly held at the time and place stated in said notice; and

**WHEREAS**, persons interested in commenting on any proposed assessment upon an assessable lot or parcel of land within District filed written protests with the

Clerk of said City at or before the conclusion of said hearing, and all interested persons desiring to be heard were given an opportunity to be heard, and all matters and things pertaining to the levy and collection of the assessments for the maintenance or servicing of said improvements were fully heard and considered by the City Council.

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

1. That protests against the proposed assessment upon any assessable lot or parcel of land within District for Fiscal Year 2014-15 be, and each of them, are hereby overruled.
2. That the public interest, convenience and necessity require and the City Council does hereby order the levy and collection of assessments pursuant to said Act, for the maintenance or servicing of improvements, more particularly described in said Engineer's Report and made a part hereof by reference thereto.
3. That the City of Benicia Landscaping and Lighting District and the properties thereof benefited and to be assessed for said costs for the maintenance and servicing of existing improvements are situated in Benicia, California, and are more particularly described by reference to a map thereof on file in the office of the Director of Public Works and Community Development of said City. Said map indicates by a boundary line the extent of the territory included in District and of any zone thereof and the general location of District.
4. That the public interest and convenience require, and the City Council does hereby order the improvements to be serviced and maintained as described in and in accordance with said Engineer's Report, reference to which is hereby made for a more particular description of said improvements.
5. That the diagram showing the exterior boundaries of District and described in said Resolution No. 14-56, and also the boundaries of any zones therein and the lines and dimensions of each lot or parcel of land within District as such lot or parcel of land is shown on the County Assessor's maps for the fiscal year to which it applies, each of which lot or parcel of land has been given a separate number upon said diagram, as contained in said report, be, and it is hereby, finally approved and confirmed.
6. That the assessment of the total amount of the costs and expenses for the maintenance or servicing of existing improvements upon the several lots or parcels of land in District in proportion to the estimated benefits to be received by such lots or parcels, and of the expenses incidental thereto contained in said report be, and the same is hereby, finally approved and confirmed.

7. That said Engineer's Report for Fiscal Year 2014-15, be, and the same is hereby, finally adopted and approved as revised to reflect the actual expenditures for prior years, as a whole.

8. Immediately upon the adoption of this Resolution, the Engineer shall file the assessment and a certified copy of this resolution with the Auditor of the County of Solano. Upon such filing, the County Auditor shall enter on the County assessment roll opposite each lot or parcel of land the amount of assessment thereupon as shown in the assessment. The assessment shall be collected at the same time and in the same manner as County taxes are collected, and all laws providing for the collection and enforcement of County taxes shall apply to the collection and enforcement of the assessments. After collection by the County, the net amount of the assessments, after deduction of any compensation due the County for collection, shall be paid to the City.

9. That the order for the levy and collection of assessments for the improvements and the final adoption and approval of the Engineer's Report as a whole, and of the plans and specifications, estimate of the costs and expenses, the diagram and the assessment, as contained in said Report, as hereinabove determined and ordered, is intended to and shall refer and apply to said Report, or any portion thereof, as amended, modified, revised or corrected by, or pursuant to and in accordance with any resolution or order, if any, heretofore duly adopted or made by the City Council.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, and 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 1<sup>st</sup> day of July, 2014, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



**RESOLUTION NO. 14- 58**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA OF INTENTION TO ORDER THE LEVY AND COLLECTION OF ASSESSMENTS PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 AND THEREFORE SETTING A PUBLIC HEARING ON JULY 1, 2014 TO CONSIDER THE FISCAL YEAR 2014-15 CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT**

**WHEREAS**, pursuant to the previous Resolution, describing improvements and directing preparation of Engineer's Report for Fiscal Year 2014-2015 for City of Benicia Landscaping and Lighting District ("District"), adopted on June 17, 2014, by the City Council of said City pursuant to the Landscaping and Lighting Act of 1972, the City Engineer of said City has prepared and filed with the Clerk of this City the written report called for under said Act and by previous Resolution, which said report has been submitted and preliminarily approved by this Council in accordance with said Act.

**NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERED**, as follows:

1. In its opinion the public interest and convenience require, and it is the intention of the City Council to order, the levy and collection of assessments for fiscal year 2014-2015 pursuant to the provisions of the Landscaping and Lighting Act of 1972, Part 2, Division 15, of the Streets and Highways Code of the State of California, for the construction or installation of the improvements, including the maintenance or servicing, or both, thereof, are:

a) The maintenance or servicing of public landscaping including, but not limited to, trees, shrubs, grass, or other vegetation in curbed median islands of public streets, in landscaped strips or areas along and adjacent to public street areas, in public open space areas retained in their natural state, or in areas developed as public parks.

b) The maintenance or servicing, or both, thereof public lighting facilities and improvements including, but not limited to, standards, poles and luminaries and the cost of electric current or energy.

2. The cost and expenses of said improvements, including the maintenance or servicing, or both, thereof, are to be made chargeable upon the District, the exterior boundaries of which District are the composite and consolidated area as more particularly described on a map thereof on file in the office of the Director of Public Works of said City, to which reference is hereby made for further particulars. Said map indicates by a boundary line the extent of the territory included in the district and of any zone thereof and the general location of said District.

3. Said Engineer's Report prepared by the City Engineer of said City, preliminarily approved by the City Council by previous Resolution and on file with the

Clerk of this City, is hereby referred to for a full and detailed description of the improvements, the boundaries of the assessment district and any zones therein, and the proposed assessments upon assessable lots and parcels of land within District.

4. Notice is hereby given that Tuesday, the 1<sup>st</sup> day of July, 2014, at 7:00 p.m. in the regular meeting place of the City Council, City Hall, 250 East "L" Street, Benicia, California, be and the same is hereby appointed and fixed as the time and place for a hearing by the City Council on the question of the levy and collection of the proposed assessment for the construction or installation of said improvements, including the maintenance and servicing, or both, thereof, and when and where it will consider all oral statements and all written comments made or filed by any interested person at or before the conclusion of said hearing against any proposed assessment upon an assessable lot or parcel of land within the District, and when and where it will consider and finally act upon the Engineer's Report.

5. Prior to the conclusion of the hearing, any interested person may file a written protest with the Clerk, or, having previously filed a protest, may file a written withdrawal of that protest. A written protest shall state all grounds of objection. A protest by a property owner shall contain a description sufficient to identify the property owned by such owner.

6. The Clerk of said City is hereby directed to give notice of said hearing by causing a copy of this Resolution to be published once in the Benicia Herald, a newspaper published and circulated in said City, and by conspicuously posting a copy thereof upon the official bulletin board customarily used by the City for the posting of notices, said posting and publication to be had and completed at least ten (10) days prior to the date of the hearing specified herein.

7. The Public Works Department is hereby designated as the office to answer inquiries regarding any proceedings to be had herein, and may be contacted during regular office hours at City Hall, 250 East "L" Street, Benicia, California 94510, or by calling (707) 746-4240.

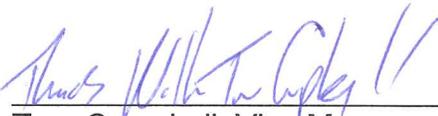
\*\*\*\*\*

On motion of **Council Member Hughes**, seconded by **Council Member Schwartzman**, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 17<sup>th</sup> day of June, 2014, and adopted by the following vote:

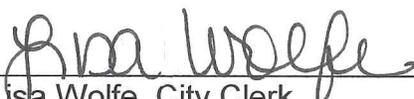
Ayes: **Council Members Campbell, Hughes, Schwartzman, Strawbridge, and Mayor Patterson**

Noes: **None**

Absent: **None**

  
\_\_\_\_\_  
Tom Campbell, Vice Mayor

ATTEST:

  
\_\_\_\_\_  
Lisa Wolfe, City Clerk

6-19-14  
\_\_\_\_\_  
Date

**RESOLUTION NO. 14- 57**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
PRELIMINARILY APPROVING THE ENGINEER'S REPORT FOR THE CITY OF  
BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2014-15**

**WHEREAS**, by previous Resolution, the City Council did adopt the Resolution describing improvements and directing preparation of Engineer's Report for Fiscal Year 2014-2015 pursuant to the Landscaping and Lighting Act of 1972 for the City of Benicia Landscaping and Lighting District ("District") in said City and did refer the proposed improvements to the Engineer of Work, and did therein direct said Engineer of Work to prepare and file with the Clerk of said City a report, in writing, all as therein more particularly described, under and pursuant to the Landscaping and Lighting Act of 1972; and

**WHEREAS**, said Engineer of Work prepared and filed with the Clerk of said City a report in writing as called for in previous resolution and under and pursuant to said Act, which report has been presented to this Council for consideration; and

**WHEREAS**, said Council has duly considered said report and each and every part thereof, and finds that each and every part of said report is sufficient, and that neither said report nor any part thereof should be modified in any respect.

**NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERED**, as follows:

1. That the Engineer's estimate of the itemized and total costs and expenses of maintenance and servicing thereof, and of the incidental expenses in connection therewith, contained in said report, be, and each of them are hereby preliminarily approved.
2. That the diagram showing the exterior boundaries of the District referred to and described in previous Resolution and also the boundaries of any zones therein and the lines and dimensions of each lot or parcel of land within District as such lot or parcel of land is shown on the County Assessor's maps for the fiscal year to which the report applies, and it is hereby, preliminarily approved.
3. That the proposed assessment of the total amount of the estimated costs and expenses of the proposed improvements upon the several lots or parcels of land in District in proportion to the estimated benefits to be received by such lots or parcels, respectively, from said improvements including the maintenance or servicing, or both, thereof, and of the expenses incidental thereto, as contained in said report, be, and they are hereby, preliminarily approved.

4. That said report shall stand as the Engineer's Report for the purpose of all subsequent proceedings to be had pursuant to the previous Resolution.

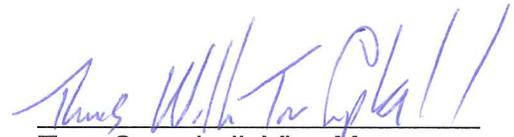
\*\*\*\*\*

On motion of **Council Member Hughes**, seconded by **Council Member Schwartzman**, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 17<sup>th</sup> day of June, 2014, and adopted by the following vote:

Ayes: **Council Members Campbell, Hughes, Schwartzman, Strawbridge, and Mayor Patterson**

Noes: **None**

Absent: **None**

  
\_\_\_\_\_  
Tom Campbell, Vice Mayor

ATTEST:

  
\_\_\_\_\_  
Lisa Wolfe, City Clerk

6-19-14  
\_\_\_\_\_  
Date

## RESOLUTION NO. 14- 56

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DESCRIBING IMPROVEMENTS AND DIRECTING PREPARATION OF ENGINEER'S REPORT FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2014-2015

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

1. Previously, the City Council did, pursuant to the provisions of the Landscaping and Lighting Act of 1972, Part 2, Division 15, of the Streets and Highways Code of the State of California, conduct the proceedings for and did form the City of Benicia Landscaping and Lighting District ("District").

2. The public interest, convenience and necessity require, and it is the intention of this Council to undertake proceedings for the levy and collection of assessments upon the several lots or parcels of land in said District, for the construction or installation of improvements, including the maintenance or servicing, or both, thereof for Fiscal Year 2014-15.

3. The improvements to be constructed or installed, including the maintenance or servicing, or both, thereof, are:

a) The maintenance or servicing of public landscaping including, but not limited to, trees, shrubs, grass, or other vegetation in curbed median islands of public streets, in landscaped strips or areas along and adjacent to public street areas, in public open space areas retained in their natural state, or in areas developed as public parks.

b) The maintenance or servicing, or both, thereof public lighting facilities and improvements including, but not limited to, standards, poles and luminaries and the cost of electric current or energy.

4. The costs and expenses of said improvements, including the maintenance or servicing, or both, thereof, are to be made chargeable upon said District, the exterior boundaries of which District are the composite and consolidated area as more particularly shown on a map thereof on file in the office of the Public Works Director of the City of Benicia to which reference is hereby made for further particulars. Said map indicates by a boundary line the extent of the territory included in said District and of any zone thereof and shall govern for all details as to the extent of the assessment district.

5. The Engineer of Work shall be Harris & Associates and is hereby directed to prepare and file with the City Clerk a report, in writing, referring to the assessment district by its distinctive designation, specifying the fiscal year to which the report applies, and, with respect to that year, presenting the following:

- a) Plans and specifications of the existing improvements and for proposed new improvements, if any, to be made within the district or within any zone thereof; and
- b) An estimate of the costs of said proposed new improvements, if any, to be made, the costs of maintenance or servicing, or both, thereof, and of any existing improvements, together with the incidental expenses in connection therewith; and
- c) A diagram showing the exterior boundaries of the district and of any zones within said district and the lines and dimensions of each lot or parcel of land within the district as such lot or parcel of land is shown on the County Assessor's map for the fiscal year to which the report applies; and
- d) A proposed assessment of the total amount of the estimated costs and expenses of the proposed new improvements, including the maintenance or servicing, or both, thereof, and of any existing improvements upon the several lots or parcels of land in said district in proportion to the estimated benefits to be received by such lots or parcels of land respectively from said improvements, including the maintenance or servicing, or both, thereof, and of the expenses incidental thereto.

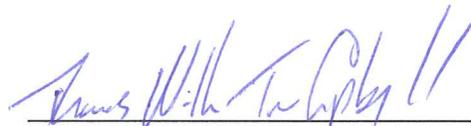
\*\*\*\*\*

On motion of **Council Member Hughes**, seconded by **Council Member Schwartzman**, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 17<sup>th</sup> day of June, 2014, and adopted by the following vote:

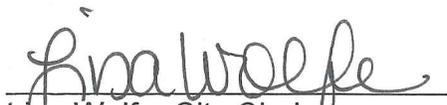
Ayes: **Council Members Campbell, Hughes, Schwartzman, Strawbridge, and Mayor Patterson**

Noes: **None**

Absent: **None**

  
Tom Campbell, Vice Mayor

ATTEST:

  
Lisa Wolfe, City Clerk

6-19-14  
Date





**Harris & Associates**<sup>SM</sup>

SHAPING THE FUTURE ONE PROJECT AT A TIME<sup>SM</sup>

# Engineer's Report

---

for

## Landscaping and Lighting Assessment District

Fiscal Year 2014-15

For the

**City of Benicia  
Solano County, California**

June 10, 2014  
Revised June 24, 2014

**VIII.A.15**

## Table of Contents

1	OVERVIEW.....	2
1.1	INTRODUCTION.....	2
	General Description of the District.....	2
	Compliance with the California Constitution.....	3
	Summary of Proposed Assessment and Expenditures.....	3
2	PLANS AND SPECIFICATIONS.....	5
2.1	Level of Maintenance Services Provided.....	6
3	BUDGET.....	9
4	METHOD OF APPORTIONMENT.....	15
4.1	GENERAL.....	15
4.2	BENEFIT ANALYSIS.....	15
	General Benefits.....	15
	Special Benefits.....	15
	Non-Assessable Properties.....	16
4.3	ASSESSMENT METHODOLOGY.....	16
4.4	Special Cases.....	17
5	ASSESSMENT ROLL.....	18
	APPENDIX A.....	19

**ENGINEER'S REPORT  
CITY OF BENICIA  
LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT**

The undersigned respectfully submits the enclosed report as directed by the City Council. The undersigned certifies that he is a Professional Engineer, registered in the State of California.



DATED: June 10, 2014

A handwritten signature in blue ink, appearing to read "K. Dennis Klingelhofer", written over a horizontal line.

BY: K. Dennis Klingelhofer  
Assessment Engineer  
R.C.E. No. 50255

## **1 OVERVIEW**

### **1.1 INTRODUCTION**

The City of Benicia ("City") levies and collects special assessments on parcels within the City of Benicia Landscaping and Lighting District ("District") in order to maintain the improvements within those areas. The District was initially formed in the late 1970's to provide a dedicated source of funding for the ongoing maintenance of lighting and landscape improvements within the Southhampton area. Over the years, other areas have been annexed into the original benefit zone, and additional benefit zones have also been created. The assessments and methods of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

#### *General Description of the District*

The District consists of five (5) Benefit Zones as described below. Only parcels within each of those zones receive an assessment.

**Zone 1 – Residential ("Zone 1")** is comprised of 2,196 single-family residential parcels. Within this zone is a large portion of the Southhampton area plus the areas known by their subdivision name including Hamann Hills, Benicia Terrace, Olive Branch Estates, Harbor View Knolls and Clos Duvall. It also includes the Southhampton D-6 and D-7 subdivisions. Also within the boundaries of Zone 1 are parcels identified as publicly owned open space and parks and privately owned open space and sliver parcels that are deemed to be not assessable.

**Zone 2 – Fleetside Industrial Park ("Zone 2")** is comprised of two industrial park subdivisions east of Interstate 680 in the eastern portion of the City. The two subdivisions are Fleetside Industrial Park and Drake Industrial Park. Also within the boundaries of Zone 2 are parcels identified as publicly owned wetland parcels that are deemed to be not assessable.

**Zone 3 – Goodyear Road ("Zone 3")** is comprised of four parcels totaling 37.01 acres in area located between Goodyear Road and Interstate 680 in the northeasterly corner of the City. The most southerly of the four parcels is 10.94 acres in area and is zoned "General Commercial." The three northerly parcels totaling 26.07 acres in area are zoned "Industrial Park."

**Zone 4 – East 2nd Street ("Zone 4")** is comprised of five assessed parcels totaling 276.36 acres. The two southernmost parcels adjacent to East 2nd Street total 200.04 acres in area and are zoned "General Industrial." The two northernmost parcels totaling 76.32 acres are zoned "Industrial Park." There are also three small City-owned parcels used for water system distribution and storage purposes that are deemed to be not assessable.

**Zone 5 – Columbus Parkway ("Zone 5")** is comprised of both commercial parcels, residential parcels and privately owned open space parcels. There are five assessed commercial parcels totaling 9.28 acres; there are 188 residential condominiums at the Cambridge Apartments and there are 50 units on Assessment Parcel #1327. Also within the boundaries of Zone 5 are parcels identified as privately owned open space parcels that are deemed to be not assessable.



### **Compliance with the California Constitution**

Assessments are levied annually pursuant to the Landscape and Lighting Act of 1972, Part 2 of Division 15 of the California Streets and Highways Code ("1972 Act"). All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and are in compliance with the provisions of the California Constitution Article XIID ("Article XIID"), which was enacted with the passage of Proposition 218 in November 1996. Pursuant to Article XIID Section 5, certain existing assessments are exempt from the substantive and procedural requirements of Article XIID Section 4. Specifically, Article XIID Section 5(b) exempted:

*"Any assessment imposed pursuant to a petition signed by the person owning all of the parcels subject to the assessment at the time the assessment is initially imposed."*

The City has determined that all improvements and the annual assessments originally established for the District were part of the conditions of property development and approved by the original property owner (developer at the time of the District formation late 1970's). As such, pursuant to Article XIID Section 5(b), all the property owners approved the existing District assessments at the time the assessments were created (originally imposed pursuant to a 100% landowner petition). Therefore, the pre-existing assessment amount has been exempt from the procedural requirements of Article XIID Section 4 since the amount of the assessment has not increased since the passage of Proposition 218.

Any future increase in the assessment rate or substantial changes in the services provided would require that the District be brought into compliance with all of the requirements of Article XIID and would require the approval of the property owners subject to the assessment based upon a mailed ballot which would be sent to each property owner.

### **Summary of Proposed Assessment and Expenditures**

A summary of the assessments to be levied in each Benefit Zone is shown in the table below. Based upon the estimated expenditures, the transfer which will be needed from the Zones projected fund balance is also shown for fiscal year 2014-15, and as well as the projected fund balance as of June 30, 2014. As seen in several of the zones, the fund balance will be substantially depleted in the current year. This will require a significant reduction in service levels in future years so that expenditures match assessment revenues or the City's General Fund will need to make a contribution/loan to the District, or an increase in the current assessment rate.

CITY OF BENICIA  
 LANDSCAPE AND LIGHTING DISTRICT FY 2014-15  
 SUMMARY OF EXPENSES AND REVENUES

	Zone 1 Residential	Zone 2 Fleetside Ind. Park	Zone 3 Goodyear Road	Zone 4 E. Second Street	Zone 5 Columbus Parkway	Total
<b>DIRECT COST</b>						
Maintenance and Servicing	\$ 269,705	\$ 98,060	\$ 6,232	\$ 20,245	\$ 21,685	\$ 415,927
Utilities	\$ 94,000	\$ 15,600	\$ 1,200	\$ 15,500	\$ 3,500	\$ 129,800
Capital Outlay	\$ 1,000	\$ 4,000	\$ 500	\$ 500	\$ 500	\$ 6,500
District Administration	\$ 9,570	\$ 3,045	\$ 145	\$ 1,015	\$ 725	\$ 14,500
<b>TOTAL DIRECT COST</b>	<b>\$ 374,275</b>	<b>\$ 120,705</b>	<b>\$ 8,077</b>	<b>\$ 37,260</b>	<b>\$ 26,410</b>	<b>\$ 566,727</b>
Estimated Fund Balance 7/1	\$ 31,100	\$ 115,500	\$ 38,700	\$ 34,900	\$ 97,600	\$ 317,800
Estimated Use of Fund Reserves	\$ (31,100)	\$ (40,610)	\$ (4,077)	\$ (9,260)	\$ (9,663)	\$ (94,710)
Estimated General Fund Transfer	\$ 43,290	\$ -	\$ -	\$ -	\$ -	\$ 43,290
Estimated Interest Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Projected Fund Balance 6/30	\$ 43,290	\$ 74,890	\$ 34,623	\$ 25,640	\$ 87,937	\$ 266,380
<b>ASSESSMENT REVENUES</b>	<b>\$ 299,885</b>	<b>\$ 79,977</b>	<b>\$ 4,000</b>	<b>\$ 28,000</b>	<b>\$ 15,800</b>	<b>\$ 427,662</b>
Assessment per Benefit Unit	\$ 136.56				\$ 40.00	
Assessment Needed to Fully Fund	\$ 170.43				\$ 66.87	
Assessment per Acre		\$ 644.77	\$ 108.08	\$ 101.32	\$ 645.00	
Assessment Needed to Fully Fund		\$ 973.11	\$ 218.24	\$ 134.82	\$ 1,076.95	

## **2 PLANS AND SPECIFICATIONS**

The District provides for the continued installation, maintenance and servicing of landscaping within public parks, street landscaping and lighting improvements within the public right-of-ways which provide special benefit to parcels and properties in each of the five (5) Benefit Zones

As generally defined in the 1972 Act, maintenance and servicing of the improvements may include one or any combination of the following:

- 1) The installation or planting of landscaping.
- 2) The installation or construction of statuary, fountains, and other ornamental structures and facilities.
- 3) The installation or construction of public lighting facilities, including, but not limited to streetlights and traffic signals.
- 4) The installation or construction of any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof; including but not limited to, grading, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
- 5) The installation of park or recreational improvements including, but not limited to the following:
  - a) Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
  - b) Lights, playground equipment, play courts and public restrooms.
- 6) The maintenance or servicing, or both, of any of the foregoing including the furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement, including, but not limited to:
  - a) Repair, removal, or replacement of all or any part of any improvements;
  - b) Grading, clearing, removal of debris, the installation, repair or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities;
  - c) Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury;
  - d) The removal of trimmings, rubbish, debris, and other solid waste;
  - e) The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.
  - f) Electric current or energy, gas, or other agent for the lighting or operation of any other improvements.
  - g) Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.
- 7) The acquisition of land for park, recreational or open-space purposes, or the acquisition of any existing improvement otherwise authorized by the 1972 Act.
- 8) Incidental expenses associated with the improvements including, but not limited to:
  - a) The cost of preparation of the report, including plans, specifications, estimates, diagram, and assessment;
  - b) The costs of printing, advertising, and the publishing, posting and mailing of notices;
  - c) Compensation payable to the County for collection of assessments;

- 
- d) Compensation of any engineer or attorney employed to render services;
  - e) Any other expenses incidental to the construction, installation, or maintenance and servicing of the improvements; and,
  - f) Costs associated with any elections held for the approval of a new or increased assessment.

### **2.1 Level of Maintenance Services Provided**

The City has defined the desired level of maintenance services which should be provided to maintain the appearance and health of vegetation and landscaped area, and to maintain recreation areas in a safe and attractive manner to serve the surrounding property. At the time of formation of the Landscape and Lighting District in the late 1970's, assessment revenues were sufficient to provide maintenance service at the approximate frequency shown under the "Desired Level of Maintenance" in the table below.

However, over the years the frequency of maintenance services which the District has been able to provide has gradually been reduced. The primary reason for the gradual reduction in maintenance levels is that although the cost of labor, materials, utilities and other services have continued to increase annually, the assessment revenues have not increased. As a result, the current frequency of maintenance services which the District is able to provide is shown in the table on the following page under "Current Maintenance Level".

The location, boundaries and general description of the improvements provided within the District are described below. The detailed specifications and location of the improvements are on plans and maps on file with the Public Works department and by reference are made part of this Report

#### **Zone 1 – Residential**

The Zone 1 improvements shall consist of: 1) maintenance and servicing of open space areas including disking, mowing and trash removal; 2) within public park sites with established landscaping, maintenance and servicing improvements including trimming, pruning, weeding, fertilizing, irrigation, trash removal, mechanical sprinkler repair, plant replacement, and other necessary maintenance programs; and 3) the servicing of electrical power for 304 streetlights for this zone.

#### **Zone 2 – Fleetside Industrial Park**

The Zone 2 improvements shall consist of: 1) the maintenance and servicing of landscaped strip areas along and adjacent to the public street areas including trimming, pruning, weeding, fertilizing, irrigation, trash removal, mechanical sprinkler repair, plant replacement, and other necessary maintenance programs; and 2) the servicing of electrical power for 33 streetlights for this zone.

**Summary of Maintenance Activities and Frequencies**

<b>Activity</b>	<b>Desired Frequency</b>	<b>Budgeted Frequency</b>
<b>Turf Maintenance</b>		
Mowing, edging & trimming	Weekly	Weekly
Fertilization	Four times per year	Once per year
Control and/or eradication of pest and weeds	Four times per year	Twice per year
<b>Landscape Maintenance</b>		
Re-mulch landscape areas	Annually	NB*
Color Plantings	Semi-annually	NB*
Plant Replacement	As-needed	NB*
Fertilize shrubs and ground cover	Annually	NB*
Fertilize trees	Annually	NB*
Control and/or eradication of pest and weeds	Four times per year	Twice per year
<b>Trash and Debris Removal</b>		
Turf/Landscape areas	Daily	Daily
Hardscape areas	Daily	Daily
Picnic/Play Areas	Daily	Daily
Restrooms	Daily	Daily
<b>Pruning and Trimming</b>		
Shrubs	Four times per year	Twice per year
Trees	3-5 Year Cycle	Limited to emergency pruning and removal
<b>Irrigation Maintenance</b>		
Monitor, test and inspect irrigation system	Weekly	Twice per month
<b>Street Light Maintenance</b>		
Re-lamping	2-3 Year Cycle	2-3 Year Cycle
<b>Hardscape Maintenance</b>		
Repair of damaged sidewalks	Annual contract	Limited to emergency repairs to correct safety hazards
Repair/Replacement of playground equipment	Planned replacement program	NB*

\* NB = Not within Budget

**Zone 3 – Goodyear Road**

The Zone 3 improvements shall consist of: 1) the maintenance and servicing of landscaped strip areas along and adjacent to the public street areas including trimming, pruning, weeding, fertilizing, irrigation, trash removal, mechanical sprinkler repair, plant replacement and other necessary maintenance programs; and 2) the servicing of electrical power for 10 streetlights for this zone.

**Zone 4 – East 2nd Street**

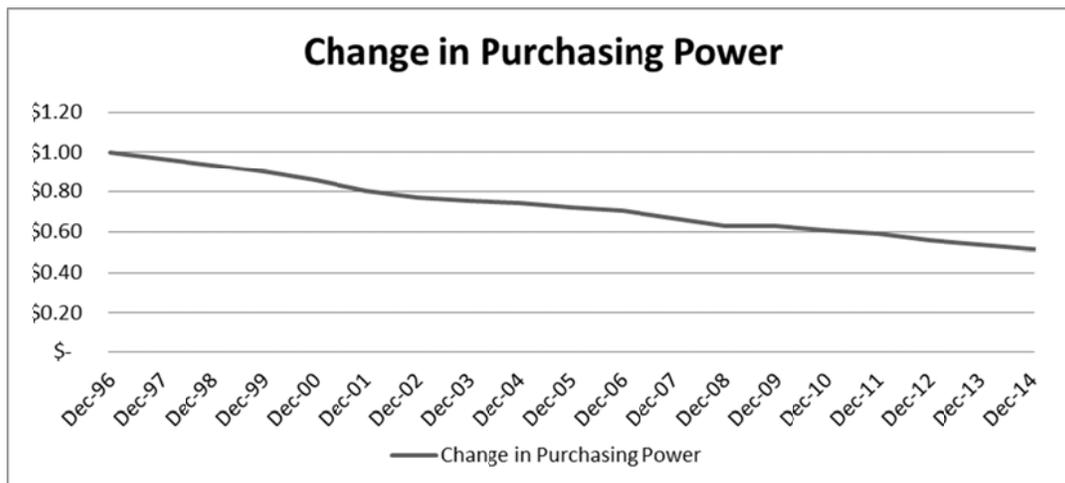
The Zone 4 improvements shall consist of: 1) the maintenance and servicing of landscaped median areas in Rose Drive from East 2nd Street to 1,800 feet (0.34 miles), more or less, northwesterly of East 2nd Street, and in East 2nd Street from 4,800 feet (0.91 miles), more or less, southerly of Rose Drive to 1,950 feet (0.37 miles), more or less, northeasterly of Rose Drive, include trimming, pruning, weeding, fertilizing, irrigation, trash removal, mechanical sprinkler repair, plant replacement and other necessary maintenance programs; and 2) the servicing of electrical power for 78 streetlights for this zone.

**Zone 5 – Columbus Parkway**

Zone 5 improvements shall consist of: 1) the maintenance and servicing of landscaped median areas along the public street areas and for a landscaped, Caltrans-owned parcel lying between Columbus Parkway and Interstate 780 southerly of Rose Drive, including trimming, pruning, weeding, fertilizing, irrigation, trash removal, mechanical sprinkler repair, plant replacement and other necessary maintenance programs; and 2) the servicing of electrical power for 15 streetlights for this zone.

### 3 BUDGET

All improvements within the District are maintained and serviced on a regular basis. Based upon the available revenues generated by the assessment, City staff determines the frequency and specific maintenance operations which can be provided in a given year. Since the assessment rate has not been increased since the passage of Proposition 218 in 1996, the City has had to gradually reduce service levels as costs have increased while the assessment rate has remained fixed. The table below shows the change in purchasing power since the passage of Proposition 218 based upon the annual change in the Consumer Price Index for the San Francisco Bay Area as published by the U.S. Department of Labor.



The proposed budget for each Zone is shown on the following pages. This includes an estimate of the costs of utilities, operations, services, administration and maintenance associated with the improvements within the each Zone, including all labor, personnel, equipment, materials and administrative expenses. The budget summary for each zone also shows the estimated fund balance for the zone, and the projected use of fund reserves for each zone that will be required based upon the estimated expenditures and assessment revenue. As seen in the budget tables, a contribution will be required from the fund reserves in each Zone for Fiscal Year 2014-15 since the estimated revenue from assessment will be less than budgeted expenditure. Although the estimated reserve at the end of Fiscal Year 2013-14 in Zone 1 are projected to be greater than anticipated as a result of lower expenditures than budgeted, the fund reserve will not be sufficient to cover the deficit between assessment revenues and budgeted expenditures and a General Fund contribution of \$43,290 will be required to cover the deficit. Based upon the projected maintenance costs in future years for Zones 2-5, the existing fund reserve in most of the other Zone's will be fully depleted in the next several years which will require that maintenance levels be further reduced to match the assessment revenues, assessment rates be increased or the City will need to make a contribution from other available funds. Where the costs of maintenance is greater than the revenue generated by the current assessment, the summary of revenues and expenditures (page 4) shows the estimated assessment rate that would be required to fully fund maintenance activities for each zone.

CITY OF BENICIA  
LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT  
ZONE 1 - RESIDENTIAL

	Actual Expenditure 2009-10	Actual Expenditure 2010-11	Actual Expenditure 2011-12	Actual Expenditure 2012-13	Adopted Budget 2013-14	Projected Budget 2014-15	Projected Budget 2015-16	Projected Budget 2016-17
<b>EXPENDITURES</b>								
<b>Maintenance and Servicing</b>								
Personnel Cost	\$ 239,910	\$ 232,190	\$ 216,511	\$ 217,498	\$ 249,820	\$ 235,205	\$ 227,766	\$ 238,270
Contractor Services	\$ -	\$ 1,500	\$ 4,323	\$ 11,720	\$ 1,530	\$ 12,000	\$ 12,240	\$ 12,485
Materials and Supplies	\$ 12,060	\$ 18,535	\$ 13,919	\$ 8,247	\$ 4,630	\$ 22,500	\$ 22,950	\$ 23,409
Subtotal	\$ 251,970	\$ 252,225	\$ 234,753	\$ 237,465	\$ 255,980	\$ 269,705	\$ 262,956	\$ 274,164
<b>Utilities</b>	\$ 71,215	\$ 88,200	\$ 70,810	\$ 87,072	\$ 90,530	\$ 94,000	\$ 97,760	\$ 101,670
<b>Capital Outlay</b>	\$ -	\$ 2,000	\$ -	\$ -	\$ 1,020	\$ 1,000	\$ 1,020	\$ 1,040
<b>District Administration</b>	\$ 13,710	\$ 15,500	\$ 8,388	\$ 6,431	\$ 15,810	\$ 9,570	\$ 9,761	\$ 9,956
<b>TOTAL EXPENDITURES</b>	\$ 336,895	\$ 357,925	\$ 313,951	\$ 330,968	\$ 363,330	\$ 374,275	\$ 371,497	\$ 386,830
<b>REVENUES</b>								
<b>Use of Money and Property</b>	\$ 1,895	\$ 958	\$ 618	\$ 386	\$ 650	\$ -	\$ -	\$ -
<b>Transfer From Fund Balance</b>	\$ 35,115	\$ 57,081	\$ 13,448	\$ 30,697	\$ 62,795	\$ 31,100	\$ -	\$ -
<b>Estimated General Fund Transfer</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 43,290	\$ 75,612	\$ 90,945
<b>Total Adjustments</b>	\$ 37,010	\$ 58,039	\$ 14,066	\$ 31,083	\$ 63,445	\$ 31,100	\$ -	\$ -
<b>Assessments Levied</b>	\$ 299,885	\$ 299,886	\$ 299,885	\$ 299,885	\$ 299,885	\$ 299,885	\$ 295,885	\$ 295,885
<b>FUND BALANCE</b>								
<b>Estimated Balance 7/1</b>	\$ 206,256	\$ 169,246	\$ 111,207	\$ 97,759	\$ 67,062	\$ 31,100	\$ -	\$ -
<b>Estimated use of Reserve Funds</b>	\$ (37,010)	\$ (58,039)	\$ (13,448)	\$ (30,697)	\$ (62,795)	\$ (31,100)	\$ -	\$ -
<b>Estimated Interest Income</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Projected Balance 6/30</b>	\$ 169,246	\$ 111,207	\$ 97,759	\$ 67,062	\$ 4,267	\$ -	\$ -	\$ -
<b>ANNUAL LEVY SUMMARY</b>								
<b>Total Parcels Levied</b>	2,196	2,196	2,196	2,196	2,196	2,196	2,196	2,196
<b>Assessment per Benefit Unit</b>	\$ 136.56	\$ 136.56	\$ 136.56	\$ 136.56	\$ 136.56	\$ 136.56	\$ 136.56	\$ 136.56
<b>Assessment Needed to Fully Fund</b>	\$ 153.41	\$ 162.99	\$ 142.96	\$ 150.71	\$ 165.45	\$ 170.43	\$ 169.17	\$ 176.15

**Notes**

- 1/ Beginning Fund Balance for FY 2014/15 based upon estimated actual operating expenditures for FY 2013-14
- 2/ Projected Budgets for FY 2015/16 & FY 2016/17 based upon 2% annual Expenditure increase.

CITY OF BENICIA  
 LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT  
 ZONE 2 - FLEETSIDE INDUSTRIAL PARK

	Actual Expenditure 2009-10	Actual Expenditure 2010-11	Actual Expenditure 2011-12	Actual Expenditure 2012-13	Adopted Budget 2013-14	Projected Budget 2014-15	Projected Budget 2015-16	Projected Budget 2016-17
<b>EXPENDITURES</b>								
<b>Maintenance and Servicing</b>								
Personnel Cost	\$ 41,590	\$ 75,690	\$ 67,319	\$ 72,278	\$ 72,300	\$ 80,560	\$ 78,127	\$ 81,634
Contractor Services	\$ -	\$ 2,000	\$ 7,000	\$ 5,000	\$ 2,040	\$ 2,000	\$ 2,040	\$ 2,081
Materials and Supplies	\$ 1,450	\$ 10,115	\$ 2,199	\$ 2,199	\$ 5,220	\$ 15,500	\$ 15,810	\$ 16,126
Subtotal	\$ 43,040	\$ 87,805	\$ 76,518	\$ 79,477	\$ 79,560	\$ 98,060	\$ 95,977	\$ 99,841
<b>Utilities</b>	\$ 13,030	\$ 21,000	\$ 11,329	\$ 13,731	\$ 24,230	\$ 15,600	\$ 16,224	\$ 16,873
<b>Capital Outlay</b>	\$ -	\$ 29,350	\$ 700	\$ -	\$ 4,080	\$ 4,000	\$ 4,080	\$ 4,162
<b>District Administration</b>	\$ 2,200	\$ 4,000	\$ 200	\$ -	\$ 4,080	\$ 3,045	\$ 3,106	\$ 3,168
<b>TOTAL EXPENDITURES</b>	\$ 58,270	\$ 142,155	\$ 88,747	\$ 93,208	\$ 111,950	\$ 120,705	\$ 119,387	\$ 124,044
<b>REVENUES</b>								
Use of Money and Property	\$ 2,800	\$ 2,620	\$ 1,352	\$ 382	\$ 149	\$ 118	\$ 118	\$ 75
Transfer From Fund Balance	\$ (24,507)	\$ 59,558	\$ 7,418	\$ 12,849	\$ 31,824	\$ 40,610	\$ 39,292	\$ 43,992
Estimated General Fund Transfer	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Adjustments	\$ (21,707)	\$ 62,178	\$ 8,770	\$ 13,231	\$ 31,973	\$ 40,728	\$ 39,410	\$ 44,067
Assessments Levied	\$ 79,977	\$ 79,977	\$ 79,977	\$ 79,977	\$ 79,977	\$ 79,977	\$ 79,977	\$ 79,977
<b>FUND BALANCE</b>								
Estimated Balance 7/1	\$ 201,930	\$ 228,332	\$ 169,732	\$ 162,314	\$ 149,465	\$ 115,500	\$ 117,641	\$ 74,890
Estimated use of Reserve Funds	\$ 24,507	\$ (59,558)	\$ (7,418)	\$ (12,849)	\$ (31,824)	\$ (40,610)	\$ (39,292)	\$ (43,992)
Estimated Interest Income	\$ 1,895	\$ 958	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Projected Balance 6/30	\$ 228,332	\$ 169,732	\$ 162,314	\$ 149,465	\$ 117,641	\$ 74,890	\$ 78,349	\$ 30,898
<b>ANNUAL LEVY SUMMARY</b>								
Total Acreage Levied	124	124	124	124	124	124	124	124
Assessment per Benefit Unit	\$ 644.77	\$ 644.77	\$ 644.77	\$ 644.77	\$ 644.77	\$ 644.77	\$ 644.77	\$ 644.77
Assessment Needed to Fully Fund	\$ 469.77	\$ 1,146.04	\$ 715.47	\$ 751.44	\$ 902.53	\$ 973.11	\$ 962.49	\$ 1,000.03

Notes

- 1/ Beginning Fund Balance for FY 2014/15 based upon estimated actual operating expenditures for FY 2013-14
- 2/ Projected Budgets for FY 2015/16 & FY 2016/17 based upon 2% annual Expenditure increase.

CITY OF BENICIA  
LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT  
ZONE 3 - GOODYEAR ROAD

	Actual Expenditure 2009-10	Actual Expenditure 2010-11	Actual Expenditure 2011-12	Actual Expenditure 2012-13	Adopted Budget 2013-14	Projected Budget 2014-15	Projected Budget 2015-16	Projected Budget 2016-17
<b>EXPENDITURES</b>								
<b>Maintenance and Servicing</b>								
Personnel Cost	\$ -	\$ 3,630	\$ 3,666	\$ 3,690	\$ 3,690	\$ 5,132	\$ 5,057	\$ 5,253
Contractor Services	\$ -	\$ 1,040	\$ 200	\$ 500	\$ 510	\$ 1,000	\$ 1,020	\$ 1,040
Materials and Supplies	\$ 2,000	\$ 2,080	\$ 110	\$ 110	\$ 510	\$ 100	\$ 102	\$ 104
Subtotal	\$ 2,000	\$ 6,750	\$ 3,976	\$ 4,300	\$ 4,710	\$ 6,232	\$ 6,179	\$ 6,397
<b>Utilities</b>	\$ 895	\$ 2,980	\$ 849	\$ 629	\$ 1,280	\$ 1,200	\$ 1,248	\$ 1,298
<b>Capital Outlay</b>	\$ -	\$ 13,000	\$ -		\$ 510	\$ 500	\$ 510	\$ 520
<b>District Administration</b>	\$ 110	\$ 830	\$ 200	\$ -	\$ 850	\$ 145	\$ 148	\$ 151
<b>TOTAL EXPENDITURES</b>	\$ 3,005	\$ 23,560	\$ 5,025	\$ 4,929	\$ 7,350	\$ 8,077	\$ 8,085	\$ 8,366
<b>REVENUES</b>								
<b>Use of Money and Property</b>	\$ -	\$ -	\$ 355	\$ 357	\$ -	\$ -	\$ -	\$ -
<b>Transfer From Fund Balance</b>	\$ (995)	\$ 19,560	\$ 670	\$ 572	\$ 3,350	\$ 4,077	\$ 4,085	\$ 4,366
<b>Estimated General Fund Transfer</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Adjustments</b>	\$ (995)	\$ 19,560	\$ 1,025	\$ 929	\$ 3,350	\$ 4,077	\$ 4,085	\$ 4,366
<b>Assessments Levied</b>	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000
<b>FUND BALANCE</b>								
<b>Estimated Balance 7/1</b>	\$ 61,456	\$ 62,451	\$ 42,891	\$ 42,221	\$ 41,649	\$ 38,700	\$ 34,623	\$ 30,538
<b>Estimated use of Reserve Funds</b>	\$ 995	\$ (19,560)	\$ (670)	\$ (572)	\$ (3,350)	\$ (4,077)	\$ (4,085)	\$ (4,366)
<b>Estimated Interest Income</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Projected Balance 6/30</b>	\$ 62,451	\$ 42,891	\$ 42,221	\$ 41,649	\$ 38,299	\$ 34,623	\$ 30,538	\$ 26,172
<b>ANNUAL LEVY SUMMARY</b>								
<b>Total Acreage Levied</b>	<b>37</b>	<b>37</b>	<b>37</b>	<b>37</b>	<b>37</b>	<b>37</b>	<b>37</b>	<b>37</b>
<b>Assessment per Benefit Unit</b>	\$ <b>108.08</b>	\$ <b>108.08</b>	\$ <b>108.08</b>	\$ <b>108.08</b>	\$ <b>108.08</b>	\$ <b>108.08</b>	\$ <b>108.08</b>	\$ <b>108.08</b>
<b>Assessment Needed to Fully Fund</b>	\$ 81.19	\$ 636.58	\$ 135.77	\$ 133.18	\$ 198.59	\$ 218.24	\$ 218.45	\$ 226.05

Notes

- 1/ Beginning Fund Balance for FY 2014/15 based upon estimated actual operating expenditures for FY 2013-14
- 2/ Projected Budgets for FY 2015/16 & FY 2016/17 based upon 2% annual Expenditure increase.

CITY OF BENICIA  
 LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT  
 ZONE 4 - EAST 2ND STREET

	Actual Expenditure 2009-10	Actual Expenditure 2010-11	Actual Expenditure 2011-12	Actual Expenditure 2012-13	Adopted Budget 2013-14	Projected Budget 2014-15	Projected Budget 2015-16	Projected Budget 2016-17
<b>EXPENDITURES</b>								
<b>Maintenance and Servicing</b>								
Personnel Cost	\$ 12,895	\$ 14,890	\$ 12,268	\$ 12,744	\$ 15,650	\$ 14,495	\$ 14,059	\$ 14,686
Contractor Services	\$ -	\$ 2,080	\$ 1,000	\$ 2,500	\$ 1,020	\$ 3,750	\$ 3,825	\$ 3,902
Materials and Supplies	\$ -	\$ 3,500	\$ 770	\$ 770	\$ 2,550	\$ 2,000	\$ 2,040	\$ 2,081
Subtotal	\$ 12,895	\$ 20,470	\$ 14,038	\$ 16,014	\$ 19,220	\$ 20,245	\$ 19,924	\$ 20,669
<b>Utilities</b>	\$ 11,055	\$ 13,100	\$ 11,541	\$ 9,255	\$ 16,700	\$ 15,500	\$ 16,120	\$ 17,435
<b>Capital Outlay</b>	\$ -	\$ 3,315	\$ -	\$ -	\$ -	\$ 500	\$ 510	\$ 520
<b>District Administration</b>	\$ 770	\$ 1,660	\$ 200	\$ -	\$ 1,690	\$ 1,015	\$ 1,035	\$ 1,056
<b>TOTAL EXPENDITURES</b>	\$ 24,720	\$ 38,545	\$ 25,779	\$ 25,269	\$ 37,610	\$ 37,260	\$ 37,589	\$ 39,680
<b>REVENUES</b>								
<b>Use of Money and Property</b>	\$ -	\$ -	\$ 290	\$ 288	\$ -	\$ -	\$ -	\$ -
<b>Transfer From Fund Balance</b>	\$ (3,280)	\$ 10,545	\$ (2,511)	\$ (3,019)	\$ 9,610	\$ 9,260	\$ 9,589	\$ 11,680
<b>Estimated General Fund Transfer</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Adjustments</b>	\$ (3,280)	\$ 10,545	\$ (2,221)	\$ (2,731)	\$ 9,610	\$ 9,260	\$ 9,589	\$ 11,680
<b>Assessments Levied</b>	\$ 28,000	\$ 28,000	\$ 28,000	\$ 28,000	\$ 28,000	\$ 28,000	\$ 28,000	\$ 28,000
<b>FUND BALANCE</b>								
<b>Estimated Balance 7/1</b>	\$ 42,482	\$ 45,762	\$ 35,217	\$ 37,728	\$ 40,747	\$ 34,900	\$ 25,640	\$ 16,051
<b>Estimated use of Reserve Funds</b>	\$ 3,280	\$ (10,545)	\$ 2,511	\$ 3,019	\$ (9,610)	\$ (9,260)	\$ (9,589)	\$ (11,680)
<b>Estimated Interest Income</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Projected Balance 6/30</b>	\$ 45,762	\$ 35,217	\$ 37,728	\$ 40,747	\$ 31,137	\$ 25,640	\$ 16,051	\$ 4,371
<b>ANNUAL LEVY SUMMARY</b>								
<b>Total Acreage Levied</b>	<b>276.36</b>	<b>276.36</b>	<b>276.36</b>	<b>276</b>	<b>276</b>	<b>276</b>	<b>276</b>	<b>276</b>
<b>Assessment per Benefit Unit</b>	\$ <b>101.32</b>	\$ <b>101.32</b>	\$ <b>101.32</b>	\$ <b>101.32</b>	\$ <b>101.32</b>	\$ <b>101.32</b>	\$ <b>101.32</b>	\$ <b>101.32</b>
<b>Assessment Needed to Fully Fund</b>	\$ 89.45	\$ 139.47	\$ 93.28	\$ 91.44	\$ 136.09	\$ 134.82	\$ 136.01	\$ 143.58

Notes

- 1/ Beginning Fund Balance for FY 2014/15 based upon estimated actual operating expenditures for FY 2013-14
- 2/ Projected Budgets for FY 2015/16 & FY 2016/17 based upon 2% annual Expenditure increase.

CITY OF BENICIA  
LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT  
ZONE 5 - COLUMBUS PARKWAY

	Actual Expenditure 2009-10	Actual Expenditure 2010-11	Actual Expenditure 2011-12	Actual Expenditure 2012-13	Adopted Budget 2013-14	Projected Budget 2014-15	Projected Budget 2015-16	Projected Budget 2016-17
<b>EXPENDITURES</b>								
<b>Maintenance and Servicing</b>								
Personnel Cost	\$ 5,160	\$ 12,925	\$ 9,829	\$ 10,171	\$ 13,710	\$ 12,685	\$ 12,317	\$ 12,843
Contractor Services	\$ -	\$ 2,080	\$ 1,000	\$ 4,866	\$ 2,120	\$ 8,000	\$ 8,160	\$ 8,323
Materials and Supplies	\$ -	\$ 5,700	\$ 434	\$ 434	\$ 5,810	\$ 1,000	\$ 1,020	\$ 1,040
Subtotal	\$ 5,160	\$ 20,705	\$ 11,263	\$ 15,471	\$ 21,640	\$ 21,685	\$ 21,497	\$ 22,206
<b>Utilities</b>	\$ 1,825	\$ 2,870	\$ 1,274	\$ 944	\$ 3,660	\$ 3,500	\$ 3,640	\$ 3,786
<b>Capital Outlay</b>	\$ -	\$ 1,500	\$ -	\$ -	\$ 1,020	\$ 500	\$ 510	\$ 520
<b>District Administration</b>	\$ 435	\$ 1,660	\$ 1,600	\$ -	\$ 1,690	\$ 725	\$ 740	\$ 755
<b>TOTAL EXPENDITURES</b>	\$ 7,420	\$ 26,735	\$ 14,137	\$ 16,415	\$ 28,010	\$ 26,410	\$ 26,387	\$ 27,267
<b>REVENUES</b>								
<b>Use of Money and Property</b>	\$ -	\$ -	\$ 897	\$ 287	\$ 1,059	\$ 947	\$ 879	\$ 782
<b>Transfer From Fund Balance</b>	\$ (8,380)	\$ 10,935	\$ (2,560)	\$ 328	\$ 11,151	\$ 9,663	\$ 9,708	\$ 10,685
<b>Estimated General Fund Transfer</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Adjustments</b>	\$ (8,380)	\$ 10,935	\$ (1,663)	\$ 615	\$ 12,210	\$ 10,610	\$ 10,587	\$ 11,467
<b>Assessments Levied</b>	\$ 15,800	\$ 15,800	\$ 15,800	\$ 15,800.00	\$ 15,800	\$ 15,800	\$ 15,800	\$ 15,800
<b>FUND BALANCE</b>								
<b>Estimated Balance 7/1</b>	\$ 106,208	\$ 114,588	\$ 103,653	\$ 106,213	\$ 105,885	\$ 97,600	\$ 87,937	\$ 78,230
<b>Estimated use of Reserve Funds</b>	\$ 8,380	\$ (10,935)	\$ 2,560	\$ (328)	\$ (11,151)	\$ (9,663)	\$ (9,708)	\$ (10,685)
<b>Estimated General Fund Transfer</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Estimated Interest Income</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Projected Balance 6/30</b>	\$ 114,588	\$ 103,653	\$ 106,213	\$ 105,885	\$ 94,734	\$ 87,937	\$ 78,230	\$ 67,545
<b>ANNUAL LEVY SUMMARY</b>								
Revenue from Commercial (52.4%)	\$ 8,279	\$ 8,279	\$ 8,279	\$ 8,279	\$ 8,279	\$ 8,279	\$ 8,279	\$ 8,279
<b>Total Acreage Levied</b>	<b>12.85</b>	<b>12.85</b>	<b>12.85</b>	<b>12.85</b>	<b>12.85</b>	<b>12.85</b>	<b>12.85</b>	<b>12.85</b>
<b>Assessment per Benefit Unit</b>	<b>\$ 645.00</b>	<b>\$ 645.00</b>	<b>\$ 645.00</b>	<b>\$ 645.00</b>	<b>\$ 645.00</b>	<b>\$ 645.00</b>	<b>\$ 645.00</b>	<b>\$ 645.00</b>
Assessment Needed to Fully Fund	\$ 302.57	\$ 1,090.21	\$ 576.48	\$ 669.37	\$ 1,142.20	\$ 1,076.95	\$ 1,076.01	\$ 1,111.90
Revenue from Residential (47.6%)	\$ 7,521	\$ 7,521	\$ 7,521	\$ 7,521	\$ 7,521	\$ 7,521	\$ 7,521	\$ 7,521
<b>Total Units Assessed</b>	<b>188.00</b>	<b>188.00</b>	<b>188.00</b>	<b>188.00</b>	<b>188.00</b>	<b>188.00</b>	<b>188.00</b>	<b>188.00</b>
<b>Assessment per Benefit Unit</b>	<b>\$ 40.00</b>	<b>\$ 40.00</b>	<b>\$ 40.00</b>	<b>\$ 40.00</b>	<b>\$ 40.00</b>	<b>\$ 40.00</b>	<b>\$ 40.00</b>	<b>\$ 40.00</b>
Assessment Needed to Fully Fund	\$ 18.79	\$ 67.69	\$ 35.79	\$ 41.56	\$ 70.92	\$ 66.87	\$ 66.81	\$ 69.04

Notes

1/ Beginning Fund Balance for F 2008-09

2/ Projected Budgets for FY 2015/16 & FY 2016/17 based upon 2% annual Expenditure increase.

## **4 METHOD OF APPORTIONMENT**

### **4.1 GENERAL**

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

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

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel. In addition, pursuant to Article XIID Section 4:

*“No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable and an agency shall separate the general benefits from the special benefits conferred on a parcel.”*

### **4.2 BENEFIT ANALYSIS**

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on special benefits received from the improvements as determined at the time the District was established.

**General Benefits** — the improvements within each Zone are a direct result of property development within the Zone and would otherwise not be required or necessary. Developers typically install landscape improvements to enhance the marketability and value of properties within the development and/or as conditions of development. In either case, the improvements are clearly installed for the benefit of the properties being developed and not for the benefit of surrounding properties.

Although many landscape improvements (by virtue of their location), may be visible to surrounding properties or to the public at large, any benefit to surrounding properties is incidental and cannot be considered a direct and special benefit to those properties. Therefore, it has been determined that the improvements within these Zones and the ongoing operation and maintenance of those improvements are clearly a direct and special benefit to properties within each respective Zone. Unless otherwise noted, these improvements provide no measurable general benefit to properties outside the Zone or to the public at large.

**Special Benefits** — The method of apportionment (assessment methodology) approved at the time the District was formed is based on the premise that each of the assessed parcels within the District receives benefit from the improvements maintained and financed by annual assessments. Specifically, the assessments are for the maintenance of local street lighting and landscape improvements installed as part of the original improvement. The desirability and security of properties within the District are enhanced by the presence of street lighting and well-maintained landscaping in close proximity to those properties. The special benefits associated with the local landscaping improvements are specifically:

- Enhanced desirability of properties through association with the improvements.
- Improved aesthetic appeal of properties within the Zones providing a positive representation of the area.
- Enhanced adaptation of the urban environment within the natural environment from adequate green space and landscaping.
- Environmental enhancement through improved erosion resistance, and dust and debris control.
- Increased sense of pride in ownership of property within the District resulting from well-maintained improvements associated with the properties.
- Reduced criminal activity and property-related crimes (especially vandalism) against properties in the District through well-maintained surroundings and amenities including abatement of graffiti.
- Enhanced environmental quality of the parcels within the Zones by moderating temperatures, providing oxygenation and attenuating noise. The special benefits of street lighting are the convenience, safety, and security of property, improvements, and goods. Specifically:
  - Enhanced deterrence of crime and the aid to police protection.
  - Increased nighttime safety on roads and highways.
  - Improved ability of pedestrians and motorists to see.
  - Improved ingress and egress to property.
  - Reduced vandalism and other criminal acts and damage to improvements or property.
  - Improved traffic circulation and reduced nighttime accidents and personal property loss.
  - Increased promotion of business during nighttime hours in the case of commercial properties.

All of the preceding special benefits contribute to a specific enhancement and desirability of each of the assessed parcels within the District.

**Non-Assessable Properties** — Within the boundaries of Zones 1, 2, 4 and 5, there are several types of properties that are considered to receive no special benefit from the District improvements and are therefore not assessed. These parcels include:

- 1) Publicly owned parcels that are reserved as Public Open Space or are developed as City Parks for active recreation and are maintained and serviced by the District;
- 2) Publicly owned wetland parcels;
- 3) Certain Public Utility parcels;
- 4) Privately owned open space parcels; and
- 5) Privately owned "sliver" parcels that have resulted from a lot line adjustment with an adjacent larger parcel. The adjacent larger parcel, of which these "sliver" parcels are a part, are assessed at the Residential Zone rate.

#### **4.3 ASSESSMENT METHODOLOGY**

The special benefits received by each parcel within the Zone and each parcel's proportional annual assessment are calculated on the basis of a formula known as Equivalent Benefit Units. The **Equivalent Benefit Unit (EBU)** method of apportionment establishes a proportional benefit relationship between the various parcels within the District and the improvements maintained by the District. The EBU assigned to each parcel utilizes a set formula and proportional weighting factors based on the land use and size of each parcel within the District as compared to other parcels within the District. The number

of EBU's assigned to each parcel is calculated by multiplying an assigned benefit unit factor (based on land use) by the dwelling units for residential parcels and acreage for commercial parcels.

The benefit unit factors (proportional special benefit) to be applied to the various land use classifications are listed below.

**Single Family Residence One (1.0) Benefit Unit per Unit  
Commercial Use One (1.0) Benefit Unit per Acre**

The annual cost of the Zone improvements to be levied (Balance to Levy) is divided by the total number of EBU's calculated for each Zone to establish the annual assessment rate (Levy per EBU) for the fiscal year. This formula is represented as follows:

$$\text{Balance to Levy} / \text{Total Number of EBU} = \text{Levy per EBU}$$

The levy amount for each parcel is then calculated by multiplying the Levy per EBU (assessment rate) by the parcel's individual EBU calculated. The formula is represented as follows:

$$\text{Levy per EBU} \times \text{Parcel EBU} = \text{Parcel Levy Amount}$$

#### **4.4 Special Cases**

Since the assessments must be levied in proportion to the special benefit received by a parcel, the City has identified the following parcels as receiving no special benefit from the improvements based upon their current land use.

##### **Zone 1 – Residential**

Assessor Parcel Number 0083-152-070 (District Assessment No. 214) is owned by PacBell and is used for telephone switching facilities. This parcel is considered to receive no special benefit and is not assessed.

##### **Zone 2 – Fleetside Industrial Park**

As of Fiscal Year 2009/10, Caltrans met their agreement with the City and is no longer required to pay assessments on parcels 80-292-040, 050, 060, 070, 080, 120 and 130.

##### **Zone 5 – Columbus Parkway**

Since the residential units also pay annual costs for maintenance of privately owned open space and for on-site lighting, costs were allocated at 47.6% for residential parcels and 52.4% for commercial parcels. Assessor Parcel Number's 0079-020-590, 0079-020-600 and 0079-020-610 (District Assessment Nos. 1329A, 1329B and 1329C) totaling 3.67 acres are governed by Conditions, Covenants and Restrictions (CC&R's). Individual assessments were apportioned by allocating a portion of the total assessment for the total area of the three parcels.

## **5 ASSESSMENT ROLL**

The proposed assessment and the amount of the assessment apportioned to each lot or parcel, as shown on the latest roll at the Assessor's Office, is shown in Appendix A. The description of each lot or parcel is part of the records of the Assessor of the County of Solano and those records are, by reference, made part of this report. The assessments shown will be submitted to the County Auditor/Controller, and included on the property tax roll for each parcel shown in the assessment roll for fiscal year 2014-15.

**APPENDIX A**



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**BUSINESS ITEMS**

**DATE** : June 2, 2014

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **FILLING THE VACANCY IN THE OFFICE OF CITY TREASURER**

**RECOMMENDATION:**

Review the applications, interview the applicants and appoint a City Treasurer to fill the vacancy created by the passing of City Treasurer H.R. Autz. This should be done by adopting a resolution. In addition, resolutions are attached to have the people elect a treasurer in November and/or to place a ballot measure to make the position appointed.

**EXECUTIVE SUMMARY:**

The Government Code provides that the City Council may fill a vacancy in the office of City Treasurer by either appointing someone to the office or calling a special election to fill the office. It was decided at the Council's May 27, 2014 meeting to ask for applications with the intent to appoint someone to fill the vacancy. The applications received by the June 10, 2014 deadline are attached. In case the Council would like to call a special election, those documents are attached as well.

**BUDGET INFORMATION:**

The office of City Treasurer receives \$200 per month as a stipend and retirement benefits. The position does not receive other benefits. There are also the minimal costs of business cards, new letterhead, etc. If an election is required to fill the vacancy, the estimated cost of the election would be 30 cents per registered voter, as it would be added to the November 4, 2014 regularly scheduled election. The costs for a ballot measure to determine the desire for the City Treasurer position would be comparable. The current budget does not include the costs of a special election that is estimated to cost \$264,510.

**GENERAL PLAN:**

N/A

**STRATEGIC PLAN:**

N/A

**BACKGROUND:**

Unfortunately, City Treasurer H.R. Autz passed away on May 16, 2014. He was appointed in October 2012 to the position to fill the vacancy created by the death of City Treasurer Robert Langston. Because Treasurer Autz passed while holding the office, there is yet again a vacancy in the office of City Treasurer.

The City Treasurer has very limited duties. In accordance with Benicia Municipal Code Section 2.48.010, the only duties of the City Treasurer are to countersign warrants and attend Finance Committee meetings. Until the vacancy is filled, warrants will be countersigned by the Mayor and authorized staff members.

The process for filling the vacancy remains the same as 2012 and 2010 when City Treasurers Robert Langston and Teddie Bidou passed. Government Code Section 36512 provides for the filling vacancies in elected offices such as the City Treasurer. This section requires action by the City Council within 60 days from the date of the vacancy. Thus, **July 15, 2014** is the last day for action by the Council.

Government Code Section 36512 requires the City Council to fill the vacancy either by appointing someone to the office or by calling a special election to fill the vacancy. The appointment to fill the vacancy must be made within 60 days from the date of the vacancy. If the Council chooses to call for an election instead of an appointment, the election must be called within 60 days of the vacancy. The special election must be held on the next regularly established election date not less than 114 days from the call of the election. There are three regular election dates for each year per Elections Code Section 1000. The November 7, 2014 election date would be the time for the election.

Whether the vacancy is filled by appointment or election, the City Treasurer must be an elector of the city at the time of appointment and must maintain residency during the term of office. See Government Code Section 36502. The term of office, whether appointed or elected, will be the remainder of City Treasurer Autz' term. He was appointed to fill out the rest of Treasurer Langston's term, which Council extended one year in order to consolidate the elections. Thus, the person filling out the remainder of Treasurer Autz' term will serve until December of 2016.

At the City Council's meeting on May 27, the City Council decided to ask for applications for the position. The deadline for applications was set as June 10 at 5 p.m. The City Clerk posted a Notice of Intention to Fill a Vacancy in the position of City Treasurer and advertised for applications to fill the vacancy.

Copies of the applications received are attached. It is recommended that the City Council interview the applicants and make an appointment. A resolution for the appointment is attached.

**Appointment Process:**

As noted in the last staff report, the interviews of the applicants will be conducted in public. Each applicant was asked, and agreed, to wait outside the Council Chamber until it was time for the applicant's interview. Order of the interviews may be determined by a coin toss since there are only two applicants or by drawing cards.

Each applicant is allowed a one-minute opening statement. Then, the City Council will ask each of the applicants four questions:

1. Why do you want to be City Treasurer?
2. Describe the background and experiences that make you a desirable candidate.
3. What is your understanding of the City's Investment Policy as approved by the City Council?
4. Are you willing to serve the full unexpired term until December 2015?

If follow up questions are needed, the Council should ask the same questions to each candidate. Candidates have not been given a time limit for their responses but a time limit may be set if desired by the City Council.

Last time, there were no time limits on the response time for the applicants and none of the candidates talked excessively. The Council decided that follow up questions could be asked but wanted to keep the questions the same for each applicant. No follow up questions were actually asked of the applicants.

Public comment should happen after all the applicants spoke. The City Council then deliberates and selects the City Treasurer. As noted above, there are minimum qualifications for the City Treasurer position. The City Council may appoint anyone, including a City employee, who is an elector of the City.

**Election:**

If the City Council would like to submit the matter to the voters to choose the City Treasurer, the Council must adopt a resolution placing the matter on the ballot for November 4, 2014. The cost a candidate race for treasurer or to add a ballot measure is estimated to be an additional 30 cents per registered voter. A draft resolution is attached for your consideration to put the matter on the ballot.

**Ballot Measure:**

In 2010, the City Council decided not to pursue a ballot measure to make the City Treasurer position or City Clerk position appointed. You may recall that in 1998 the question of whether the City Treasurer and City Clerk positions should be appointed was put to a vote of the people. Although the measures failed at that time, it may be appropriate to reconsider the issues.

At the May 27, 2014 meeting, Council discussed the possibility of a ballot

measure in an upcoming election to address the position of City Treasurer. Action to place a ballot measure on the November ballot could be agendized if desired. Several concept ideas were discussed and are briefly summarized below.

First, aligned with the ideas put forth in the 2010 ballot measure, a ballot measure to determine whether the public wanted an appointed or an elected City Treasurer was proposed.

Second, Council discussed the need for a City Treasurer. With the evolution of technology and the continual transfer of financial responsibilities over to electronic system, the duties of the City Treasurer are diminishing, thus so is the definitive need for a Treasurer. While the City Treasurer is elected by the people and serves as their representative, an overseer of the Financial Department, and a fresh set of eyes, most of the duties over the years have been delegated to the Finance Director, an employee of the city. Another option for a ballot measure would be to propose eliminating the City Treasurer position all together. It would ask the public if they wanted a citizen elected official to oversee the Finance Department.

Third, Council discussed the need for both measures. To first ask if the Treasurer Position was desired by citizens and then to ask if they wanted the position elected or appointed if voted to retain the position, as the second proposed measure would assume that if they wanted a Treasurer they would also want to elect one. There are two points of views regarding this idea. One is that both questions need to be asked because the City Treasurer acts as an additional set of eyes on the City's financial state, whether elected or appointed. The second point of view is that if the citizens are passionate about having a Treasurer, they also want a say in who it there is already a City appointed official in the position of Finance Director.

Regardless of the decided upon ballot measure option, if the City retains the position of Treasurer because the public wants to have a Treasurer, the title should not be an empty one. Council Member Hughes suggested making the Treasurer a voting member of the Finance Committee. While this decision would create an even number of voting members, Vice Mayor Campbell pointed out that often times not all members are present during meetings making the odd/even number problem only minor. Additional options for expanding the duties of the Treasurer could be further discussed in future meeting if desired.

Attachments:

- Benicia Municipal Code Chapter 2.48
- Government Code Section 36512
- Government Code Section 36502

## **VIII.B.4**

- Resolution Confirming Appointment Process and Appointing a Treasurer
- Draft Resolution to Call for an Election for Candidates for Treasurer
- 1998 Staff Report for Ballot Measures
- Draft Resolution to Put a Ballot Measure on the November 2014 Ballot to Make the Position Appointed
- Applications for City Treasurer Position



## Chapter 2.48 CITY TREASURER

### Sections:

- 2.48.010 Powers and duties.
- 2.48.020 Compensation and benefits.
- 2.48.030 Qualifications.

#### **2.48.010 Powers and duties.**

---

All statutory duties and responsibilities not heretofore transferred to the county, the city manager or the finance director which are now performed by the city treasurer are transferred to the city clerk, who is ordered to perform all such duties, including but not limited to those duties required by law.

The city treasurer shall countersign warrants and serve on the finance committee. (Ord. 11-09 § 1).

#### **2.48.020 Compensation and benefits.**

---

The city treasurer shall receive a \$200.00 per month stipend and related retirement benefit but no other benefits. (Ord. 11-09 § 1).

#### **2.48.030 Qualifications.**

---

The city treasurer is an elected position so the only qualifications are that the individual be a registered voter of the city. Therefore, the following qualifications are desirable, but not required.

##### A. Knowledge of:

1. Municipal revenue sources;
2. Methods, practices and principles related to the investment of city idle funds;
3. Basic assessment district and bond financing techniques; and
4. Methods, practices and principles related to evaluating municipal cash flow needs.

##### B. Ability to:

1. Invest city idle funds in a wise and prudent manner;
2. Meet the public and provide required information pleasantly and efficiently;
3. Communicate effectively and tactfully in both oral and written forms;
4. Establish and maintain complex and extensive financial record keeping systems and files;
5. Operate and use a variety of office equipment;
6. Establish and maintain effective work relationships with those contacted in the performance of required duties. (Ord. 11-09 § 1).

**The Benicia Municipal Code is current through Ordinance 14-01, passed April 1, 2014.**

Disclaimer: The City Clerk's Office has the official version of the Benicia Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.



**Effective: January 1, 2011**

West's Annotated California Codes [Currentness](#)

Government Code ([Refs & Annos](#))

Title 4. Government of Cities ([Refs & Annos](#))

▣ [Division 3. Officers](#) ([Refs & Annos](#))

▣ [Part 1. General](#) ([Refs & Annos](#))

→→ **§ 36512. Vacancies; fill by appointment or special election; term; ordinances governing appointments or elections; restrictions**

(a) If a vacancy occurs in an appointive office provided for in this chapter, the council shall fill the vacancy by appointment. A person appointed to fill a vacancy holds office for the unexpired term of the former incumbent.

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

(c) Notwithstanding subdivision (b) and [Section 34902](#), a city may enact an ordinance that does any of the following:

(1) Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to [Section 34902](#). The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

(2) Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to [Section 34902](#) when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body that has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.

(3) Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

(d)(1) Notwithstanding subdivision (b) and [Section 34902](#), an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

(2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

#### CREDIT(S)

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1975, c. 283, p. 703, § 1; Stats.1977, c. 1205, p. 4076, § 89; [Stats.1992, c. 136 \(A.B.2295\), § 1](#); [Stats.1993, c. 229 \(A.B.1282\), § 12, eff. July 29, 1993](#); [Stats.2010, c. 38 \(A.B.1668\), § 10.](#))

Current with urgency legislation through Ch. 16 of 2014 Reg.Sess. and all propositions on the 6/3/2014 ballot.

(C) 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

## C

**Effective:[See Text Amendments]**

West's Annotated California Codes [Currentness](#)

Government Code ([Refs & Annos](#))

Title 4. Government of Cities ([Refs & Annos](#))

▢ [Division 3. Officers \(Refs & Annos\)](#)

▢ [Part 1. General \(Refs & Annos\)](#)

→→ **§ 36502. Councilmember, clerk or treasurer; qualifications; vacancy upon nonresidence; term limits; electoral approval**

(a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in [Section 10227 of the Elections Code](#).

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

(b) Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. Notwithstanding the provisions of this subdivision, the provisions of any city charter that, on January 1, 1996, impose limitations on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall remain in effect. Unless otherwise prohibited by a city charter, any city charter may be amended pursuant to this section or pursuant to the procedures specified in the charter, to include the limitation authorized in this subdivision.

CREDIT(S)

(Added by Stats.1949, c. 79, p. 143, § 1. Amended by Stats.1957, c. 635, p. 1842, § 1; Stats.1961, c. 1682, p. 3650, § 1; Stats.1975, c. 1030, p. 2432, § 4, eff. Sept. 24, 1975; [Stats.1994, c. 923 \(S.B.1546\), § 71](#); [Stats.1995, c. 432 \(S.B.2\), § 5](#).)

Current with urgency legislation through Ch. 16 of 2014 Reg.Sess. and all propositions on the 6/3/2014 ballot.

(C) 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE BENICIA CITY COUNCIL CONFIRMING THE PROCESS  
FOR FILING THE VACANT CITY TREASURER POSITION AND APPOINTING  
\_\_\_\_\_ TO FILL THE POSITION FOR THE REMAINDER OF THE TERM**

**WHEREAS**, City Treasurer H.R. Autz passed away on May 16, 2014 prior to the end of his elected term of office, December 2016; and

**WHEREAS**, California Government Code Section 1770 declares the death of an incumbent in the office of the City Treasurer creates a vacancy and the City Council of the City of Benicia now states a vacancy exists; and

**WHEREAS**, California Government Code Section 36512 provides for a manner to fill the vacant position of City Treasurer of General Law cities; and

**WHEREAS**, it is the desire of the Benicia City Council to consider filling the vacancy through the appointment of an eligible resident of the City of Benicia.

**NOW, THEREFORE, BE IT RESOLVED** that the Benicia City Council finds as follows:

- (1) That the City Council hereby declares that there exists a vacancy in the position of City Treasurer.
- (2) That it is in the best interest of the City of Benicia to seek applications to consider filling the vacancy by appointment to assure continuity in our local government.
- (3) That the City Council directed the City Clerk to post a Notice of Intention to Fill a Vacancy in the position of City Treasurer and to advertise for applications to fill the vacancy and require that applications be returned by no later than Tuesday, June 10, 2014 at 5:00 p.m.
- (4) The interview process on July 1, 2014 includes:
  - (a) The interviews are conducted in public;
  - (b) Each applicant is allowed a one-minute opening statement;
  - (c) City Council asks each candidate the same four (4) questions;
  - (d) There are no time limits on the candidates responses to the questions;
  - (e) If follow up questions are needed, City Council will ask the same question to each candidate;
  - (f) Each applicant agrees to wait outside Council Chambers until it's time for the applicant's interview; and
  - (g) The order of the interviews will be determined by either a coin toss or drawing cards.

**BE IT FURTHER RESOLVED THAT** the City Council of the City of Benicia hereby retains the right to fill the vacancy through the special election process as prescribed by Government Code 36512 even after receiving eligible applications and after appointing a replacement City Treasurer should they so desire without statement of cause or explanation.

**BE IT FURTHER RESOLVED THAT** after completing an interview process the City Council appoints \_\_\_\_\_ to fill the position of City Treasurer for the remainder of H.R. Autz term which ends in December of 2016.

\* \* \* \* \*

On a 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 the regular meeting of said Council held on the 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY AT THE NOVEMBER 2014 GENERAL MUNICIPAL THE ELECTION OF A CITY TREASURER**

**WHEREAS**, the City Council has declared a vacancy in the office of City Treasurer due to the passing of H.R. Autz and desires to hold an election to fill the vacancy; and

**WHEREAS**, pursuant to the Elections Code, the governing body of any City may, by Resolution, request the Board of Supervisors of the county to permit the county elections official to render specified services to the City relating to the conduct of an election; and

**WHEREAS**, Elections Code Section 10002 requires the City to reimburse the county in full for the services performed upon presentation of a bill to the City by the county elections official.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The City Council finds and determines that each of the findings set forth above are true and correct.

**SECTION 2.** That pursuant to the requirements of the laws of the State of California for general law cities, the City Council hereby submits to the voters at the Election the election of a City Treasurer

**SECTION 3.** The City will reimburse the county for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due as determined by the elections official.

**SECTION 4.** In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**SECTION 5.** Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

**SECTION 6.** The City Clerk is hereby directed to file a certified copy of this Resolution with the Solano County Board of Supervisors, Solano County Clerk, and the Elections Department of the County of Solano.

\*\*\*\*\*

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 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**AGENDA ITEM  
CITY COUNCIL MEETING: JULY 7, 1998  
NEW BUSINESS**

**DATE** : June 25, 1998

**TO** : Mayor & City Council

**FROM** : City Manager

**SUBJECT** : **BALLOT MEASURE REGARDING POSITIONS OF CITY CLERK  
AND CITY TREASURER:**

**RECOMMENDATION:**

- The City Council approve a resolution calling for a special municipal election to be held November 3, 1998 requesting the Solano County Board of Supervisors to permit the Registrar of Voters to provide specified services in connection with this Special Election.
- Approve Council arguments in favor of ballot measures.

**BUDGET INFORMATION:**

- Election will cost the City approximately \$16,000
- Reorganization as recommended will save the City \$25,585.00 per year

**SUMMARY:**

In keeping with the City's continuing efforts to provide the most cost effective and efficient service to the community, staff examined the operation and function of City Clerk and City Treasurer positions. As a result of this examination, it is recommended that the position of City Treasurer be eliminated and that the position of Deputy City Clerk and City Clerk be combined, creating one (1) position appointed by the City Manager. This reorganization will result in a net savings to the City of \$25,585.00 per year.

As we all know, the City just celebrated its Sesquicentennial in 1997. The positions of City Clerk and City Treasurer were created in 1850, some 148 years ago, when the City's population was around 100, and the number of employees working for the City was a one digit number. Since then, the City has grown to a population of 28,000 with a full time work force of 198

employees. With the growth of the City the functions previously performed by the City Treasurer have been absorbed by the Finance Director and the Finance Department staff. Given the passage of time and the absorption of the functions previously performed by the City Treasurer, the City Treasurer position is now ceremonial rather than requisite.

In September 1989, the City created the position of Deputy City Clerk in an effort to support the part-time elected position of City Clerk. Like the position of City Treasurer, because of the current evolution of the City, it is very clear that one full-time position could accomplish the work currently performed by the full-time Deputy City Clerk position and the part-time elected position of City Clerk. It is also clear that reorganization of these two positions into one (1) full-time City Clerk position would create the most cost effective, efficient operation for the position of City Clerk.

If Council approves the resolution as presented by staff, two questions will be presented to the voters at the November 3, 1998 General Election. The questions will be:

1. Shall the office of City Clerk be appointive?
2. Shall the office of City Treasurer be appointive?

Although the staff report is recommending, as part of the reorganization, the elimination of the City Treasurer position and consolidation of the Deputy City Clerk and City Clerk positions into one City Clerk position, the questions posed to the voters are worded as required by law. If the voters approve the appointive nature of the positions of City Clerk and City Treasurer, the Council, by ordinance, would then formally incorporate the duties and responsibilities previously vested in the City Treasurer into the role description of the City Finance Director. Also, by ordinance, the City Council would place the position of City Clerk with those employees appointed by the City Manager.

Arguments in favor of or against the measures may be submitted to the voters pursuant to Election Code Section 9282-9287. The City Council must decide whether to author an argument in favor of the measures. This decision need not be made with adoption of the resolution, but must be made prior to August 7, 1998. Attached for your review and action are Council arguments in favor of these measures. Also attached for your information is the City Attorney's Impartial Analysis of each ballot measure.

The Council may also choose to allow rebuttal arguments. However, this decision must be made this evening when the resolution calling for the special election is adopted, pursuant to Section 9285(b) of the Election Code. You should note, the resolution before you allows for rebuttal arguments. Based upon the time reasonably necessary to prepare and print the arguments and sample ballots and to permit the ten (10) day public examination period, the Council should set August 7, 1998 as the date after which no arguments for or against the measure may be submitted, according to Section 9286 of the Election Code.

X1.A.2

Just a point of information, the Board of Supervisors must take action consolidating the City's special municipal election with the Statewide General Election in November no later than August 7, 1998. The Board meets on August 4, 1998. Therefore, this resolution must reach the County Registrar of Voters by July 20, 1998.



Otto Wm. Giuliani  
City Manager

OWG:tb  
/Agen77.98

Attachments:

- Draft Resolution
- Financial Analysis
- City Attorney Impartial Analysis (City Clerk)
- City Attorney Impartial Analysis (City Treasurer)
- Council Argument in Favor of Measure (City Clerk)
- Council Argument in Favor of Measure (City Treasurer)

M E M O R A N D U M

TO : CITY MANAGER

FROM : FINANCE DIRECTOR *AN*

ABOUT : ELIMINATION OF CITY CLERK, ASSISTANT CITY CLERK, AND CITY TREASURER POSITIONS

DATE : 26 FEBRUARY 1998

---

In reference to your request, the following is provided:

<u>DESCRIPTION</u>	<u>AMOUNT SAVED</u> (BASED ON 1997.98 BUDGET)
Elimination of Elected City Clerk Position	\$ 16,195
Elimination of Deputy City Clerk Position	46,780
Elimination of Elected City Treasurer Position	9,390
Sub Total--->>	<u>\$ 72,365</u>
Creation of Appointed City Clerk Position	(46,780)
Total Savings	\$ 25,585

Should you have question or comment concerning this data, please see me.

*XI.A.6*

**CITY ATTORNEY'S  
IMPARTIAL ANALYSIS**

**MEASURE D**

**SHALL THE CITY CLERK BE ELECTED OR APPOINTED**

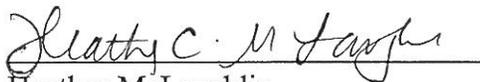
This Ballot Measure is about the office of the City Clerk. The City Clerk of the City of Benicia performs a variety of duties on behalf of the City Council. Some of these duties include:

- Acting as the official custodian of City records;
- Conducting City elections;
- Administering oaths;
- Maintaining the Benicia Municipal Code;
- Serving as clerk to the City Council;
- Providing notice of public hearings;
- Receiving and maintaining statements of economic interests from City employees; and
- Keeping and maintaining custody of the City seal.

The City Clerk now is elected by the voters to a four-year term. This Ballot Measure would change the City Clerk's office from an elective office to an appointive office. If this Ballot Measure passes, the current City Clerk would continue to serve the remainder of her term. At the expiration of her term or upon a vacancy in the office and with the adoption of an ordinance delegating appointment of the City Clerk to the City Manager, the City Manager would appoint a City Clerk. If the City Clerk is appointed, the duties and responsibilities of the office will remain identical to those now set forth in the State law and in the Benicia Municipal Code. In 167 California cities, the City Clerk is elected. In 302 California cities, the City Clerk is appointed.

A yes vote will approve the Ballot Measure and make the City Clerk an appointive office.

A no vote will disapprove the Ballot Measure and keep the City Clerk as an elective office.

  
Heather McLaughlin  
City Attorney

**CITY ATTORNEY'S  
IMPARTIAL ANALYSIS**

**MEASURE E**

**SHALL THE CITY TREASURER BE ELECTED OR APPOINTED**

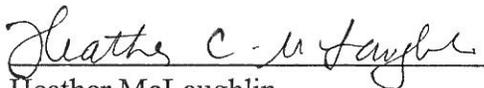
This Ballot Measure is about the office of the City Treasurer. The City Treasurer of the City of Benicia has certain duties and responsibilities set forth in State law. The City Treasurer is required to:

- Invest city monies in accordance with State law and the investment policy adopted by the City Council;
- Prepare and submit a monthly report to the City Council accounting for all receipts, disbursements, and fund balances;
- Sign disbursements in the name of the City of Benicia upon the direction and authorization of the City Council.

Currently, most of these tasks are performed by the Finance Director, and the position of City Treasurer is largely ceremonial.

The City Treasurer now is elected by the voters to a four-year term. This Ballot Measure would change the City Treasurer's office from an elective office to an appointive office. If this Ballot Measure passes, the current City Treasurer would continue to serve the remainder of her term. At the expiration of her term or upon a vacancy in the office and with the adoption of an ordinance delegating appointment of the City Treasurer to the City Manager, the City Manager would appoint a City Treasurer. If the City Treasurer is appointed, the duties and responsibilities of the office will remain identical to those now set forth in the State law. There are 472 cities in California. There are 183 elected City Treasurers.

A yes vote will approve the Ballot Measure and make the City Treasurer an appointed office. A no vote will disapprove the Ballot Measure and keep the City Treasurer as an elective office.

  
Heather McLaughlin  
City Attorney

RESOLUTION NO. 98-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING  
BALLOT ARGUMENT IN FAVOR OF MEASURE D

WHEREAS, a Ballot Argument in Favor of Measure D was submitted for public viewing, Council approval and signing prior to submission to the County Clerk for incorporation in the November 3, 1998 Election.

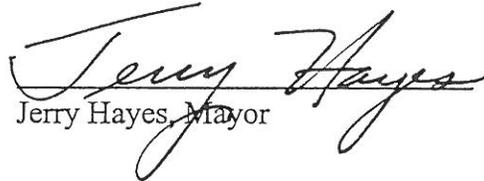
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that Ballot Argument in Favor of Measure D be and it hereby is approved.

On motion of Council Member Gizzi, seconded by Council Member Corbaley, the above resolution was introduced and passed by the Council of the City of Benicia at a regularly scheduled meeting of said Council held on the 21st day of July, 1998 and adopted by the following vote:

Ayes: Councilmembers Corbaley, Gizzi and Mayor Hayes

Noes: Councilmembers Cox-Golovich and Messina

Absent: None

  
Jerry Hayes, Mayor

Attest:

  
Linda S. Purdy, City Clerk

I, Linda S. Purdy, City Clerk of the City of Benicia, County of Solano, State of California, hereby certify that the foregoing Resolution was adopted by the City Council of the City of Benicia at a regular meeting held July 21, 1998.

  
Linda S. Purdy, City Clerk

**BALLOT ARGUMENT  
IN FAVOR OF  
MEASURE D**

**SHALL THE CITY CLERK BE ELECTED OR APPOINTED**

Since the City was incorporated in 1847, the City Clerk has been elected by the voters. In our early days as a City, and for many years thereafter, the City Clerk personally wrote and maintained the minutes of the City Council meetings and other official records of the City.

Today, the City Clerk is responsible for keeping public records, giving notice of public hearings and serving as clerk to the City Council. These are important duties which carry both fiduciary and legal responsibilities for which the City Council hold both the City Manager and City Attorney accountable.

The City Council relies on the City Manager to oversee the day-to-day operations of the City, including the very important operations of the City Clerk's Office. The City Manager is accountable to the City Council for all City services, and appoints all of the other department managers, except for the City Attorney. Your vote in favor of Measure D and an enabling ordinance by the City Council would permit the City Manager to consolidate the full-time Deputy City Clerk and part-time City Clerk positions into one full-time appointed City Clerk position. This consolidation would save the City more than \$16,000 a year.

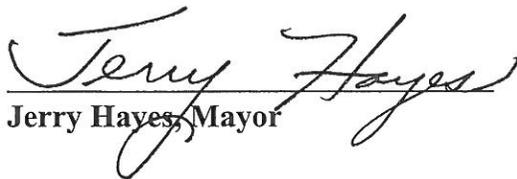
A vote in favor of Measure D will save precious tax dollars.

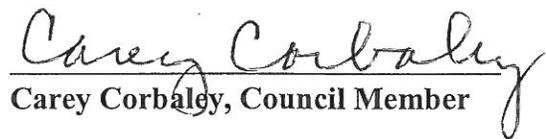
A vote in favor of Measure D is a vote for better government.

A vote in favor of Measure D is a vote for responsible government.

A vote in favor of Measure D is a vote for efficient government.

Please vote **YES** on **MEASURE D** on **November 3, 1998**

  
Jerry Hayes, Mayor

  
Carey Corbaley, Council Member

  
Steve Gizzi, Council Member

RESOLUTION NO. 98-117

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING  
BALLOT ARGUMENT IN FAVOR OF MEASURE E

WHEREAS, a Ballot Argument in Favor of Measure E was submitted for public viewing, Council approval and signing prior to submission to the County Clerk for incorporation in the November 3, 1998 Election.

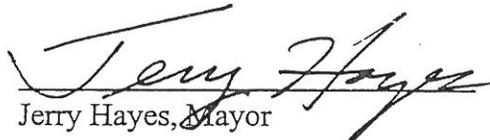
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that Ballot Argument in Favor of Measure E be and it hereby is approved.

On motion of Council Member Corbaley, seconded by Council Member Gizzi, the above resolution was introduced and passed by the Council of the City of Benicia at a regularly scheduled meeting of said Council held on the 21st day of July, 1998 and adopted by the following vote:

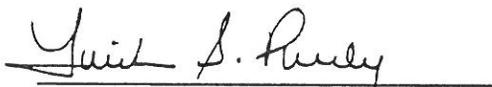
Ayes: Councilmembers Corbaley, Gizzi and Mayor Hayes

Noes: Councilmembers Cox-Golovich and Messina

Absent: None

  
Jerry Hayes, Mayor

Attest:

  
Linda S. Purdy, City Clerk

I, Linda S. Purdy, City Clerk of the City of Benicia, County of Solano, State of California, hereby certify that the foregoing Resolution was adopted by the City Council of the City of Benicia at a regular meeting held July 21, 1998.

  
Linda S. Purdy, City Clerk

**BALLOT ARGUMENT  
IN FAVOR OF  
MEASURE E**

**SHALL THE CITY TREASURER BE ELECTED OR APPOINTED**

The variety and complexity of today's financial transactions were unimaginable in 1883 when the State created the position of City Treasurer and required the City Treasurer to be elected by the voters. With the complexities of City finance and the law, the City Council transferred all but ceremonial duties of the City Treasurer to the Finance Director in 1976 in accordance with the Government Code and Benicia Municipal Code. This action left the City Treasurer with purely ceremonial duties. For twenty-two (22) years, it has been the Finance Director's job to be the expert on the financial transactions for the City, to maintain controls over the proper expenditure of City revenue, and to help prepare and administer the City budget. Benicia no longer needs an elected City Treasurer. Elimination of the elected City Treasurer will save the City \$9,000 a year in salary and benefits.

Your vote in favor of Measure E would stop the waste of taxpayer dollars on a ceremonial position. Benicia cannot afford to waste our limited tax dollars.

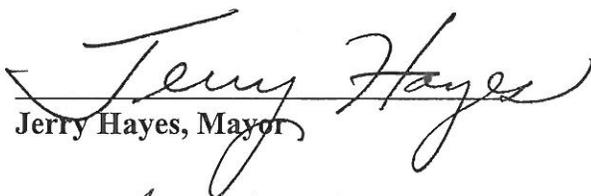
A vote in favor of Measure E will save precious tax dollars.

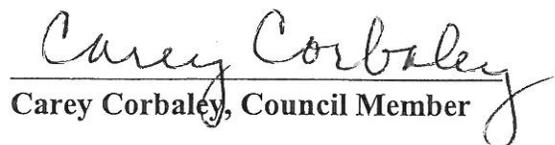
A vote in favor of Measure E is a vote for better government.

A vote in favor of Measure E is a vote for responsible government.

A vote in favor of Measure E is a vote for efficient government.

Please vote **YES** on **MEASURE E** on **November 3, 1998**

  
Jerry Hayes, Mayor

  
Carey Corbaley, Council Member

  
Steve Gizzi, Council Member

**RESOLUTION NO. 14-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY AT THE NOVEMBER 2014 GENERAL MUNICIPAL ELECTION A MEASURE RELATED TO THE CITY TREASURER POSTION**

**WHEREAS**, the City Council is authorized by statute to submit the question of whether the City Treasurer position should be made an appointed position to the qualified electors of the City at the general municipal election to be held in November of 2014; and

**WHEREAS**, the City Council deems it advisable to submit to the voters a ballot measure to make the City Treasurer appointed instead of elected because the traditional duties of the part-time treasurer are now handled by trained professional staff and consultant due to the expertise required to perform these duties; and

**WHEREAS**, pursuant to the Elections Code, the governing body of any City may, by Resolution, request the Board of Supervisors of the county to permit the county elections official to render specified services to the City relating to the conduct of an election; and

**WHEREAS**, Elections Code Section 10002 requires the City to reimburse the county in full for the services performed upon presentation of a bill to the City by the county elections official.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The City Council finds and determines that each of the findings set forth above are true and correct.

**SECTION 2.** That pursuant to the requirements of the laws of the State of California for general law cities, the City Council hereby submits the Ordinance to the voters at the Election and orders the following question to be submitted to the voters at the Election:

Shall the office of City Treasurer be appointive?	YES	
	NO	

This question requires the approval of a majority of those casting votes.

**SECTION 3.** The City will reimburse the county for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due as determined by the elections official.

**SECTION 4.** In all particulars not recited in this Resolution, the election shall be

held and conducted as provided by law for holding municipal elections.

**SECTION 5.** Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

**SECTION 6.** Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days of the adoption of this Resolution.

**SECTION 7.** Arguments for or against this measure shall be submitted not later than 5 p.m. on August 15, 2014 to the City Clerk.

**SECTION 8.** The City Council adopts the provisions of subdivision (a) of Section 9285 of the Elections Code to permit rebuttal arguments, if arguments have been filed in favor of and against the measure which is being submitted to the voters of the City at this special election. Rebuttal arguments shall be filed not later than 5:00 p.m. on August 25, 2014.

**SECTION 9.** The City Clerk is hereby directed to file a certified copy of this Resolution with the Solano County Board of Supervisors, Solano County Clerk, and the Elections Department of the County of Solano.

\*\*\*\*\*

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 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



What are your main areas of interest in Benicia City government?

Financial Planning, Economic Development and Tourism

What relevant experience can you bring to this position?

In former and current business opportunities ranging from \$42 million to \$1.1 billion in sales, day-to-day review of controllable and non-controllable expenses compared to forecast and planning was a daily activity.

What community organizations and associations do you belong to?

Former member of City Parks, Recreation and Cemetery, Board of Directors Benicia Main Street, Rebuilding Together Solano County, Team Depot (Wounded Warriors Projects).

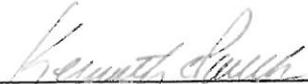
Are you serving or have you served on any Benicia advisory groups? (Please indicate dates of service) Former member of City Parks, Recreation and Cemetery Commission – August 2009 – July 2013.

To assist in evaluating your qualifications for appointment as City Treasurer, please provide related background and education.

Executive Vice President Operations – Jones Apparel Group, responsible for 3 divisions (LEI Junior Sportswear, Polo Jeans Company and Sun Apparel private label manufacturing) with full operational financial actives supporting \$1.1 billion in sales.

Specialty Sales Manager for Home Depot - \$42 million in sales with full accountability for expenses, labor management hours, inventory and shrink.

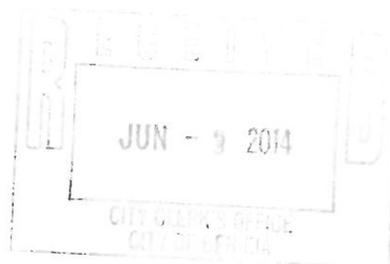
**You may attach to this application any additional materials that may be considered for appointments (i.e., resumes, letters of recommendation). Please keep in mind the application and responses are public records.**

  
Applicant's Signature

5/30/2014  
Date Submitted



CITY OF BENICIA  
Application for  
City Treasurer



This application and any documents you attach are public records under the Public Records Act. Completion and submission of this application are required for consideration of appointment to the City Treasurer position, term ending December 2016. This application must be submitted with an original signature no later than the deadline of June 10, 2014 by 5:00 p.m. You must be an elector of the City of Benicia and 18 years or older.

**Please be advised** that the position for which you are applying will require a Statement of Economic Interest if you are appointed.

It is the policy of the City of Benicia that no qualified disabled person will be denied the opportunity to participate. Appropriate arrangements will be made to accommodate individuals as needed.

PLEASE RETURN COMPLETED APPLICATIONS TO: City Clerk Department  
250 East L Street  
Benicia, CA 94510  
(707) 746-4200

APPLICANT'S NAME: John Potter  
(Please print- no nicknames).

HOME ADDRESS: 290 West G St  
(Street Address)

Benicia, Ca 94510 707 795-4914  
(City) (Zip Code) (Phone Number)

EMAIL ADDRESS: John.Potter@1959.usna.com

CURRENT EMPLOYER: Retired - USN12  
(Company Name)

Retired - P33E  
(Company address)

POSITION TITLE: LT  
(City) (Zip Code) (Phone Number)

DRIVER'S LICENSE NUMBER: \_\_\_\_\_  
(Or Date of Birth if no driver's license) (CA) (Number)

I have been a resident for 4.5 years.

PLEASE ATTACH A SUMMARY OF YOUR RELEVANT BACKGROUND, EXPERIENCE AND EDUCATION THAT QUALIFIES YOU FOR THE CITY TREASURER POSITION.

What are your main areas of interest in Benicia City government? \_\_\_\_\_

Merit of Elected Treasurer

What relevant experience can you bring to this position? \_\_\_\_\_

Budget/Accounting/Finance  
PG&E - Business Unit Comptroller - Diablo Canyon  
Consultant - Arctic Slope Corp (Inupiat Estero) also clean Air Plant

What community organizations and associations do you belong to? \_\_\_\_\_

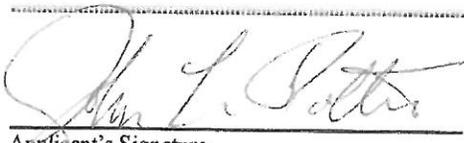
Commissioner - Solano County Airport Land Use Commission 10 yrs.  
Benicia-Tula Sister City Assn - Treasurer since 2006  
since 2002

Are you serving or have you served on any Benicia advisory groups? (Please indicate dates of service) Benicia Unified School District - Trustee on Board 2 yrs.

To assist in evaluating your qualifications for appointment as City Treasurer, please provide related background and education.

MBA - Stanford '72

You may attach to this application any additional materials that may be considered for appointments (i.e., resumes, letters of recommendation). Please keep in mind the application and responses are public records.



Applicant's Signature

6/3/14  
Date Submitted

Thank you for your willingness to serve your community. The City appreciates your commitment.

OFFICIAL USE ONLY

\_\_\_\_\_ BPD Background Check      Comments \_\_\_\_\_

**AGENDA ITEM  
CITY COUNCIL MEETING DATE - JULY 1, 2014  
BUSINESS ITEMS**

**DATE** : June 23, 2014

**TO** : City Council

**FROM** : Interim Finance Director

**SUBJECT** : **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA OF INTENTION TO LEVY REASSESSMENTS AND TO ISSUE REFUNDING BONDS UPON THE SECURITY THEREOF, RELATING TO THE BENICIA MCALLISTER AREA ASSESSMENT DISTRICT**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING REASSESSMENT REPORT FOR THE CITY OF BENICIA, BENICIA MCALLISTER AREA ASSESSMENT DISTRICT, CONFIRMING AND ORDERING THE REASSMENTS AND AUTHORIZING AND DIRECTING ACTIONS WITH RESPECT THERETO**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE ISSUANCE OF LIMITED OBLIGATION REFUNDING BONDS, PROVINGING FOR EXECUTION OF A FISCAL AGENT AGREEMENT, AND APPROVING AND AUTHORIZING OTHER MATTERS RELATED THERETO**

**RECOMMENDATION:**

- 1) Adopt resolution of intention to levy reassessments and to issue refunding bonds upon the security thereof for the Benicia McAllister Area Assessment District.
- 2) Adopt resolution adopting reassessment report for the assessment district, confirming and ordering the reassessments and authorizing and directing actions with respect thereto.
- 3) Adopt resolution authorizing the issuance of limited obligation refunding bonds, providing for execution of a Fiscal Agent Agreement, and approving and authorizing other matters related thereto.

**EXECUTIVE SUMMARY:**

The City, in 2004, issued \$11,700,000 principal amount of Limited Obligation Improvement Bonds for the Benicia McAllister Area Assessment District in order to finance various public improvements and to refund a portion of certain

outstanding assessment bonds. The 2004 bonds are payable from special assessments levied on properties in the Assessment District. The current outstanding principal amount of the 2004 bonds is \$8,495,000.

Due to the current low interest rates in the tax-exempt bond market, an opportunity exists for the City to issue bonds to refund the 2004 bonds, and thereby lower the annual assessments on properties in the Assessment District.

On June 17, 2014, the City Council adopted a resolution directing staff to proceed with the preparation of documents for the refunding bonds, and designating the consultants necessary to assist City Staff with that effort.

The actions needed to complete the refunding of the 2004 bonds include (a) adoption of a resolution of intention to levy reassessments on properties in the Assessment District and to issue refunding bonds, which directs Willdan Financial Services to prepare a report for the reassessment proceedings and provides notice that the City Council intends to issue refunding bonds payable from the reassessments; (b) adoption of a resolution adopting the reassessment report, confirming the reassessments that will supplant the current assessments on parcels in the Assessment District, and directing recordings and other actions related to the reassessments; and (c) adoption of a resolution authorizing the issuance and sale of limited obligation refunding bonds and approving a fiscal agent agreement and a bond purchase and rate lock agreement in connection therewith.

**BUDGET INFORMATION:**

Refunding the outstanding McAllister improvement bonds will have no budget impact on the City of Benicia. The debt service savings from this refinancing will be realized by the 336 property owners within the McAllister Assessment District.

**STRATEGIC PLAN:**

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions
- Strategy #4: Manage City finances prudently.

**BACKGROUND:**

On November 3, 2004, the City issued the Benicia McAllister Area Assessment District Limited Obligation Improvement Bonds in the amount of \$11,700,000. The proceeds of the 2004 bonds were used to fund the construction of public improvements within the assessment district boundaries and refund that portion of the East 2nd Street/Rose Drive Assessment District, Series A bonds issued in 1990, corresponding to the property within the Assessment District.

The 2004 bonds are payable from annual assessment levies by the City on parcels in the Assessment District. The total assessment levied on each of the 336 parcels of land within the Assessment District at the time of formation of the Assessment District was \$34,821.43, which assessments are currently payable over the 25 year term of the 2004 bonds, plus annual accrued interest. The annual assessment to fund the debt service on the 2004 bonds is collected through the property tax roll. The assessment on each parcel for the 2013-14 fiscal year tax roll was \$2,526.96.

The outstanding principal on the 2004 bonds is \$8,495,000. The City currently has the opportunity to refinance the outstanding 2004 bonds at a lower interest rate (approximately 3.75 percent) which is projected to result in debt service savings of approximately \$112,000 per year based upon current interest rates. Over the remaining 16 year term of the 2004 bonds, this savings will amount to approximately \$1.6 million. As the debt service on the 2004 bonds is paid entirely by the property owners within the Assessment District, each of the 336 property owners would have their annual assessments reduced by approximately 13%, or \$330 per year to approximately \$2,200. The actual interest rates on the refunding bonds will be determined at the time the bonds are sold, which may result in slightly greater or lesser savings to the property owners.

In order to complete the actions needed for the issuance of the refunding bonds, the City Council is being asked to adopt a resolution indicating the intention of the City Council to levy reassessments on properties in the Assessment District and to issue the refunding bonds. The resolution directs Willdan Financial Services to prepare a reassessment report containing information required by the Streets and Highways Code, including the unpaid current assessments and the proposed reassessments. The resolution gives notice that the City intends to issue refunding bonds to refund the 2004 bonds and to create a reserve fund for the refunding bonds.

Immediately following consideration of the foregoing resolution, the City Council is then being asked to adopt a resolution adopting the reassessment report which already has been prepared, and finding that the reassessments on the properties in the Assessment District will be lower than the assessments that they will supplant, that the final maturity of the refunding bonds to be issued is not later than the final maturity of the 2004 bonds to be refunded, and that the reduction in the assessments by reason of the reassessments is by the same percentage for each parcel in the Assessment District. The resolution also acknowledges the reassessment diagram contained in the reassessment report, approves and confirms the report, finds that the reassessments specially benefit the parcels in the Assessment District and confirms and levies the reassessments. The resolution directs various recordings and filings required by applicable law, and allows for the City Manager to revise the reassessment report to reduce the

reassessments if the aggregate amount of the reassessments turns out to be greater than the principal amount of the refunding bonds.

Immediately following consideration of the foregoing resolution, the City Council is then being asked to adopt a third resolution approving a list of the unpaid reassessments set forth in the reassessment report and authorizing the issuance of up to \$8,495,000 of refunding bonds. The resolution approves and authorizes the City Manager to execute a fiscal agent agreement which sets forth the terms of the refunding bonds and an escrow agreement providing for the redemption and payment of the 2004 bonds with proceeds of the refunding bonds and certain funds held for the Assessment District and the 2004 bonds. The resolution authorizes payment of the costs of issuance of the refunding bonds from proceeds of the refunding bonds or other funds held for the Assessment District, designates U.S. Bank National Association as the fiscal agent under the fiscal agent agreement and authorizes the City Manager to enter into a contract with U.S. Bank for its services.

The resolution authorizes the City Manager to award the sale of the refunding bonds to the entity that the Placement Agent (Wulff Hansen & Co.) determines has submitted the best bid for the purchase of the refunding bonds, taking into account the interest cost of the refunding bonds, the proceeds of the refunding bonds available to refund the 2004 bonds and pay the designated costs of issuing the refunding bonds, the redemption provisions for the refunding bonds and the proposed covenants of the City with respect to the refunding bonds. The refunding bond principal sold may not exceed \$8,495,000, and the average interest rate on the refunding bonds may not exceed 4.5%. The resolution authorizes the City Manager to execute a bond purchase and rate lock agreement with the winning bidder which will set forth the interest rate and amortization schedule for the principal of the refunding bonds. The City Treasurer and the City Clerk are directed to execute and attest, respectively, the refunding bonds, and the resolution authorizes staff to take all actions necessary to accomplish the issuance, sale and delivery of the refunding bonds.

If the resolutions are adopted, it is anticipated that the refunding bonds will be issued in late July and that the property owners within the Assessment District will see reduced annual assessments commencing with their 2014-2015 property tax bills.

Attachments:

- Proposed resolution of intention to levy reassessments and to issue refunding bonds upon the security thereof, relating to the Benicia McAllister area assessment district.

- Proposed resolution adopting reassessment report for the assessment district, confirming and ordering the reassessments and authorizing and directing actions with respect thereto
- Proposed resolution authorizing the issuance of limited obligation refunding bonds, providing for execution of a fiscal agent agreement, and approving and authorizing other matters related thereto
- Reassessment Report
- Fiscal Agent Agreement
- Escrow Agreement
- Bond Purchase and Rate Lock Agreement



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

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA OF INTENTION TO LEVY REASSESSMENTS AND TO ISSUE REFUNDING BONDS UPON THE SECURITY THEREOF, RELATING TO THE BENICIA MCALLISTER AREA ASSESSMENT DISTRICT**

**WHEREAS**, in order to finance certain public improvements and to refund a portion of certain outstanding assessment bonds, the City of Benicia (the "City") conducted special assessment proceedings pursuant to Resolution of Intention No. 04-115, adopted by the City Council on August 3, 2004, and by those proceedings the City confirmed unpaid assessments upon the parcels in the City's Benicia McAllister Area Assessment District (the "District"), and special assessment bonds entitled "Limited Obligation Improvement Bonds, City of Benicia, Benicia McAllister Area Assessment District, Series 2004-B" in the initial principal amount of \$11,700,000 (the "Prior Bonds") were issued and delivered, and the outstanding Prior Bonds are secured by the unpaid assessments; and

**WHEREAS**, due to the current low interest rates in the public debt market the future assessment levies on the parcels of property in the District may be reduced by means of the refunding of the Prior Bonds, and this City Council intends to accomplish the refunding through the levy of reassessments and the issuance of refunding bonds upon the security thereof; and

**WHEREAS**, on June 17, 2014, the City Council adopted Resolution No. 14-60 authorizing the commencement of proceedings for the issuance of limited obligation refunding bonds for the District and designating consultants in connection therewith; and

**WHEREAS**, City Staff, working with the designated consultants, have caused to be prepared the documents needed for the refunding, and the City Council now desires to proceed with the actions needed to reassess the property in the District and issue bonds to refund the outstanding Prior Bonds, all with the purpose and intent of reducing the annual assessment levies on property in the District.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

Section 1. Proceedings for the levy and collection of reassessments as security for the issuance and payment of refunding bonds the proceeds of which are to be used to refund the Prior Bonds shall be conducted for the District pursuant to the Refunding Act of 1984 for 1915 Improvement Act Bonds, constituting Division 11.5 (commencing with Section 9500) of the California Streets and Highways Code (the "Act").

Section 2. The contemplated reassessment and refunding is of more than local or ordinary public benefit, and the costs and expenses thereof are made chargeable upon the District the exterior boundaries of which are shown on a map thereof

heretofore filed in the office of the City Clerk, a copy of which is attached hereto as Exhibit A, and to which map reference is hereby made for further particulars. The map indicates by a boundary line the extent of the territory included in the District and shall govern for all details as to the extent thereof.

Section 3. The reassessment and refunding is hereby referred to Willdan Financial Services, a qualified firm employed by the City for the purpose of the reassessment proceedings, and said firm is hereby directed to make and file with the City Clerk a report in writing presenting the following:

(a) A schedule setting forth the unpaid principal and interest on the Prior Bonds and the total amounts thereof.

(b) The total estimated principal amount of the reassessment and of the refunding bonds and the maximum interest rate thereon, together with an estimate of cost of the reassessment and of issuing the refunding bonds, including all costs of issuing the refunding bonds, as contemplated by subdivision (a) of Section 9600 of the Act.

(c) The auditor's record kept pursuant to Section 8682 of the California Streets and Highways Code showing the schedule of principal installments and interest on all unpaid original assessments and the total amounts thereof.

(d) The estimated amount of each reassessment, identified by reassessment number corresponding to the reassessment number on the reassessment diagram, together with a proposed auditor's record for the reassessment prepared in the manner described in said Section 8682.

(e) A reassessment diagram showing the District and the boundaries and dimensions of the subdivisions of land within the District. Each subdivision, including each separate condominium interest as defined in Section 783 of the California Civil Code, shall be given a separate number upon the diagram.

When any portion or percentage of the costs and expenses of the refunding and reassessment is to be paid from sources other than reassessments, the amount of such portion or percentage shall first be deducted from the total estimated cost and expenses of the refunding and reassessment, and the reassessments shall include only the remainder of the estimated cost and expenses.

It is hereby acknowledged that delinquencies in the payment of assessments previously levied on parcels in the District that are not fully cured by the date hereof will not in any way be supplanted or extinguished by these proceedings.

Section 4. If any excess shall be realized from the reassessments it shall be used in such amounts as the City Council may determine, in accordance with the provisions of applicable law, and in a manner to be provided in these reassessment proceedings.

Section 5. Notice is hereby given that serial and/or term refunding bonds to represent reassessments, and to bear interest at an average interest rate of not in excess of four and one-half percent (4.50%) per annum, will be issued in the manner provided by the Act, the last installment of which refunding bonds shall mature not later than September 2, 2030. It is the intention of the City Council that the City will not obligate itself to advance available funds from the treasury of the City to cure any deficiency in the redemption fund to be created with respect to the refunding bonds; provided, however, that a determination not to obligate the City shall not prevent the City from, in its sole discretion, so advancing the funds.

Section 6. The provisions of Part 11.1 of Division 10 of the California Streets and Highways Code, providing for an alternative procedure for the advance payment of reassessments and the calling of bonds, shall apply to the refunding bonds to be issued pursuant to the reassessment proceedings.

Section 7. It is the intention of the City Council to create a special reserve fund pursuant to and as authorized by Part 16 of Division 10 of the California Streets and Highways Code with respect to the refunding bonds.

Section 8. This Resolution shall take effect upon its adoption.

\* \* \* \* \*

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 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

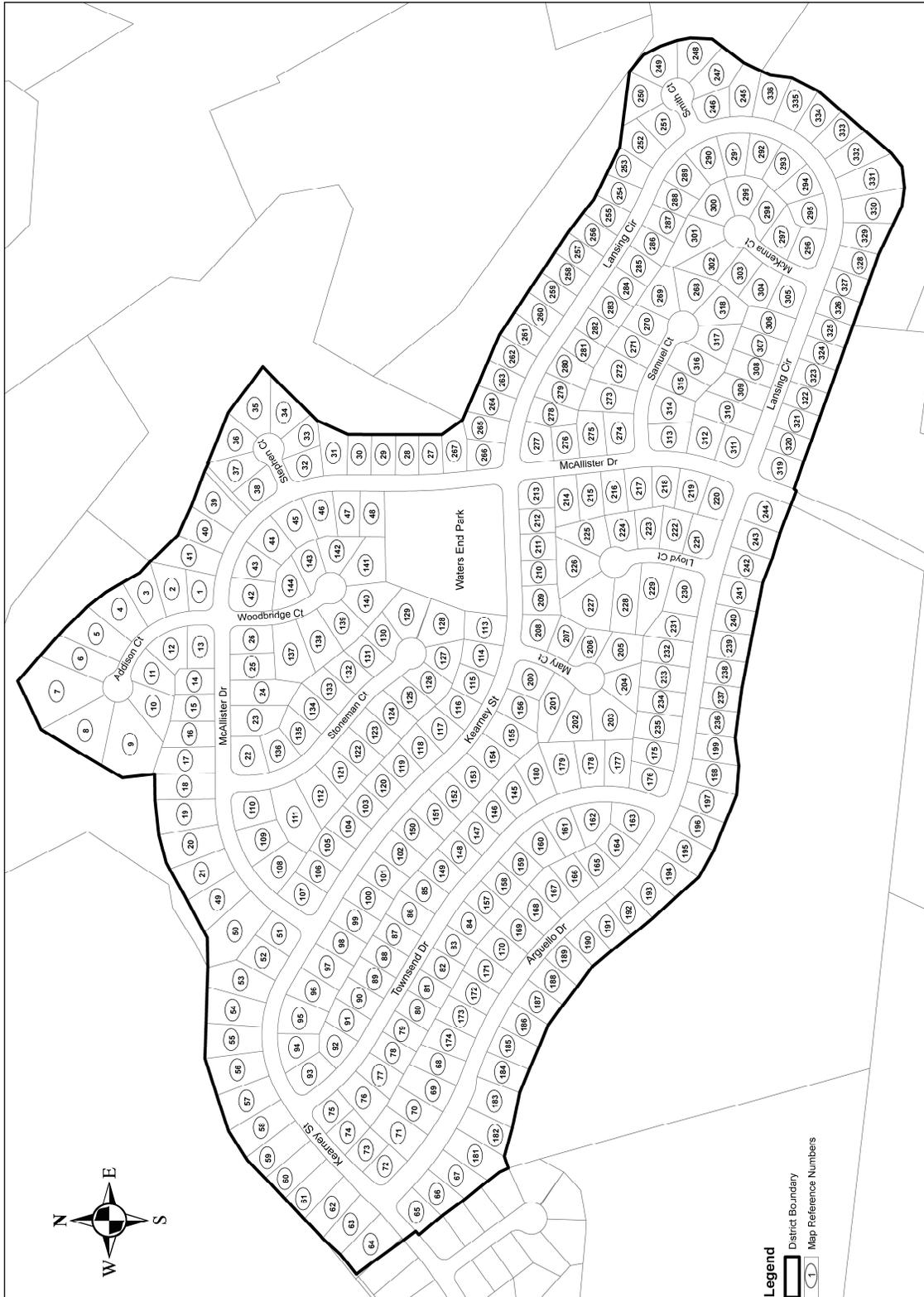
\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

02017.06:J12693  
6/19/14

# EXHIBIT A

## MAP INDICATING BOUNDARIES OF THE DISTRICT



**RESOLUTION NO. 14-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING REASSESSMENT REPORT FOR THE CITY OF BENICIA, BENICIA MCALLISTER AREA ASSESSMENT DISTRICT, CONFIRMING AND ORDERING THE REASSESSMENTS AND AUTHORIZING AND DIRECTING ACTIONS WITH RESPECT THERETO**

**WHEREAS**, the City Council has adopted a Resolution of the City Council of the City of Benicia of Intention to Levy Reassessments and to Issue Refunding Bonds Upon the Security Thereof, Relating to the Benicia McAllister Area Assessment District (the "Resolution of Intention"), wherein the City Council directed the making and filing of a reassessment report (the "Report") in accordance with and pursuant to the Refunding Act of 1984 for 1915 Improvement Act Bonds, constituting Division 11.5 of the California Streets and Highways Code (the "Act"); and

**WHEREAS**, the City Council has determined that in order to reduce future assessment levies on property in the Benicia McAllister Area Assessment District (the "District") it is desirable that the outstanding Limited Obligation Improvement Bonds, City of Benicia, Benicia McAllister Area Assessment District, Series 2004-B (the "Prior Bonds") issued for the District be refunded and reassessments be levied as security for limited obligation refunding bonds the proceeds of which will be used to refund the Prior Bonds; and

**WHEREAS**, the Report was duly made and filed with the City Clerk, and the Report has been duly considered by the City Council with the assistance of City Staff and found to be sufficient in every particular, and the Report shall stand for all subsequent proceedings under and pursuant to the Resolution of Intention; and

**WHEREAS**, the City desires to issue refunding bonds (the "Refunding Bonds") for the District pursuant to the Act, the proceeds of which Refunding Bonds will be used to refund the outstanding Prior Bonds.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

Section 1. Pursuant to Section 9525 of the Act, and based upon the Report, the City Council finds that all of the following conditions are satisfied:

(a) each estimated annual installment of principal and interest on the reassessment, as set forth in the Report, is less than the corresponding annual installment of principal and interest on the portion of the original assessment being superseded and supplanted as also set forth in the Report, by the same percentage for all subdivisions of land with the District;

(b) the number of years to maturity of the Refunding Bonds proposed to be issued is not more than the number of years to the last maturity of the Prior Bonds; and

(c) the principal amount of the reassessment on each subdivision of land within the District is less than the unpaid principal amount of the portion of the original assessment being superseded and supplanted by the same percentage for each subdivision of land within the District (with any amount added to a reassessment because of a delinquency in payment of the original assessment not being considered in this calculation).

Section 2. The public interest, convenience and necessity require that the reassessment be made.

Section 3. The land in the District benefited by the reassessment and to be reassessed to pay the costs and expenses thereof, and the exterior boundaries thereof, are as shown by the reassessment diagram a copy of which is attached to the Report, which reassessment diagram is made a part of this Resolution by this reference thereto.

Section 4. Pursuant to the findings above with respect to Section 9525 of the Act, the conditions set forth therein for the reassessment are deemed satisfied and the following elements of the Report are hereby finally approved and confirmed without further proceedings, including without the conduct of a public hearing under the Act:

(a) a schedule setting forth the unpaid principal and interest on the Prior Bonds to be refunded and the total amounts thereof;

(b) an estimate of the total principal amount of the reassessment and of the Refunding Bonds and the maximum interest rate thereon, together with an estimate of cost of the reassessment and of issuing the Refunding Bonds, including expenses incidental thereto;

(c) the auditor's record kept pursuant to Section 8682 of the California Streets and Highways Code showing the respective schedule of principal installments and interest on all unpaid original assessments and the total amounts thereof;

(d) the estimated amount of each reassessment, identified by reassessment number corresponding to the reassessment number of the reassessment diagram, together with a proposed auditor's record for the reassessment prepared in the manner described in said Section 8682; and

(e) a reassessment diagram showing the District and the boundaries and dimensions of the subdivisions of land therein, assigning a separate number to each such subdivision of land.

Final adoption and approval of the Report as a whole, including the estimate of the costs and expenses, the reassessment diagram and the reassessment, as contained in the Report, as hereinabove determined and ordered, is intended to and shall refer and apply to the Report, or any portion thereof, as amended, modified,

revised or corrected by, or pursuant to and in accordance with, any resolution or order, if any, duly adopted or made by this City Council, or by the City Manager as authorized pursuant to Sections 6 and 9 below.

Section 5. Based on the oral and documentary evidence, including the Report, offered and received by the City Council, the City Council expressly finds and determines:

(a) that each of said several subdivisions of land within the District will be specially benefited by the reassessment at least in the amount, if not more than the amount, of the reassessment apportioned against said subdivisions of land, respectively, and

(b) that there is substantial evidence to support, and the weight of said evidence preponderates in favor of, the aforesaid finding and determination as to special benefits.

Section 6. The reassessment, including all costs and expenses thereof, is hereby approved, confirmed and levied. Pursuant to the provisions of the Act, reference is hereby made to the Resolution of Intention for further particulars. The reassessment shall be reduced in the event that the City Manager determines that to do so is necessary and advisable to further the purposes of this Resolution, and, if such determination is made, the City Manager is hereby authorized and directed to record said reduced reassessment in the manner set forth in Section 9 hereof, and to take any further actions required to finalize said reduction, without further action of this City Council.

It is hereby acknowledged that delinquencies in the payment of assessments previously levied on parcels in the District that are not fully cured by the date hereof will not in any way be supplanted or extinguished by these proceedings.

Section 7. The City Clerk shall forthwith cause:

(a) the reassessment to be delivered to the official of the City who acts as the Superintendent of Streets of the City, together with the reassessment diagram, as approved and confirmed by this City Council, with a certificate of such confirmation and of the date thereof, executed by the City Clerk, attached thereto. The Superintendent of Streets shall record the reassessments and the reassessment diagram in a suitable book to be kept for that purpose, and append thereto a certificate of the date of such recording, and such recordation shall be and constitute the reassessment roll for the District;

(b) a copy of the reassessment diagram and a notice of reassessment, in the form specified in Section 3114 of the California Streets and Highways Code and executed by the City Clerk, to be filed and recorded in the office of the County Recorder of the County of Solano; and

(c) a copy of this Resolution to be provided to the Auditor of the County of Solano.

From the date of recording of the notice of reassessment, all persons shall be deemed to have notice of the contents of such reassessment, and each of the reassessments shall thereupon be a lien upon the property against which it is made, and, unless sooner discharged, such liens shall so continue for the period of ten (10) years from the date of said recordation, or in the event bonds are issued to represent the reassessments, until the expiration of four (4) years after the due date of the last installment upon the bonds or of the last installment of principal of the bonds.

The appropriate officer or officers of the City are hereby authorized to pay any and all fees required by law in connection with the above.

Section 8. The Interim Finance Director shall keep, or cause to be kept, the record showing the several installments of principal and interest on the reassessments which are to be collected each year during the term of the Refunding Bonds. An annual apportionment of each reassessment, together with annual interest on said reassessment, shall be payable in the same manner and at the same time and in the same installments as the general ad valorem property taxes and shall be payable and if not paid shall become delinquent at the same time and in the same proportionate amount. Each year the annual installments shall be submitted to the County Auditor-Controller for purposes of collection, and the County Auditor-Controller shall, at the close of the tax collecting period, promptly render to the Interim Finance Director a detailed report showing the amount of such installments, interest, penalties and percentages so collected.

Section 9. The City Manager is hereby authorized and directed (a) to revise the Report to reduce the applicable reassessments, as confirmed pursuant to Section 6 hereof, if and to the extent necessary so that the aggregate amount thereof does not exceed the initial principal amount of the Refunding Bonds, (b) to amend the reassessment and reassessment diagram to reflect such reductions, and (c) to promptly record the reassessment, together with the reassessment diagram, as so amended, in the office of the Superintendent of Streets of the City. Immediately thereafter, a copy of the reassessment diagram, as so amended, shall be filed in the office of the County Recorder and a Notice of Reassessment, referring to the reassessment diagram, shall be recorded in the office of the County Recorder, all pursuant to the provisions of Division 4.5 of the California Streets and Highways Code.

Section 10. This Resolution shall take effect upon its adoption.

\*\*\*\*\*

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 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

Attest:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



## RESOLUTION NO. 14-

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE ISSUANCE OF LIMITED OBLIGATION REFUNDING BONDS, PROVIDING FOR EXECUTION OF A FISCAL AGENT AGREEMENT, AND APPROVING AND AUTHORIZING OTHER MATTERS RELATED THERETO**

**WHEREAS**, the City Council has adopted a Resolution of the City Council of the City of Benicia of Intention to Levy Reassessments and to Issue Refunding Bonds Upon the Security Thereof, Relating to the Benicia McAllister Area Assessment District (the "Resolution of Intention") relating to the levy and collection of reassessments as security for the issuance and payment of a series of refunding bonds for the City's Benicia McAllister Area Assessment District (the "District"), and in the Resolution of Intention the City Council provided that serial and/or term bonds would be issued pursuant to the provisions of the Refunding Act of 1984 for 1915 Act Improvement Bonds, constituting Division 11.5 of the California Streets and Highways Code (the "Act") for the District, and reference to the Resolution of Intention is hereby expressly made for further particulars; and

**WHEREAS**, the City Council also has adopted a Resolution of the City Council of the City of Benicia Adopting Reassessment Report for the City of Benicia, Benicia McAllister Area Assessment District, Confirming and Ordering the Reassessments and Authorizing and Directing Actions With Respect Thereto, adopting a reassessment report (the "Report"), which Report set forth a list of the reassessments in the District which remain unpaid (the "List of Unpaid Reassessments"); and

**WHEREAS**, the City Council has determined that, due to favorable interest rates, it is in the best interests of the owners of land in the District that bonds be issued secured by the reassessments (the "Refunding Bonds") to refund the outstanding Limited Obligation Improvement Bonds, City of Benicia, Benicia McAllister Area Assessment District, Series 2004-B (the "Prior Bonds"); and

**WHEREAS**, there has been submitted to the City Council an agreement (the "Fiscal Agent Agreement") providing for the issuance of the Refunding Bonds, and the City Council, with the aid of City staff, has reviewed the Fiscal Agent Agreement and found it to be in proper order, and the City Council now desires to approve the Fiscal Agent Agreement and the issuance of the Refunding Bonds; and

**WHEREAS**, there has been submitted to the City Council an escrow agreement (the "Escrow Agreement") providing for the creation of a fund which will be used to refund and redeem the Prior Bonds and the City Council now desires to approve the Escrow Agreement in connection with the refunding of the Prior Bonds; and

**WHEREAS**, it appears that each of said documents referenced above is in appropriate form and is an appropriate document to be executed and delivered for the purpose intended; and

**WHEREAS**, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Refunding Bonds as contemplated by this Resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

Section 1. The reassessments that remain unpaid are as shown on the List of Unpaid Reassessments set forth in the Report, which List of Unpaid Reassessments is hereby approved and incorporated herein by this reference; and for a particular description of the lots or parcels of land bearing the respective reassessment numbers set forth in the List of Unpaid Reassessments, reference is hereby made to the reassessment and to the diagram, and any amendments thereto, all as shown in the Report recorded in the office of the person acting as Superintendent of Streets of the City.

Section 2. Pursuant to the Act, this Resolution and the Fiscal Agent Agreement, refunding bonds designated as "Limited Obligation Refunding Bonds, City of Benicia, Benicia McAllister Area Assessment District (Reassessment and Refunding of 2014)" (referred to herein as the "Refunding Bonds") shall be issued in an aggregate principal amount equal to the unpaid Reassessments, but not in any event in a principal amount in excess of \$8,495,000.00. The Refunding Bonds shall be issued at such rate or rates of interest, in such form or forms, with such maturities and upon such provisions, covenants and conditions, all of which shall be as specified by the City pursuant to the terms of the Fiscal Agent Agreement; provided, however, no Refunding Bonds shall be authorized in excess of the total aggregate amount of the unpaid reassessments.

Section 3. The Fiscal Agent Agreement, in the form on file with the City Clerk, which Fiscal Agent Agreement contains provisions for the payment of and covenants relating to the Refunding Bonds, is hereby approved. The City Manager is hereby authorized and directed to execute the Fiscal Agent Agreement on behalf of the City in such form, together with such changes thereto as may be approved by the City Manager upon consultation with the City Attorney and Bond Counsel, the approval of such changes to be conclusively evidenced by the execution and delivery of the Fiscal Agent Agreement by the City.

The City Council hereby approves the refunding of the Prior Bonds with the proceeds of the Refunding Bonds, in accordance with the provisions of the documents pursuant to which the Prior Bonds were sold and delivered, and an Escrow Agreement between the City and U.S. Bank National Association as the paying agent for the Prior Bonds, and as escrow bank thereunder. The City Council hereby approves the Escrow Agreement in the form on file with the City Clerk. The City Council hereby authorizes and directs the City Manager to execute and deliver the Escrow Agreement on behalf of the City in such form, together with any changes therein or additions thereto deemed advisable by the City Manager upon consultation with Bond Counsel and the City Attorney, the approval of such changes to be conclusively evidenced by the execution and delivery of the Escrow Agreement by the City.

The designated costs of issuing the Refunding Bonds, which shall include any applicable costs described in Section 9600(a) of the Act, shall be paid from the proceeds of the sale of the Refunding Bonds or other funds held by the City for the benefit of the District.

Section 4. U.S. Bank National Association is hereby designated to act as the Fiscal Agent for the Refunding Bonds and to perform the actions and duties required of the Fiscal Agent under the Fiscal Agent Agreement, including those for the authentication, transfer, registration, and payment of the Refunding Bonds. The City Manager is hereby authorized enter into an agreement with the Fiscal Agent for its services as the Fiscal Agent under the Fiscal Agent Agreement.

Section 5. The City Council hereby approves the sale of the Refunding Bonds to the entity that the Placement Agent for the Refunding Bonds (being the firm of Wulff Hansen & Co.) determines has submitted a proposal for the purchase of the Refunding Bonds that is in the best financial interests of the City, taking into account the interest cost of the Refunding Bonds, the proceeds of the Refunding Bonds available to refund the Prior Bonds and pay the designated costs of issuing the Refunding Bonds, the redemption provisions for the Refunding Bonds and the covenants of the City with respect to the Refunding Bonds to be included in the Fiscal Agent Agreement. In any event, however, the principal amount of the Refunding Bonds shall not be in excess of \$8,495,000.00 and the average interest rate on the Refunding Bonds shall not be in excess of 4.50%. The City Manager is hereby authorized to execute a Bond Purchase and Rate Lock Agreement (the "Purchase Contract") evidencing the award of the sale of the Refunding Bonds to the purchaser identified by the Placement Agent, in the form on file with the City Clerk, together with such changes thereto as may be approved by the City Manager upon consultation with the City Attorney and Bond Counsel, if such document is requested to be so executed by the purchaser or if such document is determined to be necessary or appropriate in the circumstances by Bond Counsel.

Section 6. The City Treasurer is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the Refunding Bonds in the form provided in the Fiscal Agent Agreement. The Refunding Bonds, when executed, shall be delivered to the Fiscal Agent for authentication. The Fiscal Agent is hereby requested and directed to authenticate the Refunding Bonds by executing the Fiscal Agent's certificate of authentication and registration appearing thereon, and to deliver the Bonds, when duly executed and authenticated, to the purchaser of the Refunding Bonds.

Section 7. The Mayor, the City Manager, the Interim Finance Director, the City Clerk and Treasurer of the City and any other officers or staff of the City are hereby authorized and directed to take any actions and execute and deliver any and all documents as are necessary to accomplish the issuance, sale and delivery of the Refunding Bonds and the refunding of the Prior Bonds in accordance with the provisions of this Resolution and as described in the Fiscal Agent Agreement and the Escrow Agreement.

Section 8. This Resolution shall take effect upon its adoption.

\* \* \* \* \*

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 1<sup>st</sup> day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



# City of Benicia, California

## Benicia McAllister Area Assessment District (Reassessment and Refunding of 2014)

REASSESSMENT REPORT

July 2014

27368 Via Industria  
Suite 110  
Temecula, CA 92590  
T 951.587.3500 | 800.755.6864  
F 951.587.3510

[www.willdan.com/financial](http://www.willdan.com/financial)



**VIII.C.21**

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**REASSESSMENT REPORT**

Division 11.5, Streets & Highways Code of the State of California

<b><u>ITEM</u></b>	<b><u>PAGE NO</u></b>
Overview.....	1
Reassessment .....	2
Cost Estimate.....	4
Prior Bonds Debt Service Schedule.....	5
Refunding Bonds Debt Service Schedule.....	6
Comparison of the Auditor's Records for the Existing Bonds and the 2014 Refunding Bonds .....	16
Method of Reassessment .....	18
Certifications .....	19
Reassessment Diagram.....	20

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**Overview**

The City of Benicia, Benicia McAllister Area Assessment District consists of approximately 76.25 acres zoned for residential use located in the northern portion of the City, bounded on the south by the East Second/Rose Drive Assessment District and the boundaries of which are shown in the Reassessment Diagram attached to this Reassessment Report.

The City of Benicia is issuing \$8,495,000 the principal amount of Limited Obligation Refunding Bonds, City of Benicia, Benicia McAllister Area Assessment District (Reassessment and Refunding of 2014) (the “Bonds”), pursuant to a Fiscal Agent Agreement, dated as of July 1, 2014 (the “Fiscal Agent Agreement”), by and between the City and U.S. Bank National Association, as fiscal agent, Resolution No. \_\_\_\_\_, adopted by the City Council of the City on July 1, 2014 (the “Resolution”), and the Refunding Act of 1984 for 1915 Improvement Act Bonds, being Division 11.5, commencing with Section 9500, of the California Streets and Highways Code (the “Act”). For further information on these Bonds see the Fiscal Agent Agreement.

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**Reassessment**

**WHEREAS**, on July 1, 2014, the City Council of the City of Benicia, California, pursuant to the provisions of the Refunding Act of 1984 for 1915 Improvement Act Bonds (the "Act"), adopted its Resolution of Intention No. \_\_\_\_\_ for the reassessment of the real property within the boundaries of the City's Benicia McAllister Area Assessment District (the "District") and for the refunding of the outstanding principal amount of certain improvement bonds (the "Prior Bonds") of the City, all as more particularly described in the Resolution of Intention, and to pay the costs of said reassessment and refunding; and

**WHEREAS**, said Resolution directed the undersigned to make and file a report presenting a schedule setting forth the unpaid principal and interest of the Prior Bonds to be refunded and the total amounts thereof, the total estimated principal amount of the reassessment and of the refunding bonds and the maximum interest thereon, together with an estimate of the cost of the reassessment and of issuing the refunding bonds, the auditor's record showing the schedule of principal installments and interest on all unpaid original assessments and the total amounts thereof, the estimated amount of each reassessment, identified by reassessment number corresponding to the reassessment number of the reassessment diagram, together with a proposed auditor's record for the reassessment, and a reassessment diagram showing the assessment district and the boundaries and dimensions of the subdivisions of land within the district, and with each subdivision, including each separate condominium interest as defined in Section 783 of the California Civil Code, given a separate number upon the diagram, to which Resolution reference is hereby made for further particulars.

**NOW THEREFORE**, the undersigned, by virtue of the power vested in me under the Act and the order of the City Council of said City, hereby makes the following reassessment to cover the portion of the estimated cost of said reassessment and refunding and the costs and expenses incidental thereto to be paid by the District.

The amount to be paid for said reassessment and refunding, together with the expenses incidental thereto, and the reassessment balance are set forth herein.

And I do hereby reassess and apportion said portion of said total amount of the cost and expenses of said reassessment and refunding upon the several lots, pieces or parcels or portions of lots or subdivisions of land liable therefore and specifically benefited thereby, and hereinafter numbered to correspond with the numbers upon the attached diagram, upon each, severally and respectively, in accordance with the special benefits to be received by such subdivisions, respectively, from the reassessment and refunding, and more particularly set forth in the list hereto attached and by reference made a part hereof.

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

As required by the Act, a diagram is hereto attached showing the assessment district and also the boundaries and dimensions of the respective subdivisions of land within said assessment district as the same existed at the time of the passage of the Resolution of Intention, each of which subdivisions having been given a separate number upon said diagram.

Said reassessment is made upon the several subdivisions of land within said assessment district in proportion to the scheduled unpaid principal amount of the original assessment recorded as a lien against each said subdivision of land. Delinquent assessment installments are not included. The diagram and reassessment numbers appearing herein are the diagram numbers appearing on said diagram, to which reference is hereby made for a more particular description of said property.

Each subdivision of land reassessed is described in the reassessment list by reference to its parcel number as shown on the Assessor's Maps of the County of Solano for the fiscal year 2014/15 and includes all of such parcels. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of said County.

Notice is hereby given that refunding bonds to represent unpaid reassessments and bearing interest at the rate of not to exceed twelve percent (12%) per annum, or such higher rate of interest as may be authorized by applicable law at the time of sale of such bonds, will be issued thereunder in the manner provided by Chapter 3 of Division 11.5 of the Streets and Highways Code, the Refunding Act of 1984 for 1915 Improvement Act Bonds, and the last installment of such refunding bonds shall mature on September 2, 2030.

Dated as of July 1, 2014

Willdan Financial Services

By \_\_\_\_\_  
Mark Risco  
President and CEO

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**Cost Estimate**

In addition to the estimated costs of the refunding shown on the following pages, the annual levy of the reassessments will include amounts permitted pursuant to Sections 8682.1 and 8682 of the Improvement Bond Act of 1915, as set forth in Division 10 (commencing with Section 8500) of the California Streets and Highways Code, for payment of the City's expenses associated with the collection of the reassessments and payment of the annual costs associated with bond registration and other duties of the fiscal agent with respect to the refunding bonds.

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**  
**Prior Bonds Debt Service Schedule**

Date	Principal	Rate	Interest	Periodic Debt Service	Annual Debt Service
09/02/14			\$0.00	\$0.00	-
03/02/15			244,177.50	244,177.50	
09/02/15	\$ 345,000.00	5.000	244,177.50	589,177.50	\$833,355.00
03/02/16			235,552.50	235,552.50	
09/02/16	360,000.00	5.100	235,552.50	595,552.50	831,105.00
03/02/17			226,372.50	226,372.50	
09/02/17	380,000.00	5.200	226,372.50	606,372.50	832,745.00
03/02/18			216,492.50	216,492.50	
09/02/18	400,000.00	5.300	216,492.50	616,492.50	832,985.00
03/02/19			205,892.50	205,892.50	
09/02/19	420,000.00	5.400	205,892.50	625,892.50	831,785.00
03/02/20			194,552.50	194,552.50	
09/02/20	360,000.00	5.900	194,552.50	554,552.50	749,105.00
03/02/21			183,932.50	183,932.50	
09/02/21	475,000.00	5.900	183,932.50	658,932.50	842,865.00
03/02/22			169,920.00	169,920.00	
09/02/22	500,000.00	5.900	169,920.00	669,920.00	839,840.00
03/02/23			155,170.00	155,170.00	
09/02/23	530,000.00	5.900	155,170.00	685,170.00	840,340.00
03/02/24			139,535.00	139,535.00	
09/02/24	565,000.00	5.900	139,535.00	704,535.00	844,070.00
03/02/25			122,867.50	122,867.50	
09/02/25	600,000.00	5.900	122,867.50	722,867.50	845,735.00
03/02/26			105,167.50	105,167.50	
09/02/26	635,000.00	5.900	105,167.50	740,167.50	845,335.00
03/02/27			86,435.00	86,435.00	
09/02/27	670,000.00	5.900	86,435.00	756,435.00	842,870.00
03/02/28			66,670.00	66,670.00	
09/02/28	710,000.00	5.900	66,670.00	776,670.00	843,340.00
03/02/29			45,725.00	45,725.00	
09/02/29	755,000.00	5.900	45,725.00	800,725.00	846,450.00
03/02/30			23,452.50	23,452.50	
09/02/30	795,000.00	5.900	23,452.50	818,452.50	841,905.00
<b>Totals:</b>	<b>\$ 8,500,000.00</b>		<b>\$4,843,830.00</b>	<b>\$13,343,830.00</b>	<b>\$ 13,343,830.00</b>

Note: For purposes of comparing the refunding bonds debt service with the prior bonds debt service, the 2014 debt service payments were not included.

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**  
**Refunding Bonds Debt Service Schedule**

Date	Principal	Estimated Rate	Interest	Less:		
				Debt Service Contribution	Periodic Debt Service	Annual Debt Service
09/02/14			\$40,705.21	(\$40,705.21)		
03/02/15			159,281.25	-	\$159,281.25	
09/02/15	\$ 395,000.00	3.750	159,281.25	-	554,281.25	\$713,562.50
03/02/16			151,875.00	-	151,875.00	
09/02/16	410,000.00	3.750	151,875.00	-	561,875.00	713,750.00
03/02/17			144,187.50	-	144,187.50	
09/02/17	425,000.00	3.750	144,187.50	-	569,187.50	713,375.00
03/02/18			136,218.75	-	136,218.75	
09/02/18	445,000.00	3.750	136,218.75	-	581,218.75	717,437.50
03/02/19			127,875.00	-	127,875.00	
09/02/19	460,000.00	3.750	127,875.00	-	587,875.00	715,750.00
03/02/20			119,250.00	-	119,250.00	
09/02/20	395,000.00	3.750	119,250.00	-	514,250.00	633,500.00
03/02/21			111,843.75	-	111,843.75	
09/02/21	500,000.00	3.750	111,843.75	-	611,843.75	723,687.50
03/02/22			102,468.75	-	102,468.75	
09/02/22	520,000.00	3.750	102,468.75	-	622,468.75	724,937.50
03/02/23			92,718.75	-	92,718.75	
09/02/23	540,000.00	3.750	92,718.75	-	632,718.75	725,437.50
03/02/24			82,593.75	-	82,593.75	
09/02/24	560,000.00	3.750	82,593.75	-	642,593.75	725,187.50
03/02/25			72,093.75	-	72,093.75	
09/02/25	585,000.00	3.750	72,093.75	-	657,093.75	729,187.50
03/02/26			61,125.00	-	61,125.00	
09/02/26	605,000.00	3.750	61,125.00	-	666,125.00	727,250.00
03/02/27			49,781.25	-	49,781.25	
09/02/27	625,000.00	3.750	49,781.25	-	674,781.25	724,562.50
03/02/28			38,062.50	-	38,062.50	
09/02/28	650,000.00	3.750	38,062.50	-	688,062.50	726,125.00
03/02/29			25,875.00	-	25,875.00	
09/02/29	680,000.00	3.750	25,875.00	-	705,875.00	731,750.00
03/02/30			13,125.00	-	13,125.00	
09/02/30	700,000.00	3.750	13,125.00	-	713,125.00	726,250.00
<b>Totals:</b>	<b>\$ 8,495,000.00</b>		<b>\$3,017,455.21</b>	<b>(\$40,705.21)</b>	<b>\$ 11,471,750.00</b>	<b>\$ 11,471,750.00</b>

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**  
**Reassessment Roll**

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminarily Approved	As Confirmed
0083-511-010	1	\$25,282.74	
0083-511-020	2	25,282.74	
0083-511-030	3	25,282.74	
0083-511-040	4	25,282.74	
0083-511-050	5	25,282.74	
0083-511-060	6	25,282.74	
0083-511-070	7	25,282.74	
0083-511-080	8	25,282.74	
0083-511-090	9	25,282.74	
0083-511-100	10	25,282.74	
0083-511-110	11	25,282.74	
0083-511-120	12	25,282.74	
0083-511-130	13	25,282.74	
0083-511-140	14	25,282.74	
0083-511-150	15	25,282.74	
0083-511-160	16	25,282.74	
0083-511-170	17	25,282.74	
0083-511-180	18	25,282.74	
0083-511-190	19	25,282.74	
0083-511-200	20	25,282.74	
0083-511-210	21	25,282.74	
0083-512-010	22	25,282.74	
0083-512-020	23	25,282.74	
0083-512-030	24	25,282.74	
0083-512-040	25	25,282.74	
0083-512-050	26	25,282.74	
0083-521-010	27	25,282.74	
0083-521-020	28	25,282.74	
0083-521-030	29	25,282.74	
0083-521-040	30	25,282.74	
0083-521-050	31	25,282.74	
0083-521-060	32	25,282.74	
0083-521-070	33	25,282.74	
0083-521-080	34	25,282.74	
0083-521-090	35	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminarily Approved	As Confirmed
0083-521-100	36	25,282.74	
0083-521-110	37	25,282.74	
0083-521-120	38	25,282.74	
0083-521-130	39	25,282.74	
0083-521-140	40	25,282.74	
0083-521-150	41	25,282.74	
0083-522-010	42	25,282.74	
0083-522-020	43	25,282.74	
0083-522-030	44	25,282.74	
0083-522-040	45	25,282.74	
0083-522-050	46	25,282.74	
0083-522-060	47	25,282.74	
0083-522-070	48	25,282.74	
0083-531-010	49	25,282.74	
0083-531-020	50	25,282.74	
0083-531-030	51	25,282.74	
0083-531-040	52	25,282.74	
0083-531-050	53	25,282.74	
0083-531-060	54	25,282.74	
0083-531-070	55	25,282.74	
0083-531-080	56	25,282.74	
0083-531-090	57	25,282.74	
0083-531-100	58	25,282.74	
0083-531-110	59	25,282.74	
0083-531-120	60	25,282.74	
0083-531-130	61	25,282.74	
0083-531-140	62	25,282.74	
0083-531-150	63	25,282.74	
0083-531-160	64	25,282.74	
0083-532-010	65	25,282.74	
0083-532-020	66	25,282.74	
0083-532-030	67	25,282.74	
0083-533-010	68	25,282.74	
0083-533-020	69	25,282.74	
0083-533-030	70	25,282.74	
0083-533-040	71	25,282.74	
0083-533-050	72	25,282.74	
0083-533-060	73	25,282.74	
0083-533-070	74	25,282.74	
0083-533-080	75	25,282.74	
0083-533-090	76	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminarily Approved	As Confirmed
0083-533-100	77	25,282.74	
0083-533-110	78	25,282.74	
0083-533-120	79	25,282.74	
0083-533-130	80	25,282.74	
0083-533-140	81	25,282.74	
0083-533-150	82	25,282.74	
0083-533-160	83	25,282.74	
0083-533-170	84	25,282.74	
0083-534-010	85	25,282.74	
0083-534-020	86	25,282.74	
0083-534-030	87	25,282.74	
0083-534-040	88	25,282.74	
0083-534-050	89	25,282.74	
0083-534-060	90	25,282.74	
0083-534-070	91	25,282.74	
0083-534-080	92	25,282.74	
0083-534-090	93	25,282.74	
0083-534-100	94	25,282.74	
0083-534-110	95	25,282.74	
0083-534-120	96	25,282.74	
0083-534-130	97	25,282.74	
0083-534-140	98	25,282.74	
0083-534-150	99	25,282.74	
0083-534-160	100	25,282.74	
0083-534-170	101	25,282.74	
0083-534-180	102	25,282.74	
0083-535-010	103	25,282.74	
0083-535-020	104	25,282.74	
0083-535-030	105	25,282.74	
0083-535-040	106	25,282.74	
0083-535-050	107	25,282.74	
0083-535-060	108	25,282.74	
0083-535-070	109	25,282.74	
0083-535-080	110	25,282.74	
0083-535-090	111	25,282.74	
0083-535-100	112	25,282.74	
0083-541-020	113	25,282.74	
0083-541-030	114	25,282.74	
0083-541-040	115	25,282.74	
0083-541-050	116	25,282.74	
0083-541-060	117	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminarily Approved	As Confirmed
0083-541-070	118	25,282.74	
0083-541-080	119	25,282.74	
0083-541-090	120	25,282.74	
0083-541-100	121	25,282.74	
0083-541-110	122	25,282.74	
0083-541-120	123	25,282.74	
0083-541-130	124	25,282.74	
0083-541-140	125	25,282.74	
0083-541-150	126	25,282.74	
0083-541-160	127	25,282.74	
0083-541-170	128	25,282.74	
0083-541-180	129	25,282.74	
0083-541-190	130	25,282.74	
0083-541-200	131	25,282.74	
0083-541-210	132	25,282.74	
0083-541-220	133	25,282.74	
0083-541-230	134	25,282.74	
0083-541-240	135	25,282.74	
0083-541-250	136	25,282.74	
0083-541-260	137	25,282.74	
0083-541-270	138	25,282.74	
0083-541-280	139	25,282.74	
0083-541-290	140	25,282.74	
0083-541-300	141	25,282.74	
0083-541-310	142	25,282.74	
0083-541-320	143	25,282.74	
0083-541-330	144	25,282.74	
0083-542-010	145	25,282.74	
0083-542-020	146	25,282.74	
0083-542-030	147	25,282.74	
0083-542-040	148	25,282.74	
0083-542-050	149	25,282.74	
0083-542-060	150	25,282.74	
0083-542-070	151	25,282.74	
0083-542-080	152	25,282.74	
0083-542-090	153	25,282.74	
0083-542-100	154	25,282.74	
0083-542-110	155	25,282.74	
0083-542-120	156	25,282.74	
0083-543-010	157	25,282.74	
0083-543-020	158	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminary Approved	As Confirmed
0083-543-030	159	25,282.74	
0083-551-010	160	25,282.74	
0083-551-020	161	25,282.74	
0083-551-030	162	25,282.74	
0083-551-040	163	25,282.74	
0083-551-050	164	25,282.74	
0083-551-060	165	25,282.74	
0083-551-070	166	25,282.74	
0083-551-080	167	25,282.74	
0083-551-090	168	25,282.74	
0083-551-100	169	25,282.74	
0083-551-110	170	25,282.74	
0083-551-120	171	25,282.74	
0083-551-130	172	25,282.74	
0083-551-140	173	25,282.74	
0083-551-150	174	25,282.74	
0083-552-010	175	25,282.74	
0083-552-020	176	25,282.74	
0083-552-030	177	25,282.74	
0083-552-040	178	25,282.74	
0083-552-050	179	25,282.74	
0083-552-060	180	25,282.74	
0083-553-010	181	25,282.74	
0083-553-020	182	25,282.74	
0083-553-030	183	25,282.74	
0083-553-040	184	25,282.74	
0083-553-050	185	25,282.74	
0083-553-060	186	25,282.74	
0083-553-070	187	25,282.74	
0083-553-080	188	25,282.74	
0083-553-090	189	25,282.74	
0083-553-100	190	25,282.74	
0083-553-110	191	25,282.74	
0083-553-120	192	25,282.74	
0083-553-130	193	25,282.74	
0083-553-140	194	25,282.74	
0083-553-150	195	25,282.74	
0083-553-160	196	25,282.74	
0083-553-170	197	25,282.74	
0083-553-180	198	25,282.74	
0083-553-190	199	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminary Approved	As Confirmed
0083-561-010	200	25,282.74	
0083-561-020	201	25,282.74	
0083-561-030	202	25,282.74	
0083-561-040	203	25,282.74	
0083-561-050	204	25,282.74	
0083-561-060	205	25,282.74	
0083-561-070	206	25,282.74	
0083-561-080	207	25,282.74	
0083-561-090	208	25,282.74	
0083-561-100	209	25,282.74	
0083-561-110	210	25,282.74	
0083-561-120	211	25,282.74	
0083-561-130	212	25,282.74	
0083-561-140	213	25,282.74	
0083-561-150	214	25,282.74	
0083-561-160	215	25,282.74	
0083-561-170	216	25,282.74	
0083-561-180	217	25,282.74	
0083-561-190	218	25,282.74	
0083-561-200	219	25,282.74	
0083-561-210	220	25,282.74	
0083-561-220	221	25,282.74	
0083-561-230	222	25,282.74	
0083-561-240	223	25,282.74	
0083-561-250	224	25,282.74	
0083-561-260	225	25,282.74	
0083-561-270	226	25,282.74	
0083-561-280	227	25,282.74	
0083-561-290	228	25,282.74	
0083-561-300	229	25,282.74	
0083-561-310	230	25,282.74	
0083-561-320	231	25,282.74	
0083-561-330	232	25,282.74	
0083-561-340	233	25,282.74	
0083-561-350	234	25,282.74	
0083-561-360	235	25,282.74	
0083-562-010	236	25,282.74	
0083-562-020	237	25,282.74	
0083-562-030	238	25,282.74	
0083-562-040	239	25,282.74	
0083-562-050	240	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminarily Approved	As Confirmed
0083-562-060	241	25,282.74	
0083-562-070	242	25,282.74	
0083-562-080	243	25,282.74	
0083-562-090	244	25,282.74	
0083-571-010	245	25,282.74	
0083-571-020	246	25,282.74	
0083-571-030	247	25,282.74	
0083-571-040	248	25,282.74	
0083-571-050	249	25,282.74	
0083-571-060	250	25,282.74	
0083-571-070	251	25,282.74	
0083-571-080	252	25,282.74	
0083-571-090	253	25,282.74	
0083-571-100	254	25,282.74	
0083-571-110	255	25,282.74	
0083-571-120	256	25,282.74	
0083-571-130	257	25,282.74	
0083-571-140	258	25,282.74	
0083-571-150	259	25,282.74	
0083-571-160	260	25,282.74	
0083-571-170	261	25,282.74	
0083-571-180	262	25,282.74	
0083-571-190	263	25,282.74	
0083-571-200	264	25,282.74	
0083-571-210	265	25,282.74	
0083-571-220	266	25,282.74	
0083-571-230	267	25,282.74	
0083-572-010	268	25,282.74	
0083-572-020	269	25,282.74	
0083-572-030	270	25,282.74	
0083-572-040	271	25,282.74	
0083-572-050	272	25,282.74	
0083-572-060	273	25,282.74	
0083-572-070	274	25,282.74	
0083-572-080	275	25,282.74	
0083-572-090	276	25,282.74	
0083-572-100	277	25,282.74	
0083-572-110	278	25,282.74	
0083-572-120	279	25,282.74	
0083-572-130	280	25,282.74	
0083-572-140	281	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminarily Approved	As Confirmed
0083-572-150	282	25,282.74	
0083-572-160	283	25,282.74	
0083-572-170	284	25,282.74	
0083-572-180	285	25,282.74	
0083-572-190	286	25,282.74	
0083-572-200	287	25,282.74	
0083-572-210	288	25,282.74	
0083-572-220	289	25,282.74	
0083-572-230	290	25,282.74	
0083-572-240	291	25,282.74	
0083-581-010	292	25,282.74	
0083-581-020	293	25,282.74	
0083-581-030	294	25,282.74	
0083-581-040	295	25,282.74	
0083-581-050	296	25,282.74	
0083-581-060	297	25,282.74	
0083-581-070	298	25,282.74	
0083-581-080	299	25,282.74	
0083-581-090	300	25,282.74	
0083-581-100	301	25,282.74	
0083-581-110	302	25,282.74	
0083-581-120	303	25,282.74	
0083-581-130	304	25,282.74	
0083-581-140	305	25,282.74	
0083-581-150	306	25,282.74	
0083-581-160	307	25,282.74	
0083-581-170	308	25,282.74	
0083-581-180	309	25,282.74	
0083-581-190	310	25,282.74	
0083-581-200	311	25,282.74	
0083-581-210	312	25,282.74	
0083-581-220	313	25,282.74	
0083-581-230	314	25,282.74	
0083-581-240	315	25,282.74	
0083-581-250	316	25,282.74	
0083-581-260	317	25,282.74	
0083-581-270	318	25,282.74	
0083-582-010	319	25,282.74	
0083-582-020	320	25,282.74	
0083-582-030	321	25,282.74	
0083-582-040	322	25,282.74	

Column 1	Column 2	Column 3	Column 4
Assessor's Parcel Number	Reassessment ID	As Preliminarily Approved	As Confirmed
0083-582-050	323	25,282.74	
0083-582-060	324	25,282.74	
0083-582-070	325	25,282.74	
0083-582-080	326	25,282.74	
0083-582-090	327	25,282.74	
0083-582-100	328	25,282.74	
0083-582-110	329	25,282.74	
0083-582-120	330	25,282.74	
0083-582-130	331	25,282.74	
0083-582-140	332	25,282.74	
0083-582-150	333	25,282.74	
0083-582-160	334	25,282.74	
0083-582-170	335	25,282.74	
0083-582-180	336	25,282.74	
<b>Total:</b>		<b>\$8,495,000.00</b>	

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**Comparison of the Auditor's Records for the Existing Bonds**  
**and the 2014 Refunding Bonds**

The following compares the Prior Bonds amortization schedule with the refunding bonds amortization schedule of each parcel in the District.

City of Benicia Limited Obligation Refunding Bonds Benicia McAllister Area Assessment District Individual Parcels								
Assessor's Parcel Number: All parcels			Remaining Assessment Lien:			\$25,297.62		
Reassessment Number: All reassessment numbers			Estimated Reassessment:			<u>25,282.74</u>		
Property Owner: All property owners			Estimated Lien Savings:			\$14.88		
AUDITOR'S RECORDS FOR ORIGINAL BONDS				AUDITOR'S RECORDS FOR REFUNDING BONDS				
Year	Principal	Interest	Total	Year	Principal	Interest	Total	Savings
2015	\$1,026.79	\$1,453.44	\$2,480.22	2015	\$1,175.60	\$948.10	\$2,123.70	\$356.53
2016	1,071.43	1,402.10	2,473.53	2016	1,220.24	904.02	2,124.26	349.27
2017	1,130.95	1,347.46	2,478.41	2017	1,264.88	858.26	2,123.14	355.27
2018	1,190.48	1,288.65	2,479.12	2018	1,324.40	810.83	2,135.23	343.89
2019	1,250.00	1,225.55	2,475.55	2019	1,369.05	761.16	2,130.21	345.34
2020	1,071.43	1,158.05	2,229.48	2020	1,175.60	709.82	1,885.42	344.06
2021	1,413.69	1,094.84	2,508.53	2021	1,488.10	665.74	2,153.83	354.69
2022	1,488.10	1,011.43	2,499.52	2022	1,547.62	609.93	2,157.55	341.97
2023	1,577.38	923.63	2,501.01	2023	1,607.14	551.90	2,159.04	341.97
2024	1,681.55	830.57	2,512.11	2024	1,666.67	491.63	2,158.30	353.82
2025	1,785.71	731.35	2,517.07	2025	1,741.07	429.13	2,170.20	346.87
2026	1,889.88	626.00	2,515.88	2026	1,800.60	363.84	2,164.43	351.44
2027	1,994.05	514.49	2,508.54	2027	1,860.12	296.32	2,156.44	352.11
2028	2,113.10	396.85	2,509.94	2028	1,934.52	226.56	2,161.09	348.85
2029	2,247.02	272.17	2,519.20	2029	2,023.81	154.02	2,177.83	341.37
2030	2,366.07	139.60	2,505.67	2030	2,083.33	78.13	2,161.46	344.21
<b>Totals:</b>	<b>\$25,297.62</b>	<b>\$14,416.16</b>	<b>\$39,713.78</b>	<b>Totals:</b>	<b>\$25,282.74</b>	<b>\$8,859.38</b>	<b>\$34,142.12</b>	<b>\$5,571.66</b>

The following compares the Prior Bonds with the refunding bonds amortization schedule for all parcels combined.

City of Benicia								
Limited Obligation Refunding Bonds								
Benicia McAllister Area Assessment District								
Summary								
						Remaining Assessment Lien:	\$8,500,000.00	
						Estimated Reassessment:	8,495,000.00	
						Estimated Lien Savings:	<u>\$5,000.00</u>	
AUDITOR'S RECORDS FOR ORIGINAL BONDS				AUDITOR'S RECORDS FOR REFUNDING BONDS				
Year	Principal	Interest	Total	Year	Principal	Interest	Total	Savings
2015	\$345,000.00	\$488,355.00	\$833,355.00	2015	\$395,000.00	\$318,562.50	\$713,562.50	\$119,792.50
2016	360,000.00	471,105.00	831,105.00	2016	410,000.00	303,750.00	713,750.00	117,355.00
2017	380,000.00	452,745.00	832,745.00	2017	425,000.00	288,375.00	713,375.00	119,370.00
2018	400,000.00	432,985.00	832,985.00	2018	445,000.00	272,437.50	717,437.50	115,547.50
2019	420,000.00	411,785.00	831,785.00	2019	460,000.00	255,750.00	715,750.00	116,035.00
2020	360,000.00	389,105.00	749,105.00	2020	395,000.00	238,500.00	633,500.00	115,605.00
2021	475,000.00	367,865.00	842,865.00	2021	500,000.00	223,687.50	723,687.50	119,177.50
2022	500,000.00	339,840.00	839,840.00	2022	520,000.00	204,937.50	724,937.50	114,902.50
2023	530,000.00	310,340.00	840,340.00	2023	540,000.00	185,437.50	725,437.50	114,902.50
2024	565,000.00	279,070.00	844,070.00	2024	560,000.00	165,187.50	725,187.50	118,882.50
2025	600,000.00	245,735.00	845,735.00	2025	585,000.00	144,187.50	729,187.50	116,547.50
2026	635,000.00	210,335.00	845,335.00	2026	605,000.00	122,250.00	727,250.00	118,085.00
2027	670,000.00	172,870.00	842,870.00	2027	625,000.00	99,562.50	724,562.50	118,307.50
2028	710,000.00	133,340.00	843,340.00	2028	650,000.00	76,125.00	726,125.00	117,215.00
2029	755,000.00	91,450.00	846,450.00	2029	680,000.00	51,750.00	731,750.00	114,700.00
2030	795,000.00	46,905.00	841,905.00	2030	700,000.00	26,250.00	726,250.00	115,655.00
<b>Totals:</b>	<b>\$8,500,000.00</b>	<b>\$4,843,830.00</b>	<b>\$13,343,830.00</b>	<b>Totals:</b>	<b>\$8,495,000.00</b>	<b>\$2,976,750.00</b>	<b>\$11,471,750.00</b>	<b>\$1,872,080.00</b>

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**Method of Reassessment**

Each reassessment has been computed as a proration of the existing unpaid individual assessments, to the total existing assessment, and this does not include delinquent assessments.

The following conditions necessary for compliance under the Act have been satisfied:

- 1.) That each estimated annual installment of principal and interest on the reassessment is less than the corresponding annual installment of principal and interest on the portion of the original assessment being superseded, by the same percentage for all subdivisions of land within the assessment district.
- 2.) That the number of years to maturity of all refunding bonds is not more than the number of years to the last maturity of the prior bonds being refunded.
- 3.) That the principal amount of the reassessment on each subdivision of land within the assessment district is less than the unpaid principal amount of the portion of the original assessment being superseded and supplanted by the same percentage for each subdivision of land within the assessment district.

**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**Certifications**

1. I, the City Clerk of the City of Benicia, California, hereby certify that the foregoing Reassessment with the Reassessment Diagram thereto attached, was filed with me on \_\_\_\_\_.

\_\_\_\_\_  
City Clerk, City of Benicia

2. I, the City Clerk of the City of Benicia, California, hereby certify that the Reassessments set forth in Column 3 of the Reassessment Roll, with Reassessment Diagram attached, were approved and confirmed by the City Council of said City on \_\_\_\_\_.

\_\_\_\_\_  
City Clerk, City of Benicia

3. I, the City Engineer of the City of Benicia, County of Solano, California, hereby certify that this Reassessment, together with the Reassessment Diagram thereto attached, was recorded in my office on \_\_\_\_\_.

\_\_\_\_\_  
City Engineer (Superintendent of  
Streets)

4. A Notice of Reassessment was recorded and the Reassessment Diagram was filed in the office of the County Recorder of the County of Solano, California, on \_\_\_\_\_.

\_\_\_\_\_  
City Clerk, City of Benicia

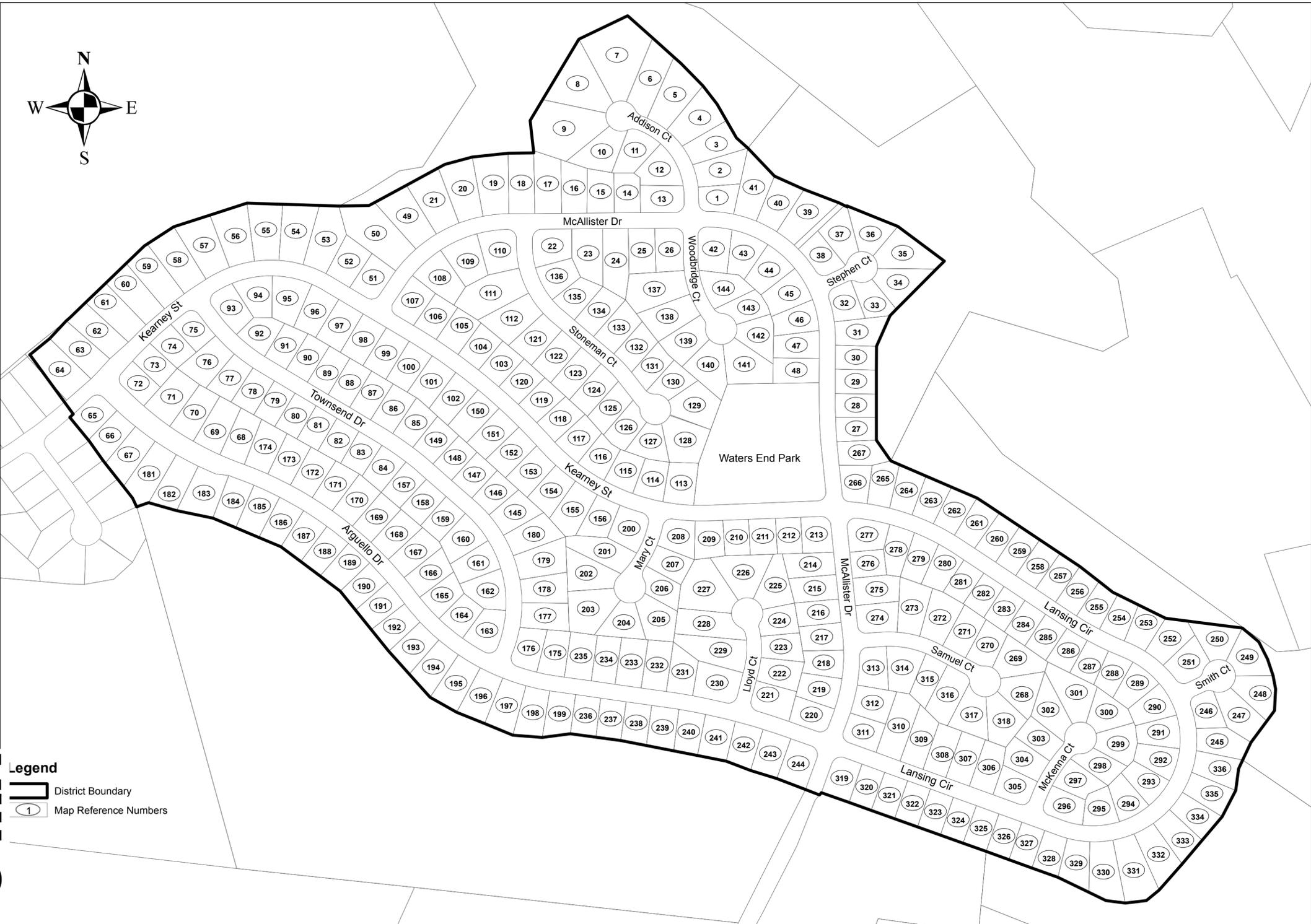
**CITY OF BENICIA**  
**Benicia McAllister Area Assessment District**  
**(Reassessment and Refunding of 2014)**

**Reassessment Diagram**

The reassessment diagram is on file with the City Clerk and a copy of which is attached hereto.

# BENICIA MCALLISTER AREA ASSESSMENT DISTRICT (REASSESSMENT AND REFUNDING OF 2014)

CITY OF BENICIA  
COUNTY OF SOLANO  
STATE OF CALIFORNIA



FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF BENICIA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014.

CITY CLERK  
CITY OF BENICIA

A REASSESSMENT WAS LEVIED BY THE CITY COUNCIL OF THE CITY OF BENICIA ON THE LOTS, PIECES, AND PARCELS OF LAND SHOWN ON THIS REASSESSMENT DIAGRAM. SAID REASSESSMENT WAS LEVIED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014. SAID REASSESSMENT DIAGRAM AND REASSESSMENT ROLL WERE RECORDED IN THE OFFICE OF THE SUPERINTENDENT OF STREETS OF THE CITY OF BENICIA ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014. REFERENCE IS MADE TO THE REASSESSMENT ROLL RECORDED IN THE OFFICE OF THE SUPERINTENDENT OF STREETS OF SAID CITY FOR THE EXACT AMOUNT OF EACH REASSESSMENT LEVIED AGAINST EACH PARCEL SHOWN ON THE REASSESSMENT DIAGRAM.

CITY CLERK  
CITY OF BENICIA

RECORDED IN THE OFFICE OF THE SUPERINTENDENT OF STREETS, CITY OF BENICIA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014.

SUPERINTENDENT OF STREETS  
CITY OF BENICIA

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014, AT THE HOUR OF \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ OF MAPS OF ASSESSMENT AT PAGE(S) \_\_\_\_\_ AT THE REQUEST OF THE CITY OF BENICIA IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SOLANO, STATE OF CALIFORNIA.

FEE: \_\_\_\_\_ INST. NO.: \_\_\_\_\_  
COUNTY CLERK - RECORDER

BY DEPUTY  
COUNTY RECORDER  
COUNTY OF SOLANO

NOTE:  
THIS REASSESSMENT DIAGRAM IS RECORDED PURSUANT TO THE REFUNDING ACT OF 1984 FOR 1915 IMPROVEMENT ACT BONDS (SECTION 9500 AND FOLLOWING, CALIFORNIA STREETS AND HIGHWAY CODE). THE RECORDING OF THE REASSESSMENTS FROM THESE PROCEEDINGS HAS SUPERSEDED AND SUPPLANTED THE EARLIER ASSESSMENTS FOR THE CITY OF BENICIA MCALLISTER AREA ASSESSMENT DISTRICT, COUNTY OF SOLANO, CALIFORNIA, WHICH BECAME A LIEN BY VIRTUE OF THE RECORDING ON \_\_\_\_\_, IN BOOK \_\_\_\_\_ AND PAGES \_\_\_\_\_ THROUGH \_\_\_\_\_ OF THE MAPS OF ASSESSMENTS IN THE OFFICE OF THE SOLANO COUNTY RECORDER.

FOR PARTICULARS OF THE LINES AND DIMENSIONS OF ASSESSOR'S PARCELS, REFERENCE IS MADE TO THE MAPS OF THE SOLANO COUNTY ASSESSOR, WHICH MAPS SHALL GOVERN FOR ALL DETAILS RELATING THERETO.

VII.C.43

**Legend**  
 District Boundary  
 Map Reference Numbers



**BENICIA MCALLISTER AREA ASSESSMENT DISTRICT  
(REASSESSMENT AND REFUNDING OF 2014)**

CITY OF BENICIA  
COUNTY OF SOLANO  
STATE OF CALIFORNIA

APN	Reassessment ID										
0083-511-010	1	0083-521-030	29	0083-531-090	57	0083-534-010	85	0083-541-020	113	0083-541-300	141
0083-511-020	2	0083-521-040	30	0083-531-100	58	0083-534-020	86	0083-541-030	114	0083-541-310	142
0083-511-030	3	0083-521-050	31	0083-531-110	59	0083-534-030	87	0083-541-040	115	0083-541-320	143
0083-511-040	4	0083-521-060	32	0083-531-120	60	0083-534-040	88	0083-541-050	116	0083-541-330	144
0083-511-050	5	0083-521-070	33	0083-531-130	61	0083-534-050	89	0083-541-060	117	0083-542-010	145
0083-511-060	6	0083-521-080	34	0083-531-140	62	0083-534-060	90	0083-541-070	118	0083-542-020	146
0083-511-070	7	0083-521-090	35	0083-531-150	63	0083-534-070	91	0083-541-080	119	0083-542-030	147
0083-511-080	8	0083-521-100	36	0083-531-160	64	0083-534-080	92	0083-541-090	120	0083-542-040	148
0083-511-090	9	0083-521-110	37	0083-532-010	65	0083-534-090	93	0083-541-100	121	0083-542-050	149
0083-511-100	10	0083-521-120	38	0083-532-020	66	0083-534-100	94	0083-541-110	122	0083-542-060	150
0083-511-110	11	0083-521-130	39	0083-532-030	67	0083-534-110	95	0083-541-120	123	0083-542-070	151
0083-511-120	12	0083-521-140	40	0083-533-010	68	0083-534-120	96	0083-541-130	124	0083-542-080	152
0083-511-130	13	0083-521-150	41	0083-533-020	69	0083-534-130	97	0083-541-140	125	0083-542-090	153
0083-511-140	14	0083-522-010	42	0083-533-030	70	0083-534-140	98	0083-541-150	126	0083-542-100	154
0083-511-150	15	0083-522-020	43	0083-533-040	71	0083-534-150	99	0083-541-160	127	0083-542-110	155
0083-511-160	16	0083-522-030	44	0083-533-050	72	0083-534-160	100	0083-541-170	128	0083-542-120	156
0083-511-170	17	0083-522-040	45	0083-533-060	73	0083-534-170	101	0083-541-180	129	0083-543-010	157
0083-511-180	18	0083-522-050	46	0083-533-070	74	0083-534-180	102	0083-541-190	130	0083-543-020	158
0083-511-190	19	0083-522-060	47	0083-533-080	75	0083-535-010	103	0083-541-200	131	0083-543-030	159
0083-511-200	20	0083-522-070	48	0083-533-090	76	0083-535-020	104	0083-541-210	132	0083-551-010	160
0083-511-210	21	0083-531-010	49	0083-533-100	77	0083-535-030	105	0083-541-220	133	0083-551-020	161
0083-512-010	22	0083-531-020	50	0083-533-110	78	0083-535-040	106	0083-541-230	134	0083-551-030	162
0083-512-020	23	0083-531-030	51	0083-533-120	79	0083-535-050	107	0083-541-240	135	0083-551-040	163
0083-512-030	24	0083-531-040	52	0083-533-130	80	0083-535-060	108	0083-541-250	136	0083-551-050	164
0083-512-040	25	0083-531-050	53	0083-533-140	81	0083-535-070	109	0083-541-260	137	0083-551-060	165
0083-512-050	26	0083-531-060	54	0083-533-150	82	0083-535-080	110	0083-541-270	138	0083-551-070	166
0083-521-010	27	0083-531-070	55	0083-533-160	83	0083-535-090	111	0083-541-280	139	0083-551-080	167
0083-521-020	28	0083-531-080	56	0083-533-170	84	0083-535-100	112	0083-541-290	140	0083-551-090	168

APN	Reassessment ID										
0083-551-100	169	0083-553-170	197	0083-561-260	225	0083-571-090	253	0083-572-140	281	0083-581-180	309
0083-551-110	170	0083-553-180	198	0083-561-270	226	0083-571-100	254	0083-572-150	282	0083-581-190	310
0083-551-120	171	0083-553-190	199	0083-561-280	227	0083-571-110	255	0083-572-160	283	0083-581-200	311
0083-551-130	172	0083-561-010	200	0083-561-290	228	0083-571-120	256	0083-572-170	284	0083-581-210	312
0083-551-140	173	0083-561-020	201	0083-561-300	229	0083-571-130	257	0083-572-180	285	0083-581-220	313
0083-551-150	174	0083-561-030	202	0083-561-310	230	0083-571-140	258	0083-572-190	286	0083-581-230	314
0083-552-010	175	0083-561-040	203	0083-561-320	231	0083-571-150	259	0083-572-200	287	0083-581-240	315
0083-552-020	176	0083-561-050	204	0083-561-330	232	0083-571-160	260	0083-572-210	288	0083-581-250	316
0083-552-030	177	0083-561-060	205	0083-561-340	233	0083-571-170	261	0083-572-220	289	0083-581-260	317
0083-552-040	178	0083-561-070	206	0083-561-350	234	0083-571-180	262	0083-572-230	290	0083-581-270	318
0083-552-050	179	0083-561-080	207	0083-561-360	235	0083-571-190	263	0083-572-240	291	0083-582-010	319
0083-552-060	180	0083-561-090	208	0083-562-010	236	0083-571-200	264	0083-581-010	292	0083-582-020	320
0083-553-010	181	0083-561-100	209	0083-562-020	237	0083-571-210	265	0083-581-020	293	0083-582-030	321
0083-553-020	182	0083-561-110	210	0083-562-030	238	0083-571-220	266	0083-581-030	294	0083-582-040	322
0083-553-030	183	0083-561-120	211	0083-562-040	239	0083-571-230	267	0083-581-040	295	0083-582-050	323
0083-553-040	184	0083-561-130	212	0083-562-050	240	0083-572-010	268	0083-581-050	296	0083-582-060	324
0083-553-050	185	0083-561-140	213	0083-562-060	241	0083-572-020	269	0083-581-060	297	0083-582-070	325
0083-553-060	186	0083-561-150	214	0083-562-070	242	0083-572-030	270	0083-581-070	298	0083-582-080	326
0083-553-070	187	0083-561-160	215	0083-562-080	243	0083-572-040	271	0083-581-080	299	0083-582-090	327
0083-553-080	188	0083-561-170	216	0083-562-090	244	0083-572-050	272	0083-581-090	300	0083-582-100	328
0083-553-090	189	0083-561-180	217	0083-571-010	245	0083-572-060	273	0083-581-100	301	0083-582-110	329
0083-553-100	190	0083-561-190	218	0083-571-020	246	0083-572-070	274	0083-581-110	302	0083-582-120	330
0083-553-110	191	0083-561-200	219	0083-571-030	247	0083-572-080	275	0083-581-120	303	0083-582-130	331
0083-553-120	192	0083-561-210	220	0083-571-040	248	0083-572-090	276	0083-581-130	304	0083-582-140	332
0083-553-130	193	0083-561-220	221	0083-571-050	249	0083-572-100	277	0083-581-140	305	0083-582-150	333
0083-553-140	194	0083-561-230	222	0083-571-060	250	0083-572-110	278	0083-581-150	306	0083-582-160	334
0083-553-150	195	0083-561-240	223	0083-571-070	251	0083-572-120	279	0083-581-160	307	0083-582-170	335
0083-553-160	196	0083-561-250	224	0083-571-080	252	0083-572-130	280	0083-581-170	308	0083-582-180	336

---

---

FISCAL AGENT AGREEMENT

by and between the

CITY OF BENICIA, CALIFORNIA

and

U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent

dated as of July 1, 2014

relating to:

\$ \_\_\_\_\_

Limited Obligation Refunding Bonds

City of Benicia

Benicia McAllister Area Assessment District

(Reassessment and Refunding of 2014)

TABLE OF CONTENTS

ARTICLE I

STATUTORY AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement .....3  
Section 1.02. Agreement for Benefit of Bondholders .....3  
Section 1.03. Definitions .....3

ARTICLE II

THE BONDS

Section 2.01. Principal Amount; Designation .....9  
Section 2.02. Terms of Bonds .....9  
Section 2.03. Redemption .....10  
Section 2.04. Refunding of Bonds .....12  
Section 2.05. Form of Bonds .....13  
Section 2.06. Execution of Bonds .....13  
Section 2.07. Transfer of Bonds .....13  
Section 2.08. Exchange of Bonds .....14  
Section 2.09. Bond Register .....14  
Section 2.10. Temporary Bonds .....15  
Section 2.11. Bonds Mutilated, Lost, Destroyed or Stolen .....15  
Section 2.12. Limited Obligation .....15  
Section 2.13. Non Acceleration .....16  
Section 2.14. Non Additional Bonds .....16

ARTICLE III

ISSUANCE OF BONDS

Section 3.01. Issuance and Delivery of Bonds .....17  
Section 3.02. Application of Proceeds of Sale of Bonds .....17  
Section 3.03. Validity of Bonds .....17  
Section 3.04. Pledge of Reassessments .....17

ARTICLE IV

ESTABLISHMENT OF FUNDS

Section 4.01. Redemption Fund .....19  
Section 4.02. Escrow Fund .....20  
Section 4.03. Costs of Issuance Fund .....20  
Section 4.04. Reserve Fund .....21  
Section 4.05. Administrative Expense Fund .....22  
Section 4.06. Payment Fund .....22

ARTICLE V

COVENANTS OF THE CITY

Section 5.01. Collection of Reassessments .....24  
Section 5.02. Foreclosure .....25  
Section 5.03. Punctual Payment .....25  
Section 5.04. Extension of Time for Payment .....26  
Section 5.05. Against Encumbrance .....26  
Section 5.06. Books and Accounts .....26

Section 5.07.	Protection of Security and Rights of Owners.....	26
Section 5.08.	Yield of the Bonds .....	26
Section 5.09.	Further Assurances .....	26
Section 5.10.	Private Activity Bond Limitation .....	26
Section 5.11.	Private Loan Financing Limitation .....	27
Section 5.12.	Federal Guarantee Prohibition .....	27
Section 5.13.	No Arbitrage.....	27
Section 5.14.	Maintenance of Tax-Exemption .....	27
Section 5.15.	Rebate Requirement.....	27
Section 5.16.	Continuing Disclosure Obligation .....	27

ARTICLE VI

INVESTMENTS; DISPOSITION OF INVESTMENT PROCEEDS; LIABILITY OF THE CITY

Section 6.01.	Deposit and Investment of Moneys in Funds.....	28
Section 6.02.	Acquisition, Disposition and Valuation of Investments .....	29
Section 6.03.	Liability of City .....	29
Section 6.04.	Employment of Agents by City.....	30

ARTICLE VII

THE FISCAL AGENT

Section 7.01.	Appointment of Fiscal Agent.....	31
Section 7.02.	Liability of Fiscal Agent.....	32
Section 7.03.	Information; Books and Accounts.....	33
Section 7.04.	Notice to Fiscal Agent.....	34
Section 7.05.	Compensation; Indemnification .....	34

ARTICLE VIII

MODIFICATION OR AMENDMENT OF THIS AGREEMENT

Section 8.01.	Amendments Permitted .....	35
Section 8.02.	Owners' Meetings .....	35
Section 8.03.	Procedure for Amendment with Written Consent of Owners.....	36
Section 8.04.	Disqualified Bonds.....	37
Section 8.05.	Effect of Supplemental Agreement.....	37
Section 8.06.	Endorsement or Replacement of Bonds Issued After Amendment.....	37
Section 8.07.	Amendatory Endorsement of Bonds .....	37

ARTICLE IX

MISCELLANEOUS

Section 9.01.	Benefits of Agreement Limited to Parties.....	38
Section 9.02.	Successor is Deemed Included in All Reference to Predecessor.....	38
Section 9.03.	Discharge of Agreement.....	38
Section 9.04.	Execution of Documents and Proof of Ownership by Owners .....	39
Section 9.05.	Waiver of Personal Liability .....	39
Section 9.06.	Notices to and Demand on City and Fiscal Agent.....	39
Section 9.07.	Partial Invalidity .....	40
Section 9.08.	Unclaimed Moneys.....	40
Section 9.09.	Applicable Law .....	40
Section 9.10.	Conflict with Bond Law or the Act.....	40
Section 9.11.	Conclusive Evidence of Regularity .....	40
Section 9.12.	Payment on Business Day .....	40
Section 9.13.	Counterparts.....	41

EXHIBIT A      FORM OF BOND  
EXHIBIT B      FORM OF INVESTOR'S LETTER

FISCAL AGENT AGREEMENT

THIS FISCAL AGENT AGREEMENT (the "Agreement"), dated as of July 1, 2014, is by and between the CITY OF BENICIA, CALIFORNIA, a general law city and municipal corporation organized and existing under the laws of the State of California (the "City"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as fiscal agent (the "Fiscal Agent").

RECITALS:

WHEREAS, on August 3, 2004, the City Council of the City adopted Resolution No. 04-115 relating to the acquisition and construction of certain public improvements and the refunding of certain assessment bonds under and pursuant to the provisions of the Municipal Improvement Act of 1913, constituting Division 12 of the California Streets and Highways Code (the "Formation Act") in and for the City's Benicia Mailer Area Assessment District (the "Assessment District"), and by said resolution the City Council of the City provided that serial and/or term bonds would be issued for the Assessment District pursuant to the provisions of the Improvement Bond Act of 1915, constituting Division 10 of the California Streets and Highways Code (the "Bond Law"); and

WHEREAS, under the Formation Act and the Bond Law, on October 5, 2004, the City Council of the City adopted Resolution No. 04-157 and, pursuant to said Resolution, bonds designated "Limited Obligation Improvement Bonds, City of Benicia, Benicia Mailer Area Assessment District" in the principal amount of \$11,700,000 (the "Prior Bonds") were issued on November 3, 2004 upon the security of assessments levied in the Assessment District a portion of which Prior Bonds are now outstanding; and

WHEREAS, on July 1, 2014, the City Council of the City adopted Resolution No. \_\_\_\_\_ (the "Resolution of Intention") which, among other matters, commenced proceedings for the levy of reassessments and issuance of refunding bonds pursuant to the Refunding Act of 1984 for 1915 Improvement Act Bonds, constituting Division 11.5 (commencing with Section 9500) of the California Streets and Highways Code (the "Act") for the Assessment District and, by the Resolution of Intention, the City Council provided that serial and/or term limited obligation improvement bonds of the City (the "Bonds") would be issued for the Assessment District pursuant to the provisions of the Bond Law and the Act, and reference to the Resolution of Intention and proceedings had thereunder is hereby expressly made for further particulars; and

WHEREAS, the purpose of the proceedings under the Resolution of Intention was to provide for the reassessment of the property in the Assessment District and for the refunding of the Prior Bonds in advance of the scheduled maturities thereof with the proceeds of the Bonds; and

WHEREAS, there is now on file in the office of the Interim Finance Director of the City a list of the reassessments remaining unpaid for the Assessment District; and

WHEREAS, on July 1, 2014, the City Council of the City adopted Resolution No. \_\_\_\_\_ (the "Resolution of Issuance") authorizing, among other matters, the issuance of the Bonds

designated "Limited Obligation Refunding Bonds, City of Benicia, Benicia M cA llister A rea A sse ss m e n t D i s t r i c t (R e a s s e s s m e n t a n d R e f u n d i n g o f 2 0 1 4)", the net proceeds of which are to be used to refund the Prior Bonds; and

W H E R E A S, it is in the public interest and for the benefit of the C ity and the ow n e r s o f the Bonds that the C ity enter into this A g r e e m e n t to provide for the issuance of the Bonds, the disburse m e n t o f p r o c e e d s o f the Bonds, the disposition of the reassessm e n t s securing the Bonds and the adm i n i s t r a t i o n a n d p a y m e n t o f the Bonds; and

W H E R E A S, the C ity has determ i n e d that all things necessary to cause the Bonds, w h e n authenticated by the Fiscal A g e n t and issued as provided in the Bond Law , the Resolution of Issuance and this A g r e e m e n t, to be legal, valid and binding and lim i t e d obligations of the C ity in accordance w i t h their term s, and all things necessary to cause the creation, authorization, execution and delivery of this A g r e e m e n t and the creation, authorization, execution and issuance of the Bonds, subject to the term s hereof, have in all respects been du ly authorized .

A G R E E M E N T :

N O W , T H E R E F O R E, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknow l e d g e d, the parties hereto do hereby agree as follow s:

## ARTICLE I

### STATUTORY AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement. This Agreement is entered into pursuant to the provisions of the Act, the Bond Law and the Resolution of Issuance.

Section 1.02. Agreement for Benefit of Bondowners. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the registered owners of the Bonds. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Agreement. The Fiscal Agent may become the owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Fiscal Agent.

Section 1.03. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.03 shall, for all purposes of this Agreement, of any Supplemental Agreement (as herein defined), and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to Articles, Sections and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words herein, "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

"Act" means the Refunding Act of 1984 for 1915 Improvement Act Bonds, as amended, constituting Division 11.5 of the California Streets and Highways Code.

"Administrative Expense Fund" means the fund by that name established and administered under Section 4.05 hereof.

"Agreement" means this Fiscal Agent Agreement, as it may be amended or supplemented from time to time by any Supplemental Agreement executed pursuant to the provisions hereof.

"Approved Institutional Buyer" means (a) a "qualified institutional buyer" as defined in Rule 144A promulgated under the United States Securities Act of 1933, as in effect on the date hereof (the "Securities Act"); (b) an "accredited investor" as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act; (c) an entity that is directly or indirectly wholly owned or controlled by the purchaser/bondholder representative (being a financial institution described in (a) above); (d) an entity all of the investors in which are described in (a), (b) or (c) above; or (e) a custodian or trustee for a party described in (a), (b) or (c) above.

"Assessment District" means the area within the City designated "City of Benicia, Benicia McAllister Area Assessment District" formed by the City under the Municipal Improvement Act of 1913.

"Auditor" means the auditor/controller or tax collector of the County, or such other official of the County who is responsible for preparing real property tax bills.

"Authorized Investments" means any of the following, to the extent acquired at Fair Market Value: (i) securities in which the City may legally invest funds subject to its control, pursuant to Article 1, commencing with section 53600, of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code of the State, as now or hereafter amended, (ii) shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the California Government code which invests exclusively in investments permitted by section 53635 of Title 5, Division 2, Chapter 4 of the California Government Code, as it may be amended, including but not limited to the California Arbitrage Management Program (CAM P); (iii) the Local Agency Investment Fund of the State, created pursuant to Section 156429.1 of the California Government Code, (iv) Federal Securities, (v) investments in a money market fund (including any funds of the Fiscal Agent or its affiliates) registered with the Securities and Exchange Commission rated in the highest rating category (without regard to plus (+) or minus (-) designations) by Moody's Investors Service or Standard and Poor's Ratings Group, and (vi) any other investment permitted under the City's then current investment policy.

"Authorized Officer" means the City Manager, the City Finance Director (including any Interim Finance Director), the City Treasurer, the City Clerk, or any other officer or employee of the City authorized by the City Council of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

"Bond" or "Bonds" means the "Limited Obligation Refunding Bonds, City of Benicia, Benicia Mailer Area Assessment District (Reassessment and Refunding of 2014)," at any time Outstanding under this Agreement or any Supplemental Agreement.

"Bond Counsel" means (i) Quint & Thimmig LLP, or (ii) any attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond Date" means the dated date of the Bonds, which is the Closing Date.

"Bond Law" means the Improvement Bond Act of 1915, as amended, constituting Division 10 of the California Streets and Highways Code.

"Bond Register" means the books maintained by the Fiscal Agent pursuant to Section 2.09 for the registration and transfer of ownership of the Bonds.

"Bond Year" means the twelve-month period beginning on September 3 in each year and ending on September 2 in the following year except that the first Bond Year shall begin on the Closing Date and end on September 2, 2014.

"Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Fiscal Agent has its Principal Office are authorized or obligated by law or executive order to be closed.

"City" means the City of Benicia, California, and any successor thereto.

"City Attorney" means the City Attorney of the City or other designated counsel to the City with respect to the Assessment District.

"Closing Date" means July \_\_, 2014, being the date upon which there is a physical delivery of the Bonds in exchange for the amount representing the purchase price of the Bonds by the Original Purchaser.

"Code" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable, temporary and final regulations promulgated under the Code.

"Costs of Issuance" means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of the Bonds and the refunding of the Prior Bonds, which items of expense shall include, but not be limited to, printing costs for the Bonds, costs of reproducing and binding documents, closing costs, filing and recording fees, fees and expenses of the City, initial fees and charges of the Fiscal Agent including its first annual administration fee, expenses incurred by the City in connection with the Assessment District, the issuance of the Bonds and the refunding of the Prior Bonds, Bond (purchaser's) discount, legal fees and charges, including those of bond counsel, financial advisor fees and expenses, charges for execution, transportation and safekeeping of the Bonds and other costs, charges and fees in connection with the foregoing.

"Costs of Issuance Fund" means the fund by that name established and administered under Section 4.03 hereof.

"County" means the County of Solano, California.

"Debt Service" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any mandatory sinking fund payment under Section 2.03(A)(ii)).

"Escrow Agreement" means the Escrow Agreement, dated as of July 1, 2014, by and between the City and the Escrow Bank by which the Escrow Fund is administered.

"Escrow Bank" means U.S. Bank National Association, in its capacity as the Escrow Bank under the Escrow Agreement.

"Escrow Fund" means the fund by that name established pursuant to Section 2 of the Escrow Agreement to provide for the refunding of the Prior Bonds, as referred to in Section 4.02 hereof.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code)

and, otherwise, the term "fair market value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the code, or (iii) the investment is a United States Treasury Security - State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

"Federal Securities" means any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State of California for funds held by the Fiscal Agent: (i) direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the United States Department of the Treasury) and obligations, the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America, including, without limitation, such of the foregoing which are commonly referred to as stripped obligations and coupons; or (ii) any of the following obligations of the following agencies of the United States of America: (a) direct obligations of the Export-Import Bank, (b) certificates of beneficial ownership issued by the Farmers Home Administration, (c) participation certificates issued by the General Services Administration (d) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, (e) project notes issued by the United States Department of Housing and Urban Development, and (f) public housing notes and bonds guaranteed by the United States of America.

"Finance Director" means the Finance Director (including any Interim Finance Director) of the City, or the person acting as chief financial officer of the City, or designee of either thereof.

"Fiscal Agent" means the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01 hereof.

"Fiscal Year" means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

"Formation Act" means the Municipal Improvement Act of 1913, as amended, being Division 12 of the California Streets and Highways Code.

"Interest Payment Dates" means March 2 and September 2 of each year, commencing September 2, 2014.

"List of Unpaid Reassessments" means the list on file with the Finance Director showing the amounts of the Reassessments upon each of the parcels in the Assessment District.

"Maximum Annual Debt Service" means the largest Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

"Officer's Certificate" means a written certificate of the City signed by an Authorized Officer of the City.

"Original Purchaser" means \_\_\_\_\_, as the first purchaser of the Bonds from the City.

"Outstanding" when used as of any particular time with reference to Bonds, means, subject to the provisions of Section 8.04, all Bonds except: (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation; (ii) Bonds paid or deemed to have been paid within the meaning of Section 9.03; (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City pursuant to this Agreement or any Supplemental Agreement.

"Owner" or "Bond Owner" means the registered owner of any Outstanding Bond as shown on the Bond Register.

"Payment Fund" means the fund by that name established and administered under Section 4.06 hereof.

"Principal Office" means the principal office of the Fiscal Agent in San Francisco, California, located at such address as shall be specified in a written notice by the Fiscal Agent to the City under Section 9.06 hereof or such other office designated for payment, transfer or exchange of bonds.

"Prior Bonds" means the Limited Obligation Improvement Bonds, City of Benicia, Benicia McAllister Area Assessment District, Series 2004-B, issued pursuant to the Prior Resolution.

"Prior Resolution" means Resolution No. 04-157 adopted by the City Council of the City on October 5, 2004, pursuant to which the Prior Bonds were issued, as in effect on the Closing Date.

"Prior Resolution of Intention" means Resolution No. 04-115 adopted by the City Council of the City on August 3, 2004, declaring its intention to form the Assessment District.

"Project" means (i) the improvements authorized to be financed by the City under the proceedings pursuant to the Prior Resolution of Intention, and any resolution of the City Council of the City in furtherance thereof or which amended or superseded the Prior Resolution of Intention; and (ii) the portion of the improvements financed by the Limited Obligation Improvement Bonds, East Second Street/Rose Drive Assessment District, Series A of special benefit to the property in the Assessment District, as represented by the fixed lien assessments referred to in Exhibit A to the Prior Resolution of Intention.

"Reassessments" means the unpaid reassessments levied within the Assessment District by the City under the proceedings taken pursuant to the Act and the Resolution of Intention.

"Record Date" means the fifteenth (15th) day of the month immediately preceding the month in which the applicable Interest Payment Date occurs.

"Redemption Fund" means the fund by that name established and administered under Section 4.01 hereof.

"Reserve Fund" means the fund by that name established and administered under Section 4.04 hereof.

"Reserve Requirement" means, as of any date of calculation, an amount equal to the least of (i) the then Maximum Annual Debt Service, (ii) one hundred twenty-five percent (125%) of the then average annual Debt Service, or (iii) ten percent (10%) of the initial principal amount of the Bonds. The Reserve Requirement as of the Closing Date is \$\_\_\_\_\_.

"Resolution of Intention" means Resolution No. \_\_\_\_\_, adopted by the City Council of the City on June 17, 2014.

"Resolution of Issuance" means Resolution No. \_\_\_\_\_, adopted by the City Council of the City on July 1, 2014, authorizing, among other matters, the issuance of the Bonds.

"State" means the State of California.

"Supplemental Agreement" means an agreement the execution of which is authorized by a resolution which has been duly adopted by the Council of the City under the Bond Law and which agreement is amendatory of or supplemental to this Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

ARTICLE II

THE BONDS

Section 2.01. Principal Amount; Designation. Bonds in the aggregate principal amount of \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) are hereby authorized to be issued by the City under and subject to the terms of the Resolution of Issuance and this Agreement, the Act, the Bond Law and other applicable laws of the State of California. The Bonds shall be designated "Limited Obligation Refunding Bonds, City of Benicia, Benicia Mailer Area Assessment District (Reassessment and Refunding of 2014)," and shall be secured by the Reassessments, and moneys in the Redemption Fund, the Payment Fund and the Reserve Fund.

Section 2.02. Terms of Bonds.

(A) Denominations. The Bonds shall be issued as fully registered Bonds without coupons in the denomination of \$1,000 or any integral multiple of \$1.00 in excess thereof. Bonds shall be lettered and numbered in a customary manner as determined by the Fiscal Agent.

(B) Date of Bonds. The Bonds shall be dated the Bond Date.

(C) [intentionally omitted]

(D) Maturity. The Bonds shall mature and become payable on September 2, 2030, and shall bear interest at a rate of \_\_\_\_% per annum.

(E) Interest. The Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless (i) it is authenticated and registered on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Bond Date; provided, however, that if at the time of authentication of a Bond, interest is in default thereon, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(F) Method of Payment. Interest on the Bonds (including the final interest payment upon maturity or earlier redemption) is payable by check of the Fiscal Agent mailed by first class mail on an Interest Payment Date to the registered Owner thereof at such registered Owner's address as it appears on the Bond Register maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to

the Fiscal Agent prior to the applicable Record Date, with any such instructions to remain in effect until rescinded in writing by the respective Owner. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent (subject to the provisions of Section 2.02 (G) below). All Bonds paid by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon request of the City, issue a certificate of destruction of such Bonds to the City.

(G) Provisions Applicable While the Bonds Owned by Original Purchaser. Notwithstanding anything herein to the contrary, so long as the Bonds are owned by the Original Purchaser, (i) the Fiscal Agent shall pay principal of and interest and redemption premium on the Bonds when due by wire transfer in immediately available funds to the Original Purchaser in accordance with such wire transfer instructions as shall be filed by the Original Purchaser with the Fiscal Agent from time to time, (ii) payments of principal on the Bonds pursuant to the mandatory sinking payment redemption provisions of Section 2.03 (A) (ii) shall be made without the requirement for presentation and surrender of the Bonds by the Original Purchaser, provided that principal of the Bond which is payable at maturity shall be made only upon presentation and surrender of the Bond at the office of the Fiscal Agent as provided in Section 2.03 (C), and (iii) the Fiscal Agent shall not be required to give notice to the Original Purchaser of the sinking fund payments of the Bonds under Section 2.03 (C).

Section 2.03. Redemption.

(A) (i) Each Bond, or any portion of the principal thereof in the principal amount of \$1,000 or any integral multiple of \$1.00 in excess thereof, may be redeemed and paid in advance of maturity from prepayments of Reassessments, on any Interest Payment Date in any year by giving at least 30 days notice to the Owner thereof in accordance with the Bond Law and by paying the principal amount thereof, plus interest to the date of redemption, unless sooner surrendered, in which event said interest will be paid to the date of payment, together with a redemption premium of \_\_\_\_\_ percent (\_\_\_%) of the principal amount of Bonds being redeemed.

The Finance Director shall notify the Fiscal Agent of Bonds to be called for redemption upon prepayment of Reassessments in amounts sufficient therefor. The Fiscal Agent shall select Bonds for retirement by lot.

(ii) The Bonds are subject to mandatory redemption in part by lot, on September 2 in each year commencing September 2, 2015 from sinking fund payments made by the City from the Redemption Fund pursuant to Section 4.01, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on September 2 in the respective years, all as set forth in the following table; provided, however, if some but not all of the Bonds have been redeemed pursuant to subsection (i) above, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$1.00 as determined by the Finance Director, notice of which determination shall be given by the Finance Director to the Fiscal Agent.

Sinking Fund Payment Date <u>(September 2)</u>	Sinking Fund Payment Amount [to come]
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030 (maturity)	

Redemption of Bonds pursuant to this Section 2.03(A)(ii) shall be subject to the provisions of clause (ii) of Section 2.02(G).

(iii) The provisions of Part 11.1 of the Bond Law are applicable to the advance payment of Reassessments and to the calling of the Bonds. The Finance Director shall advise the Fiscal Agent in writing of such provisions to the extent not specified herein.

(B) Notice to Fiscal Agent. The Finance Director shall give the Fiscal Agent written notice of the aggregate amount of Bonds to be redeemed pursuant to subsection (A)(i) not less than forty-five (45) days prior to the applicable redemption date, or such lesser number of days as the Fiscal Agent may allow.

(C) Redemption Procedure by Fiscal Agent. Except as otherwise provided in Section 2.02(G), the Fiscal Agent shall cause notice of redemption to be mailed to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Bond Register in the Principal Office of the Fiscal Agent; provided that, in any event, the failure to so mail or of any person or entity to receive any such notice, or any defect in any notice of redemption, shall not affect the validity of the proceeding for the redemption of such Bonds.

Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, shall designate the Bond numbers of the Bonds to be redeemed by giving the individual Bond number of each Bond to be redeemed or shall state that all Bonds between two stated Bond numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption, shall state as to any Bond called in part the principal amount thereof to be redeemed, and shall require that such Bonds be then

surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such Bonds, or the portion thereof to be redeemed, will not accrue from and after the redemption date.

Notwithstanding the foregoing, any notice of redemption of Bonds under Section 2.03(A)(i) may state that the redemption is conditioned upon receipt by the Fiscal Agent of sufficient moneys to redeem the Bonds on the anticipated redemption date, and that the redemption shall not occur if by no later than the scheduled redemption date sufficient moneys to redeem the Bonds have not been deposited with the Fiscal Agent. In the event that the Fiscal Agent does not receive sufficient funds by the scheduled redemption date to so redeem the Bonds to be redeemed, the Fiscal Agent shall send written notice to the owners of the Bonds to effect that the redemption did not occur as anticipated, and the Bonds for which notice of redemption was given shall remain Outstanding for all purposes of this Agreement.

Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at the expense of the City, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

(D) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Redemption Fund on the date fixed for redemption, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in such notice.

All Bonds redeemed by the Fiscal Agent pursuant to this Section 2.03 shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon request of the City, issue a certificate of destruction of such Bonds to the City.

(E) Purchase of Bonds in Lieu of Redemption. In lieu of redemption under Section 2.03(A), moneys in the Redemption Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium which would otherwise be due if such Bonds were to be redeemed in accordance with this Agreement.

Section 2.04. Refunding of Bonds. The Bonds may be refunded by the City pursuant to Divisions 11 or 11.5 of the Bond Law upon the conditions as set forth in appropriate proceedings therefor. This Section shall not apply to or in any manner limit advancement of the maturity of any of the Bonds as provided in Parts 8, 9, 11, or 11.1 of the Bond Law, nor shall this Section 2.04 apply to or in any manner limit the redemption and payment of any Bond

pursuant to subsequent proceedings providing for the payment of amounts to eliminate previously imposed fixed lien assessments, including the Reassessments.

Section 2.05. Form of Bonds. The Bonds, the form of Fiscal Agent's certificate of authentication and the form of assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution of Issuance and the Bond Law.

Section 2.06. Execution of Bonds. The Bonds shall be executed on behalf of the City by the facsimile signatures of its Treasurer and its City Clerk who are in office on the Closing Date. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the owner. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City. Only such Bonds as shall bear thereon a certificate of authentication and registration in substantially the form set forth in Exhibit A, executed and dated by the Fiscal Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such certificate of authentication and registration of the Fiscal Agent shall be conclusive evidence that the Bonds registered hereunder have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Agreement.

Section 2.07. Transfer of Bonds. (A) Any Bond may, in accordance with the terms of this Section 2.07, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.09 hereof by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form approved by the Fiscal Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount, maturity and interest rate in the denominations herein authorized.

(B) The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such transfer any tax or other governmental charge required to be paid with respect to such transfer.

(C) The following shall apply to all transfers of the Bonds after the initial delivery of the Bonds, unless otherwise agreed by the City in its sole and absolute discretion by written notice of an Authorized Officer to the Fiscal Agent:

(i) the Bonds, in the form attached hereto as Exhibit A, shall be physical certificated instruments, and shall not be held in a book-entry only system or registered through The Depository Trust Company;

(ii) the Bonds shall only be transferred to an entity that is an Approved Institutional Buyer;

(iii) the Bonds may only be transferred in denominations of \$1,000 or any integral multiple of \$1.00 in excess thereof;

(iv) each transferee of the Bonds shall deliver to the City and the Fiscal Agent an investor's letter in the form of Exhibit B hereto; and

(iv) the Fiscal Agent shall not authenticate or register a Bond unless the conditions of this Section 2.07 (C) have been satisfied.

Nothing contained in this Section 2.07 (C) shall be deemed to limit or otherwise restrict the sale by any Owner of any participation interests in any Bond; provided that (a) such Owner is selling interests to one or more Approved Institutional Buyers; or (b) (I) such Owner shall remain the Owner of record of such Bond following the sale of any such participation interest; (II) the purchaser of the participation interest is an Approved Institutional Buyer; and (III) each purchaser of a participation interest shall provide an investor letter to the City and the Fiscal Agent substantially in the form of Exhibit B hereto.

(D) In no case shall a purchaser of a participation interest in any Bond be deemed to be an Owner of the Bonds, or have any rights of an Owner of the Bonds.

(E) Neither the City nor the Fiscal Agent shall be required to make a transfer of Bonds on or after a Record Date and before the next Interest Payment Date, or of any Bond after it has been called for redemption.

Section 2.08. Exchange of Bonds. Bonds may be exchanged at the Principal Office of the Fiscal Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such exchange shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such exchange any tax or other governmental charge required to be paid with respect to such exchange. Neither the City nor the Fiscal Agent shall be required to be make such exchange of Bonds after a Record Date and before the next Interest Payment Date, or of any Bond after it has been called for redemption.

Section 2.09. Bond Register. The Fiscal Agent will keep or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds, called the Bond Register, which books shall show the series number, date, maturity amount, rate of interest and last registered Owner of each Bond and shall at all times be open to inspection by the City during regular business hours on any Business Day, upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided.

The City and the Fiscal Agent will treat the Owner of any Bond whose name appears on the Bond Register as the absolute Owner of such Bond for any and all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Bond owner as it appears in the Bond Register for any and all purposes.

Section 2.10. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City and authenticated by the Fiscal Agent upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary bonds shall be entitled to the same benefits under to this Agreement as definitive bonds authenticated and delivered hereunder.

Section 2.11. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the City, at the expense of the Owner of said Bond, shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent who shall, upon request of the City, deliver a certificate of destruction thereof to the City. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Fiscal Agent and, if such evidence be satisfactory to the Fiscal Agent and indemnity for the City and the Fiscal Agent satisfactory to the Fiscal Agent shall be given, the City, at the expense of the Owner, shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Bond delivered under this Section 2.11 and of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued pursuant to this Agreement.

Section 2.12. Limited Obligation. All obligations of the City under this Agreement and the Bonds shall not be general obligations of the City, but shall be limited obligations, payable solely from the Reassessments and the funds pledged therefore hereunder. Neither the faith and credit of the City nor of the State of California or any political subdivision thereof is pledged to the payment of the Bonds. The City hereby determines under Section 8769 of the Bond Law that it will not be obligated to advance available surplus funds from the City treasury to cure any deficiency in the Redemption Fund. The Bonds are payable solely from and secured solely by the Reassessments and the amounts in the Redemption Fund, the Reserve Fund and the Payment Fund.

Section 2.13. No Acceleration. The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section 2.13 shall in any way prohibit the prepayment or redemption of Bonds under Section 2.03 hereof, or the defeasance of the Bonds and discharge of this Agreement under Section 9.03 hereof.

Section 2.14. No Additional Bonds. The City shall not issue or incur any indebtedness payable from the Reassessments or the amounts in the Redemption Fund (including the Prepayment Account therein), the Payment Fund or the Reserve Fund established under this Agreement.

ARTICLE III

ISSUANCE OF BONDS

Section 3.01. Issuance and Delivery of Bonds. At any time after the execution of this Agreement, the City may issue the Bonds in the aggregate principal amount set forth in Section 2.01 hereof and deliver the Bonds to the Original Purchaser. Pursuant to the Resolution of Issuance, the Authorized Officers of the City are authorized and directed to deliver any and all documents and instruments necessary to cause the issuance of the Bonds in accordance with the provisions of the Act, the Bond Law, the Resolution of Issuance and this Agreement, and to do and cause to be done any and all acts and things necessary or convenient for delivery of the Bonds to the Original Purchaser and the disposition of the proceeds thereof as provided herein.

Section 3.02. Application of Proceeds of Sale of Bonds. The proceeds of the purchase of the Bonds by the Original Purchaser (being \$ \_\_\_\_\_) shall be paid to the Fiscal Agent, who shall forthwith deposit and remit, as applicable, such proceeds on the Closing Date as follows: (A) deposit \$ \_\_\_\_\_ to the Costs of Issuance Fund; (B) remit to the City, for deposit by the City in the Reserve Fund, \$ \_\_\_\_\_ (being an amount equal to the Reserve Requirement as of the Closing Date); (C) remit to the City, for deposit by the City in the Redemption Fund, \$ \_\_\_\_\_ (being an amount equal to the interest due on the Bonds on September 2, 2014); and (D) remit \$ \_\_\_\_\_ to the Escrow Bank, for deposit by the Escrow Bank in the Escrow Fund.

In addition to the foregoing, on the Closing Date the City shall transfer or cause to be transferred the following amounts for the following purposes:

(A) all amounts on deposit in the redemption fund and the prepayment account therein created under the Prior Resolution (being \$ \_\_\_\_\_) shall be transferred to the Escrow Bank for deposit by the Escrow Bank in the Escrow Fund; and

(B) all amounts on deposit in the reserve fund created under the Prior Resolution (being \$ \_\_\_\_\_) shall be transferred to the Escrow Bank for deposit by the Escrow Bank in the Escrow Fund.

Section 3.03. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the status of the Project or the performance by any person of such person's obligation with respect to the Project.

Section 3.04. Pledge of Reassessments. The Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all of the Reassessments and all moneys deposited in the Redemption Fund, the Reserve Fund and the Payment Fund. The Reassessments and all moneys deposited into said funds (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided herein and in the Bond Law until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose in accordance with Section 9.03.

Amounts in the Costs of Issuance Fund and the Administrative Expense Fund are not pledged to the repayment of the Bonds. The Project financed with proceeds of the Prior Bonds is not in any way pledged to pay the Debt Service on the Bonds. Any proceeds of condemnation or destruction of any portion of the Project are not pledged to pay the Debt Service on the Bonds and are free and clear of any lien or obligation imposed hereunder.

ARTICLE IV

ESTABLISHMENT OF FUNDS

Section 4.01. Redemption Fund.

(A) Establishment of Redemption Fund. The Redemption Fund is hereby established as a separate fund to be held by the Finance Director to the credit of which deposits shall be made as required by clause (C) of the first paragraph of Section 3.02, by Section 4.04 and by Section 5.01, and any other amounts required to be deposited therein by this Agreement or the Bond Law. Moneys in the Redemption Fund shall be held by the Finance Director for the benefit of the City and the Owners of the Bonds, and shall be disbursed for the payment of the principal of and interest and any premium on, the Bonds and as otherwise provided below.

Within the Redemption Fund the Finance Director shall establish a Prepayment Account into which shall be placed the proceeds of the prepayment of any Reassessment which occurs after the Closing Date and which Prepayment Account shall be administered in accordance with the provisions of Section 8767 of the Bond Law.

(B) Disbursements. (i) General. On or before each Interest Payment Date commencing September 2, 2014, the Finance Director shall withdraw from the Redemption Fund and remit to the Fiscal Agent, for deposit by the Fiscal Agent to the Payment Fund, an amount equal to the principal of, and interest and any premium, then due and payable on the Bonds (including any mandatory sinking fund payment due on the Bonds pursuant to Section 2.03(A)(ii)). Prior to each such Interest Payment Date, the Finance Director shall determine if the amounts then on deposit in the Redemption Fund are sufficient to pay the debt service due on the Bonds on such Interest Payment Date. If there are insufficient funds in the Redemption Fund to make the full amount of the transfer to the Fiscal Agent contemplated by the first sentence of this Section 4.01(B)(i) (being the principal, premium, if any, and interest due on the Bonds on the next Interest Payment Date), the Finance Director shall transfer from the Reserve Fund to the Fiscal Agent for deposit by the Fiscal Agent in the Payment Fund an amount necessary to cure such insufficiency (not to exceed the amount then on deposit in the Reserve Fund), and if, on any Interest Payment Date an insufficiency still exists, the available funds shall be applied in the manner provided in the Bond Law. Past due payments of principal and interest shall continue to bear interest at the rate of interest on the Bonds. In the event of any delinquency in payment of the Bonds, the Finance Director shall transfer to the Fiscal Agent, for deposit by the Fiscal Agent to the Payment Fund, the first available moneys in the Redemption Fund arising from the collection of delinquent Reassessments up to the delinquent amount then owing on the Bonds.

(ii) Redemption of Bonds. Funds placed in the Prepayment Account of the Redemption Fund (including amounts transferred thereto pursuant to Section 4.04(D)) shall be disbursed therefrom by the Finance Director to the Fiscal Agent, for deposit by the Fiscal Agent to the Payment Fund, to be used by the Fiscal Agent for the call and

redemption of Bonds on the redemption dates and in the amounts set forth in Section 2.03 (A) (i) hereof.

(iii) Credits and Rebate. Any earnings on investments of funds in the Redemption Fund or the Prepayment Account not required to be disbursed under Section 4.01 (B) (i) and (ii) above, shall be available for the payment of any rebate that may be owed under Section 5.15 hereof.

(iv) Identification to Fiscal Agent of Amounts Transferred to Fiscal Agent. Whenever funds are transferred by the Finance Director to the Fiscal Agent pursuant to the foregoing subsections (i), (ii) and (iii), the Finance Director shall advise the Fiscal Agent as to the proper disposition by the Fiscal Agent of such funds under Section 4.01 (B) (i), (ii) or (iii). In the absence of any such advice, the Fiscal Agent shall assume that amounts so transferred to it on any date are for disposition for the following purposes in the following order of priority: (a) for purposes described in Section 4.01 (B) (i), (b) for purposes described in Section 4.01 (B) (ii), and (c) for purposes described in Section 4.01 (B) (iii).

(C) Investment. Moneys in the Redemption Fund and the Prepayment Account shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from such investment and deposit shall be retained in the Redemption Fund and the Prepayment Account, respectively, to be used for the purposes of such fund and account.

Section 4.02. Escrow Fund. On the Closing Date, the Escrow Fund is to be established and held by the Escrow Bank under the Escrow Agreement. The purpose of the establishment of the Escrow Fund shall be to assure the payment and redemption of all of the Prior Bonds on September 2, 2014, using the proceeds of the Bonds and funds held by the City with respect to the Prior Bonds, all as specified in the Escrow Agreement.

Section 4.03. Costs of Issuance Fund.

(A) Establishment of Costs of Issuance Fund. The Costs of Issuance Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which a deposit shall be made as required by clause (A) of the first paragraph of Section 3.02. Moneys in the Costs of Issuance Fund shall be held by the Fiscal Agent for the benefit of the City and shall be disbursed as provided in subsection (B) of this Section 4.03 for the payment or reimbursement of Costs of Issuance.

(B) Disbursement. Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay Costs of Issuance as set forth in an Officer's Certificate containing respective amounts to be paid to the designated payees and delivered to the Fiscal Agent concurrent with the delivery of the Bonds. The Fiscal Agent shall pay all Costs of Issuance upon receipt of an invoice from any such payee which requests payment in an amount which is less than or equal to the amount set forth with respect to such payee in such Officer's Certificate, or upon receipt of an Officer's Certificate requesting payment of a Cost of Issuance not listed on the initial Officer's Certificate delivered to the Fiscal Agent on the Closing Date. The Fiscal Agent shall maintain the Costs of Issuance Fund for a period of 90 days from the Closing Date or until

otherwise directed by the Finance Director to close the Costs of Issuance Fund, whichever is earlier, and then shall transfer any moneys remaining therein, including any investment earnings thereon, to the Finance Director for deposit by the Finance Director in the Administrative Expense Fund.

(C) Investment. Moneys in the Costs of Issuance Fund shall be invested and deposited in accordance with Section 6.01 hereof. Pending its closing under subsection (B) above, interest earnings and profits resulting from said investment shall be retained by the Fiscal Agent in the Costs of Issuance Fund to be used for the purposes of such fund.

#### Section 4.04. Reserve Fund.

(A) Establishment of Reserve Fund. The Reserve Fund is hereby established as a separate fund to be held by the Finance Director to the credit of which a deposit shall be made as required by clause (B) of the first paragraph of Section 3.02, and deposits shall be made as provided in the Bond Law. Moneys in the Reserve Fund shall be held by the Finance Director for the benefit of the City and the owners of the Bonds as a reserve for the payment of principal of and interest and any premium on, the Bonds. The City shall cause the Reserve Fund to be administered in accordance with Part 16 of the Bond Law; provided that proceeds from redemption or sale of properties with respect to which payment of delinquent Reassessments and interest thereon was made from the Reserve Fund, shall be credited to the Reserve Fund.

(B) Use of Fund. Except as otherwise provided in this Section 4.04 all amounts deposited in the Reserve Fund shall be used and withdrawn by the Finance Director solely for the purpose of making transfers to the Redemption Fund in the event of any deficiency at any time in the Redemption Fund of the amount then required for payment of the principal of, and interest and any premium on, the Bonds or, in accordance with the provisions of this Section 4.04, for the purpose of redeeming Bonds from the Redemption Fund or, in accordance with Section 5.15, for the purpose of paying rebate to the federal government.

(C) Transfer Due to Deficiency in Redemption Fund. Transfers shall be made from the Reserve Fund to the Redemption Fund in the event of a deficiency in the Redemption Fund, with respect to amounts owing on the Bonds in accordance with Section 4.01 (B) (i) hereof.

(D) Payment of Reassessments. Whenever, after the issuance of the Bonds, a Reassessment is prepaid, in whole or in part, as provided in the Bond Law, the Finance Director shall transfer from the Reserve Fund to the Prepayment Account of the Redemption Fund an amount equal to the product of the ratio of the original amount of the Reassessment so paid to the original amount of all unpaid Reassessments, times the then amount, if any, on deposit in the Reserve Fund.

(E) Transfer of Excess of Reserve Requirement. Whenever, on any Interest Payment Date, or on any other date when requested by the Finance Director, the amount in the Reserve Fund exceeds the then Reserve Requirement, the Finance Director shall transfer on or before such Interest Payment Date an amount equal to the excess from the Reserve Fund to the Redemption Fund to be used for purposes of the Redemption Fund and otherwise as provided in Section 8887 of the Bond Law.

(F) Transfer When Balance Exceeds Outstanding Bonds. Whenever the balance in the Reserve Fund is sufficient to retire all the Outstanding Bonds, whether by advance retirement or otherwise, collection of the principal and interest on the Reassessments shall be discontinued. In such event, the Finance Director shall (i) direct the Fiscal Agent to call for redemption, on the next Interest Payment Date for which notice of redemption can timely be given, all of the then Outstanding Bonds, and (ii) transfer from the Reserve Fund to the Fiscal Agent for deposit by the Fiscal Agent in the Payment Fund, on such Interest Payment Date, an amount sufficient together with any amount transferred from the Redemption Fund to the Payment Fund on such Interest Payment Date, to pay the redemption price due on the Bonds on such Interest Payment Date. In the event that the balance in the Reserve Fund on the redemption date exceeds the amount required to retire all of the Outstanding Bonds, the excess shall after payment of amounts due to the Fiscal Agent, be transferred to the City to be used in accordance with Section 8885 of the Bond Law.

Notwithstanding the foregoing, no amounts shall be transferred from the Reserve Fund pursuant to this Section 4.04 (F) until after (i) the calculation of any amounts due to the federal government pursuant to Section 5.15 following payment of the Bonds and withdrawal of any such amount from the Reserve Fund for purposes of making such payment to the federal government, and (ii) payment of any fees and expenses due to the Fiscal Agent.

(G) Investment. Moneys in the Reserve Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained in the Reserve Fund subject to the provisions of Section 4.04 (E) hereof.

#### Section 4.05. Administrative Expense Fund.

(A) Establishment of Administrative Expense Fund. The Administrative Expense Fund is hereby established as a separate fund to be held by the Finance Director, to the credit of which deposits shall be made as required by Section 5.01 (D). Moneys in the Administrative Expense Fund shall be held by the Finance Director for the benefit of the City and shall be disbursed as provided in subsection (B) of this Section for payment or reimbursement of costs of the City in connection with the administration of this Agreement, the Bonds and the Assessment District.

(B) Disbursement. Amounts in the Administrative Fund shall be withdrawn by the Finance Director and paid to the City or its order upon receipt by the Finance Director of an Officer's Certificate stating the amount to be withdrawn, that such amount is to be used to pay a cost of the City to administer this Agreement, the Bonds or the Assessment District, and the nature of such administrative expense.

(C) Investment. Moneys in the Administrative Expense Fund shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained in the Administrative Expense Fund to be used for the purposes of such fund.

#### Section 4.06. Payment Fund.

(A) Establishment of Payment Fund. The Payment Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which deposits shall be made as

required by Section 4.01 (B) and 4.04. M oneys in the Paym ent Fund shall be held by the Fiscal Agent for the benefit of the O w ners of the Bonds, and shall be disbursed as provided in subsection (B) of this Section to pay the principal of, prem ium , if any, and interest due on the Bonds.

(B) Disbursements. (i) Scheduled Debt Service Paym ents. A m ounts transferred to the Fiscal Agent pursuant to Section 4.01 (B) (i) or 4.04 (F) shall be rem itted, on the Interest Paym ent Date w ith respect to w hich the transfer w as m ade, by the Fiscal Agent to the O w ners of the Bonds in respect of the scheduled principal of and interest due on the Bonds on such Interest Paym ent Date.

(ii) Redem ption of Bonds From Prepaym ents of Reassessm ents. A m ounts transferred to the Fiscal Agent pursuant to Section 4.01 (B) (ii) shall be rem itted, on the redem ption date w ith respect to w hich the transfer w as m ade, by the Fiscal Agent to the O w ners of the Bonds to be redeem ed pursuant to Section 2.03 (A ) (i) in respect of the redem ption price due on such Bonds.

(C) No Investm ents. M oneys in the Paym ent Fund shall be held therein by the Fiscal Agent uninvested.

ARTICLE V

COVENANTS OF THE CITY

Section 5.01. Collection of Reassessments. The City shall comply with all requirements of the Act, the Bond Law and this Agreement to assure the timely collection of the Reassessments, including, without limitation, the enforcement of delinquent Reassessments. Any funds received by the City in and for the Assessment District, including, but not limited to, collections of Reassessments upon the secured tax rolls, collections of delinquent Reassessments and penalties thereon, through foreclosure proceedings and the prepayment of Reassessments or portions thereof, shall be immediately deposited into the Redemption Fund. To that end, the following shall apply:

(A) The Reassessments as set forth on the List of Unpaid Reassessments on file with the Finance Director together with the interest thereto, shall be payable in annual series corresponding in number to the number of mandatory sinking fund payments on the Bonds issued. An annual proportion of each Reassessment shall be payable in each year preceding the date of mandatory sinking fund payments on the Bonds issued sufficient to pay the Bonds when due and such proportion of each Reassessment coming due in any year, together with the annual interest thereon, shall be payable in the same manner and at the same time and in the same installments as the general taxes on real property are payable, and become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interests after delinquency as do the general taxes on real property.

All sums received from the collection of the Reassessments and of the interest and penalties thereon shall be transmitted by the City to the Finance Director, to be placed in the Redemption Fund; provided that (i) amounts referred to in Section 5.01(D) below shall be deposited by the City in the Administrative Expense Fund, (ii) any prepayments of Reassessments shall be placed in the Prepayment Account established under and administered in accordance with Section 4.01(A) and 4.01(B)(ii) hereof, and (iii) amounts representing the collection of delinquent Reassessments (whether by foreclosure or otherwise) shall, after deduction of the costs of collection, be transferred to the Redemption Fund only in the amount of any then delinquency in the payment of the principal of or interest on the Bonds and otherwise shall be deposited to the Reserve Fund.

(B) The Finance Director shall, before the final date on which the Auditor will accept the transmission of the Reassessments for the parcels within the Assessment District for inclusion on the next tax roll, prepare or cause to be prepared, and shall transmit to the Auditor, such data as the Auditor requires to include the installments of the Reassessments on the next secured tax roll. The Finance Director is hereby authorized to employ consultants to assist in computing the installments of the Reassessments hereunder and in reconciling Reassessments billed to amounts received as provided in this Section 5.01(C).

(C) The Reassessments shall be payable and be collected in the same manner and at the same time and in the same installments as the general taxes on real property

are payable, and have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general taxes on real property.

(D) In addition to any amounts authorized pursuant to Section 8682 of the Bond Law to be included with the annual amounts of Reassessment installments as aforesaid, the City, pursuant to Section 8682.1 of the Bond Law, may cause to be entered on the Reassessment roll on which taxes will next become due, opposite each lot or parcel of land within the Assessment District in the manner set forth in said Section 8682, each lot's pro rata share of the estimated annual expenses of the City in connection with the administrative duties thereof for the Bonds, including, but not limited to, the costs of registration, authentication, transfer and compliance with the provisions of this Article V, which amounts shall be placed in the Administrative Expense Fund.

(E) Delinquent Reassessments shall be subject to foreclosure pursuant to Section 5.02 hereof.

Section 5.02. Foreclosure. Notwithstanding the following provisions of this Section 5.02, the City shall not be obligated to commence and prosecute an action in the superior court to foreclose the lien of any Reassessment installment which has been billed, but which has not been paid, if the amount in the Reserve Fund is then equal to the Reserve Requirement.

Otherwise, the City hereby covenants with and for the benefit of the Owners of the Bonds that it will order, and cause to be commenced, and thereafter diligently prosecute an action in the superior court to foreclose the lien of any Reassessment or installment thereof which has been billed, but has not been paid, pursuant to and as provided in Sections 8830 and 8835, inclusive of the Bond Law and subject in any event to the conditions specified in this Section 5.02. The City Attorney shall commence, or cause to be commenced, such foreclosure proceedings and is hereby authorized to employ counsel to conduct any such foreclosure proceedings. The following conditions shall apply to the foreclosure proceedings which shall be commenced within 60 days of the making of any of the following determinations, which determinations shall be made not later than August 1 of each Fiscal Year, provided that the City may undertake foreclosure proceedings sooner than specified below:

(A) If the Finance Director determines that there is a delinquency in the payment of a Reassessment or Reassessments totaling \$5,000 or more for any single parcel of land in the Assessment District.

(B) If the Finance Director determines that the total amount of delinquent Reassessments for the prior Fiscal Year for the entire Assessment District, less the total delinquencies under subsection (A) above, exceeds five percent (5%) of the total Reassessments due and payable in the prior Fiscal Year, foreclosure shall be commenced, against each parcel of land in the Assessment District with delinquent Reassessments for the prior Fiscal Year or prior Fiscal Years.

Section 5.03. Punctual Payment. The City will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement, and it will faithfully

observe and perform all of the conditions, covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

Section 5.04. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have so extended or funded.

Section 5.05. Against Encumbrance. The City will not encumber, pledge or place any charge or lien upon any of the unpaid Reassessments or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, except as permitted by this Agreement, the Act or the Bond Law. The City shall not issue any additional bonds secured by the Reassessments or any other assessments authorized under the Prior Resolution.

Section 5.06. Books and Accounts. The City will keep, or cause to be kept, proper books of record and accounts, separate from any other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Redemption Fund, the Administrative Expense Fund, the Reserve Fund, the Improvement Fund and the Reassessments, which records shall be subject to inspection by the Fiscal Agent upon reasonable prior notice on any Business Day.

Section 5.07. Protection of Security and Rights of Owners. The City will preserve and protect the security of the Bonds and the rights of the Owners thereto, and will warrant and defend their rights to such security against all claims and demands of all persons. From and after the delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

Section 5.08. Yield of the Bonds. In determining the yield of the Bonds to comply with Sections 5.13 and 5.15 hereof, the City will take into account the redemption price of the Bonds (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the Closing Date, regarding prepayments of Reassessments and use of prepayments for redemption of the Bonds, without regard to whether or not prepayments are received or Bonds redeemed.

Section 5.09. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

Section 5.10. Private Activity Bond Limitation. The City shall assure that the proceeds of the Prior Bonds and of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of section 141 (b) of the Code.

Section 5.11. Private Loan Financing Limitation. The City shall assure that the proceeds of the Prior Bonds and of the Bonds are not so used as to cause the Bonds to satisfy the private loan financing test of section 141 (c) of the Code.

Section 5.12. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be "federally guaranteed" within the meaning of section 149 (b) of the Code.

Section 5.13. No Arbitrage. The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the Prior Bonds and of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

Section 5.14. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Bonds.

Section 5.15. Rebate Requirement. The City shall take any and all actions necessary to assure compliance with section 148 (f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, as applicable to the Bonds and the Prior Bonds. The City may use investment earnings on amounts in the Redemption Fund or amounts on deposit in the Reserve Fund or the Administrative Expense Fund to satisfy any rebate liability to the federal government.

Section 5.16. Continuing Disclosure Obligation. The City shall provide to each registered Bond Owner the following:

(A) Promptly following the approval of the same by the City Council each year that the Bonds are Outstanding, a copy of the City's audited financial statements.

(B) Within 270 days of the end of each Fiscal Year, the City shall provide each registered Bond Owner with the following information regarding the Assessment District:

(i) the aggregate amount of the Reassessments levied on parcels in the Assessment District during the most recent Fiscal Year;

(ii) the amount of any delinquency in payment of the Reassessments so levied as of the August 1 following the Fiscal Year in which the Reassessments were levied, including a listing of each parcel with a delinquent Reassessment, the amount of the respective delinquent Reassessment and any action being taken by the City in respect of the delinquency; and

(iii) the amount then on deposit in the Reserve Fund.

ARTICLE VI

INVESTMENTS; DISPOSITION OF INVESTMENT PROCEEDS; LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds. Subject in all respects to the provisions of Section 6.02, moneys in any fund or account created or established by this Agreement and held by the Finance Director or the Fiscal Agent shall be invested by the Finance Director or the Fiscal Agent, respectively, in Authorized Investments. The following shall apply to such investments:

(A) The Finance Director or the Fiscal Agent, as applicable, shall invest any such moneys described in the definition of Authorized Investments herein. Obligations purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts;

(B) The Finance Director or the Fiscal Agent, as applicable, may act as principal or agent in the acquisition or disposition of any investment. Neither the Finance Director nor the Fiscal Agent, as applicable, shall incur any liability for losses arising from any investments made pursuant to this Section. For purposes of determining the amount on deposit in any fund or account held hereunder, all Authorized Investments or investments credited to such fund or account shall be valued at Fair Market Value.

(C) The Fiscal Agent shall invest any moneys held by it in the Costs of Issuance Fund in Authorized Investments, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments or, in the absence of any such Officer's Certificate in Authorized Investments described in clause (v) of the definition of Authorized Investments in Section 1.03.

(D) The Fiscal Agent may act as principal or agent in the acquisition or disposition of any investment.

(E) Investments in any funds or accounts held by the Fiscal Agent may at the discretion of the Fiscal Agent be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent hereunder, provided that the Fiscal Agent shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

(F) The Fiscal Agent shall sell at the highest price reasonably obtainable, or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such investment security is credited and the Fiscal

Agent shall not be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

(G) The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Fiscal Agent hereunder.

Section 6.02. Acquisition, Disposition and Valuation of Investments.

(A) Except as otherwise provided in subsection (B) of this Section 6.02, the City covenants that all investments of amounts deposited in any funds or accounts created by this Agreement, or otherwise containing gross proceeds of the Bonds (as defined by section 148 of the Code) shall be acquired, disposed of and valued (as of the date that valuation is required by this Agreement or the Code) at Fair Market Value.

(B) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code shall be valued at their present value (within the meaning of section 149 of the Code).

Section 6.03. Liability of City. The City shall not incur any responsibility in respect of the Bonds or this Agreement other than in connection with the duties or obligations explicitly provided herein or in the Bonds. The City shall not be liable to any Owner in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default thereunder. Under this Agreement, the following shall apply to the City:

(A) In the absence of bad faith, the City, including the Finance Director, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Agreement; and the City, including the Finance Director, shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts other than to the extent of money in properly obtained or retained by the City;

(B) No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to (i) in posing and collecting the Reassessments and transferring the same to the Fiscal Agent; (ii) defending the validity of the Reassessments and the Bonds and the proceedings related thereto, and (iii) the foreclosure proceedings for delinquent Reassessments and the payment of fees and costs of the Fiscal Agent, in each case as required under this Agreement) in the performance of any of its obligations hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds for

believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(C) The City may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel, who may be the City Attorney, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith;

(D) The City shall not be bound to recognize any person as the Owner of a Bond unless duly registered and until such Bond is submitted for inspection, if required, and his title thereto satisfactory established, if disputed; and

(E) Whenever in the administration of its duties under this Agreement the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Fiscal Agent or other expert retained by the City for the purposes hereof, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

Section 6.04. Employment of Agents by City. In order to perform its duties and obligations hereunder, the City Finance Director may employ such persons or entities as he deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it with reasonable care and in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

## ARTICLE V II

### THE FISCAL AGENT

Section 7.01. Appointment of Fiscal Agent. U.S. Bank National Association, at its office in San Francisco, California, is hereby appointed Fiscal Agent and Paying Agent for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Fiscal Agent. With respect to the appointment of the Fiscal Agent, the following shall apply:

(A) At any time and with or without cause, the City may remove the Fiscal Agent initially appointed and any successor thereto, and may appoint a successor or successor's thereto, but any Fiscal Agent shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(B) The Fiscal Agent may at any time resign by giving written notice to the City and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent, satisfying the requirements of Section 7.01 (A) above, by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective only upon acceptance of appointment by a successor Fiscal Agent.

(C) If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section within forty-five (45) days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent or any Bond Owner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

(D) If, by reason of the judgment of any court, the Fiscal Agent is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Fiscal Agent hereunder shall be assumed by and vest in the Finance Director of the City in trust for the benefit of the Owners. The City covenants for the direct benefit of the Owners that its Finance Director in such case shall be vested with all of the rights and powers of the Fiscal Agent hereunder, and shall assume all of the responsibilities and perform all of the duties of the Fiscal Agent hereunder, in trust for the benefit of the Owners of the Bonds.

(E) Any company into which a successor Fiscal Agent may be merged or converted or with which it may be consolidated or any company resulting from any

merger, conversion or consolidation to which it shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the preceding paragraphs of this Section 7.01 shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. The Fiscal Agent shall give the Finance Director written notice of any such succession hereunder.

Section 7.02. Liability of Fiscal Agent. With respect to the liability of the Fiscal Agent, the following shall apply:

(A) The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, makes no representations as to the validity or sufficiency of this Agreement or of the Bonds, or shall incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any official statement or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(B) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

(C) The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

(D) No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(E) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the

Owners pursuant to this Agreement unless such Owners shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(F) The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

(G) The Fiscal Agent may execute any of the powers hereof and perform any of its duties by and through attorneys, agents, receivers, consultants or employees and shall not be responsible for any loss or damage resulting from any action or nonaction exercised reasonably and in good faith in reliance on the opinion or advice of such attorneys, agents, receivers, consultants or employees. The Fiscal Agent may pay reasonable compensation to all attorneys, agents, receivers, consultants and employees as may reasonably be employed in connection with the discharge of its duties hereunder, and shall be entitled to reimbursement therefor.

(H) At any and all reasonable times, the Fiscal Agent and its duly authorized agents, attorneys, experts, accountants and representatives shall have the right fully to inspect all books, papers and records of the City pertaining to the Bonds and to make copies of any such books, papers and records such as may be desired but which is not privileged by statute or law.

(I) The right of the Fiscal Agent to perform any discretionary act enumerated or contemplated in this Agreement shall not be construed as a duty.

(J) The Fiscal Agent has no obligation or liability to the Owners for the payment of principal of, redemption price, or interest on the Bonds from its own funds.

(K) Whether or not herein expressly provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall (i) be subject to the provisions of this Section 7.02, (ii) apply to the Fiscal Agent in its capacity as Escrow Bank, and (iii) extend to the directors, officers and employees of the Fiscal Agent.

(L) The Fiscal Agent shall not be required to give any bonds or surety in respect of the execution of the duties created hereby or the powers granted hereunder.

Section 7.03. Information; Books and Accounts. The Fiscal Agent shall provide to the City such information relating to the Bonds, the funds held by the Fiscal Agent and the transactions performed by the Fiscal Agent hereunder as the City shall reasonably request, including but not limited to quarterly statements reporting transactions by the Fiscal Agent.

The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions made by it relating to the expenditure of amounts disbursed from the Costs of Issuance Fund and the Payment Fund. Such books of record and accounts shall, upon reasonable notice, at all times during business hours on any Business Day be subject to the inspection of the City and the Owners of not less than ten percent (10%) of the

principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

Section 7.04. Notice to Fiscal Agent. The Fiscal Agent may conclusively rely, without undertaking any investigation or inquiry, and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, Bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith. The Fiscal Agent shall not be bound to recognize any person as the Owner of a Bond unless and until such person is the registered Owner of such Bond and such Bond is submitted for inspection, if required, and such Owner's title thereto satisfactorily established, if disputed. Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the City, and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 7.05. Compensation; Indemnification. The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of the Fiscal Agent's in house or other attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligation of the City under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement and payment of the Bonds and discharge of this Agreement, but any monetary obligation of the City arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

ARTICLE VIII

MODIFICATION OR AMENDMENT OF THIS AGREEMENT

Section 8.01. Amendments Permitted. This Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Reassessments superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the Resolution of Issuance, the laws of the State of California or and this Agreement), or reduce the percentage of Bonds required for the amendment hereof. No such amendment may modify any of the rights or increase any of the obligations of the Fiscal Agent (other than pursuant to Section 8.01(D)) without its written consent.

This Agreement and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners (except as provided in the next sentence), only to the extent permitted by law and only for any one or more of the following purposes:

- (A) to add to the covenants and agreements of the City in this Agreement contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;
- (B) to make modifications not adversely affecting any outstanding series of Bonds in any material respect;
- (C) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in regard to questions arising under this Agreement, as the City may deem necessary or desirable and not inconsistent with this Agreement, and which shall not adversely affect the rights of the Owners of the Bonds; or
- (D) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds.

Notwithstanding the foregoing, at any time that there is only one registered Owner of all of the Outstanding Bonds, any amendment to this Agreement shall require the prior written consent of the Bondowner, such consent to not be unreasonably withheld or delayed.

Section 8.02. Owners' Meetings. The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to

provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of said meeting.

Section 8.03. Procedure for Amendment with Written Consent of Owners. The City and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is not permitted by Section 8.01 hereof, to take effect when and as provided in this Section 8.03. With respect to such Supplemental Agreement under this Section 8.03, the following shall apply:

(A) A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section provided;

(B) Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section provided for has been mailed; and

(C) After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of matters therein of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

Section 8.04. Disqualified Bonds. Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII; provided, however, that for the purposes of any vote, consent or other action or any calculation only Bonds which the Fiscal Agent knows to be so owned or held shall be disregarded. Upon request, the City shall specify to the Fiscal Agent those Bonds disqualified pursuant to this Section 8.04.

Section 8.05. Effect of Supplemental Agreement. From and after the time any Supplemental Agreement becomes effective pursuant to this Article VIII, this Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the City and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

Section 8.06. Endorsement or Replacement of Bonds Issued After Amendment. The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon request of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon request of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

Section 8.07. Mandatory Endorsement of Bonds. The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Benefits of Agreement Limited to Parties. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

Section 9.02. Successor is Deemed Included in All Reference to Predecessor. Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 9.03. Discharge of Agreement. Subject to the provisions of Section 2.04 hereof, if the City shall pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways:

(A) by well and truly paying or causing to be paid the principal of and interest and any premium on, all Bonds Outstanding, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds provided for in Sections 4.01 and 4.04 is fully sufficient to pay all Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent, in trust, cash and Federal Securities in such amount as the City shall determine, as confirmed by Bond Counsel or an independent certified public accountant, which will, together with the interest to accrue thereon and moneys then on deposit in the funds provided for in Sections 4.01 and 4.04, be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates;

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Reassessments and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to all Bonds Outstanding shall cease and terminate, except only the obligations of the City under Sections 5.10 through 5.15 hereof and the obligations of the City to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon and all amounts owing to the Fiscal Agent pursuant to Section 7.05 hereof; and thereafter Reassessments shall not be deposited to the Redemption Fund.

Notice of such election shall be filed with the Fiscal Agent. Any funds thereafter held by the City which are not required for said purpose shall be used by the City as provided in the Act and the Bond Law .

Section 9.04. Execution of Documents and Proof of Ownership by Owners. Any request, declaration or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing. Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. The ownership of registered bonds and the amount, maturity, number and date of holding the same shall be proved by the registry books. Any consent request, declaration or other instrument or writing of the then registered Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

Section 9.05. Waiver of Personal Liability. No Council member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law .

Section 9.06. Notices to and Demand on City and Fiscal Agent. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by: (i) personal delivery, overnight delivery by a recognized courier or delivery service, (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) electronic transmission, which includes fax machine, email with an imaged or scanned attachment (such as a pdf) or other similar electronic transmission, addressed as follows (if given pursuant to the preceding clause (i) or (ii)):

City of Benicia  
250 East L Street  
Benicia, California 94510  
Attention: Finance Director  
Fax: (707) 747-8115  
Email: \_\_\_\_\_@cibenicia.ca.us

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by: (i) personal delivery, overnight delivery by a recognized courier or delivery service, (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) electronic transmission, which includes fax machine, email with an imaged or scanned attachment (such

as a pdf) or other similar electronic transmission, addressed as follows (if given pursuant to the preceding clause (i) or (ii)):

U.S. Bank National Association  
One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Global Corporate Trust Services  
Fax: (415) 677-3596  
Email: mary.wong@usbank.com

The City and the Fiscal Agent may designate any further or different addresses, facsimile numbers, or email addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.07. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

Section 9.08. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when payments of principal, interest and any premium have become payable, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds.

Section 9.09. Applicable Law. This Agreement shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 9.10. Conflict with Bond Law or the Act. In the event of a conflict between any provision of this Agreement with any provision of the Bond Law or the Act, the provision of the Bond Law or the Act shall prevail over the conflicting provision of this Agreement.

Section 9.11. Conclusive Evidence of Regularity. Bonds issued pursuant to this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act and the Bond Law relative to their issuance and the levy of the Reassessments.

Section 9.12. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Agreement is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day

w ith the sam e force and effect as if m ade on the date required and no additional interest shall accrue from such Interest Paym ent Date until such Business Day .

Section 9.13. Counterparts. This A greem ent m ay be executed in counterparts, each of w hich shall be deem ed an original.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and the Fiscal Agent has caused this Agreement to be executed in its name, all as of the date first written above.

CITY OF BENICIA, CALIFORNIA

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

Brad Kilger,  
City Manager

U.S. BANK NATIONAL ASSOCIATION, as  
Fiscal Agent

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

Authorized Officer

02017.06:112688

EXHIBIT A

FORM OF BOND

United States of America  
State of California  
County of Solano

No. \_\_\_\_\_

\*\*\$ \_\_\_\_\_\*\*

LIMITED OBLIGATION REFUNDING BOND  
CITY OF BENICIA  
BENICIA MCALLISTER AREA ASSESSMENT DISTRICT  
(REASSESSMENT AND REFUNDING OF 2014)

INTEREST RATE	MATURITY DATE	BOND DATE
_____%	September 2, ____	July __, 2014

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED \_\_\_\_\_  
THOUSAND \_\_\_\_\_ HUNDRED \_\_\_\_\_ DOLLARS

Under and by virtue of the Improvement Bond Act of 1915, Division 10 (commencing with Section 8500) of the California Streets and Highways Code and the Refunding Act of 1984 for 1915 Improvement Act Bonds, Division 11.5 of the California Streets and Highways Code (collectively, the "Act"), the City of Benicia, County of Solano, State of California (the "City"), will, out of the redemption fund for the payment of the bonds issued upon the unpaid portion of reassessments more fully described in proceedings taken pursuant to Resolution of Intention No. \_\_\_\_\_ adopted by the City Council of the City on July 1, 2014, pay to the Registered Owner named above or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, in lawful money of the United States of America and in like manner will pay interest from the interest payment date next preceding the date on which this bond is authenticated, unless this bond is authenticated and registered on an interest payment date, in which event it shall bear interest from such interest payment date, or if this bond is authenticated prior to an interest payment date and after the close of business on the 15<sup>th</sup> day of the month preceding the interest payment date, in which case it will bear interest from such interest payment date, or unless this bond is authenticated and registered prior to August 15, 2014, in which event it shall bear interest from the dated date above until payment of the principal amount shall have been discharged, at the rate per annum stated above, payable semiannually on March 2 and September 2 in each year commencing on September 2, 2014.

Both the principal hereof and redemption premium hereon are payable upon surrender at the office of U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"), in Los Angeles, California, or such other place as designated by the Fiscal Agent and the interest hereon is payable by check mailed by first class mail to the registered owner hereof on the respective Interest Payment Date at the owner's address as it appears on the records of the

Fiscal Agent as of the 15th day immediately preceding each interest payment date (the "Record Date"), or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date.

This bond will continue to bear interest after maturity at the rate above stated; provided it is presented at maturity and payment thereof is refused upon the sole ground that there are not sufficient moneys in said redemption fund with which to pay same. If it is not presented at maturity, interest thereon will run until maturity.

This bond is one of an annual series of bonds of like date, tenor, and effect, issued by the City of Benicia under the Act, the Resolution of Issuance (as defined in the Fiscal Agent Agreement hereafter referenced) and the Fiscal Agent Agreement, dated as of July 1, 2014, between the City and the Fiscal Agent (the "Fiscal Agent Agreement") for the purpose of providing means for refunding the prior bonds described in the proceedings, and is secured by the moneys in said redemption fund and by the unpaid portion of said reassessments made for the payment of the bonds, and, including principal and interest, is payable exclusively out of said fund.

This bond is transferable by the registered owner hereof, in person or by the owner's attorney duly authorized in writing, at the office of the Agent, subject to the terms and conditions provided in the Resolution of Issuance and the Fiscal Agent Agreement, including the payment of certain charges, if any, upon surrender and cancellation of this bond and the other provisions of Section 2.07 of the Fiscal Agent Agreement. Upon such transfer, a new registered bond or bonds, of any authorized denomination or denominations, of the same maturity, and for the same aggregate principal amount, will be issued to the transferee in exchange therefor.

Bonds shall be registered only in the name of an individual (including joint owners), a corporation, a partnership, or a trust.

Neither the City nor the Fiscal Agent shall be required to make such exchange or registration of transfer of bonds after a Record Date and before the next interest payment date, or any bond after the bond has been called for redemption.

The City and the Fiscal Agent may treat the registered owner hereof as the absolute owner for all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary.

This bond or any portion of it in the amount of \$1,000 or any integral multiple of \$1.00 in excess thereof, may be redeemed and paid in advance of maturity upon the second day of March or September in any year by giving at least 30 days' notice to the registered owner hereof at the registered owner's address as it appears on the registration books of the Fiscal Agent and by paying principal and accrued interest together with, in certain circumstances, a premium in the amount specified in the Fiscal Agent Agreement. Notice of any such redemption may be conditioned upon receipt of sufficient funds to pay the redemption price of the bonds to be redeemed, as permitted by the Fiscal Agent Agreement.

The bonds are also subject to mandatory redemption from sinking fund payments on each September 2 commencing September 2, 2015 in part by lot at a redemption price equal to the principal amount of the bonds of such maturity to be redeemed, together with accrued interest to the date of redemption, without premium, as follows:

<u>Redemption Date</u> <u>(September 2)</u>	<u>Principal Amount</u> <u>to be Redeemed</u>
2015	[to come]
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030 (maturity)	

The bonds are subject to refunding under the procedures of Division 11 (commencing with Section 9000) or Division 11.5 (commencing with Section 9500) of the Streets and Highways Code subject to the conditions set forth in the Fiscal Agent Agreement.

This bond is a Limited Obligation Refunding Bond because, under the Resolution of Issuance and the Fiscal Agent Agreement, the City is not obligated to advance funds from the City treasury to cover any deficiency which may occur in the redemption fund for the Bonds; however, the City is not prevented, in its sole discretion, from so advancing funds.

This bond shall not be entitled to any benefit under the Act, the Resolution of Issuance or the Fiscal Agent Agreement, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Fiscal Agent.

IN WITNESS WHEREOF, the City of Benicia, California has caused this bond to be signed in facsimile by the City Treasurer and by the City Clerk, all as of the Bond Date shown above.

CITY OF BENICIA, CALIFORNIA

By: \_\_\_\_\_  
City Treasurer

By: \_\_\_\_\_  
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the bonds described in the within mentioned Resolution of Issuance and the Fiscal Agent Agreement.

Dated: July \_\_, 2014

U.S. BANK NATIONAL ASSOCIATION, as  
Fiscal Agent

By \_\_\_\_\_  
Authorized Signatory

FORM OF ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within mentioned Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_, attorney,

to transfer the same on the registration books of the Agent, with full power of substitution in the premises.

Dated:

Signature Guaranteed:

\_\_\_\_\_

S

Note: Signature(s) must be guaranteed by an eligible guarantor.

\_\_\_\_\_

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.



EXHIBIT B

FORM OF INVESTOR'S LETTER

City of Benicia, California

U.S. Bank National Association,  
as Fiscal Agent

Re: Limited Obligation Refunding Bonds, City of Benicia, Benicia Mailer Area  
Assessment District (Reassessment and Refunding of 2014)

---

Ladies and Gentlemen:

The undersigned (the "Purchaser"), being the purchaser of \$\_\_\_\_\_ principal amount of the above-referenced bonds (the "Bonds") issued pursuant to the Fiscal Agent Agreement, dated as of July 1, 2014 (the "Agreement"), between the City of Benicia, California (the "City") and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent") does hereby certify, represent and warrant for the benefit of the City and the Fiscal Agent that (capitalized terms used below have their meanings given to them in the Agreement):

(a) The Purchaser is an Approved Institutional Buyer.

(b) The Purchaser has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of tax-exempt obligations, and is capable of evaluating the merits and risks of its investment in the Bonds. The Purchaser is able to bear the economic risk of, and an entire loss of, an investment in the Bonds.

(c) The Purchaser is acquiring the Bonds solely for its own account for investment purposes, and does not presently intend to make a public distribution of, or to resell or transfer, all or any part of the Bonds.

(d) The Purchaser understands that the Bonds have not been registered under the United States Securities Act of 1933, as amended, or under any state securities laws. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Bonds by it, and further acknowledges that any current exemption from registration of the Bonds does not affect or diminish such requirements.

(e) The Purchaser understands that the Bonds are payable solely from the Reassessments and amounts in the Payment Fund under the Agreement. The Purchaser has been provided an opportunity to ask questions of, and the Purchaser has received answers from, representatives of the City regarding the terms and conditions of the Bonds and the status of the Assessment District. The Purchaser has obtained all

information requested by it in connection with the issuance of the Bonds as it regards necessary to evaluate all merits and risks of its investment in the Bonds. The Purchaser has reviewed the documents executed in conjunction with the issuance of the Bonds, including, without limitation, the Agreement.

(f) The Purchaser has authority to purchase the Bonds and to execute this letter. The individual who is signing this letter on behalf of the Purchaser is a duly appointed, qualified, and acting officer of the Purchaser and is authorized to cause the Purchaser to make the certificates, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.

(g) In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the City or the Fiscal Agent relating to the legal consequences or other aspects of its investment in the Bonds, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Assessment District.

(h) The Purchaser understands that the Bonds are not secured by any pledge of any moneys received or to be received by the City (other than the Reassessments), the State of California or any political subdivision thereof; that the Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the City, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the State of California or any political subdivision thereof for the payment of principal and interest on the Bonds; and that the liability of the City with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Agreement.

(i) The Purchaser has been informed that the Bonds (i) have not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

(j) The Purchaser acknowledges that it has the right to sell and transfer the Bonds, subject to compliance with the transfer restrictions set forth in Section 2.07 of the Agreement, including the requirement for the delivery to the City and the Fiscal Agent of an investor's letter in the same form as this Investor's Letter, including this paragraph. Failure to comply with the provisions of Section 2.07 of the Agreement shall cause the purported transfer to be null and void. The Purchaser agrees to indemnify and hold harmless the City with respect to any claim asserted against the City that arises with respect to any sale, transfer or other disposition of the Bonds by the Purchaser or any transferee thereof in violation of the provisions of the Agreement.

(k) The Purchaser acknowledges that the Bonds are exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission.

The Purchaser acknowledges that the sale of the Bonds to the Purchaser is made in reliance upon the certifications, representations and warranties herein by the addressees hereto.

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

[PURCHASER]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

---

**ESCROW AGREEMENT**

**by and between the**

**CITY OF BENICIA, CALIFORNIA**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Escrow Bank**

**dated as of July 1, 2014**

**relating to:  
Limited Obligation Improvement Bonds,  
City of Benicia,  
Benicia McAllister Area Assessment District, Series 2004-B**

---

---

## TABLE OF CONTENTS

Section 1.	Appointment of Escrow Bank .....	1
Section 2.	Establishment of Escrow Fund .....	1
Section 3.	Deposit into Escrow Fund; Investment of Amounts .....	2
Section 4.	Instructions as to Application of Deposit .....	2
Section 5.	Compensation to Escrow Bank .....	2
Section 6.	Liabilities and Obligations of Escrow Bank .....	3
Section 7.	Amendment .....	5
Section 8.	Severability .....	5
Section 9.	Notices to Escrow Bank and City .....	5
Section 10.	Merger or Consolidation of Escrow Bank .....	5
Section 11.	Unclaimed Moneys .....	5
Section 12.	Execution of Counterparts .....	5
Section 13.	Governing Law .....	6
EXHIBIT A:	REDEMPTION SCHEDULE FOR THE 2004-B BONDS	

## ESCROW AGREEMENT

This ESCROW AGREEMENT, dated as of July 1, 2014 (this "Escrow Agreement"), is by and between the CITY OF BENICIA, CALIFORNIA, a general law city and municipal corporation organized and existing under the laws of the State of California (the "City"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, in its capacity as paying agent with respect to the 2004-B Bonds (as defined below), and in its capacity as escrow bank hereunder (the "Escrow Bank").

### RECITALS:

WHEREAS, the City has heretofore issued its \$11,700,000 initial principal amount of Limited Obligation Improvement Bonds, City of Benicia, Benicia McAllister Area Assessment District, Series 2004-B (the "2004-B Bonds") pursuant to Resolution No. 04-157 adopted by the City Council of the City on October 5, 2004 (the "2004 Resolution"); and

WHEREAS, the City has determined to provide for the refunding in full of the outstanding 2004-B Bonds; and

WHEREAS, for the purpose of providing funds for the refunding of the 2004-B Bonds, the City has determined to issue its \$\_\_\_\_\_ Limited Obligation Refunding Bonds, City of Benicia, Benicia McAllister Area Assessment District (Reassessment and Refunding of 2014) (the "2014 Bonds"), pursuant to a Fiscal Agent Agreement, dated as of July 1, 2014 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"); and

WHEREAS, the City wishes to make a deposit of proceeds of the 2014 Bonds with the Escrow Bank in an amount sufficient, together with certain other funds to be transferred to the Escrow Bank as provided herein, to pay the redemption price of the 2004-B Bonds on September 2, 2014, and the City desires to enter into this Escrow Agreement for the purpose of providing the terms and conditions for the deposit and application of amounts so deposited with the Escrow Bank; and

WHEREAS, the Escrow Bank has full powers to act with respect to the irrevocable escrow created herein and to perform the duties and obligations to be undertaken by it pursuant to this Escrow Agreement.

### AGREEMENT:

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. Appointment of Escrow Bank. The City hereby appoints the Escrow Bank as escrow bank for all purposes of this Escrow Agreement and in accordance with the terms and provisions of this Escrow Agreement, and the Escrow Bank hereby accepts such appointment.

Section 2. Establishment of Escrow Fund. There is hereby created by the City with, and to be held by, the Escrow Bank, as security for the payment of the principal of and premium and

interest on the 2004-B Bonds as hereinafter set forth, an irrevocable escrow to be maintained in trust by the Escrow Bank for the benefit of the owners of the 2004-B Bonds, said escrow to be designated the "Escrow Fund." All moneys deposited in the Escrow Fund shall constitute a special fund for the payment of the principal of and premium and interest on the 2004-B Bonds in accordance with this Escrow Agreement and the provisions of the 2004 Resolution.

If at any time the Escrow Bank shall receive actual knowledge that the moneys in the Escrow Fund will not be sufficient to make any payment required by Section 4 hereof, the Escrow Bank shall notify the City of such fact and the City shall immediately cure such deficiency from any funds that may be lawfully available for such purpose.

Section 3. Deposit into Escrow Fund; Investment of Amounts. Concurrent with delivery of the 2014 Bonds, the City shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$9,082,262.50 in immediately available funds derived as follows: (a) \$\_\_\_\_\_ from the proceeds of sale of the 2014 Bonds, (b) \$\_\_\_\_\_ from funds held in the Reserve Fund for the 2004-B Bonds, and (c) \$\_\_\_\_\_ from funds held in the Redemption Fund for the 2004-B Bonds.

The Escrow Bank shall hold the funds deposited to the Escrow Fund in cash, uninvested. The cash in the Escrow Fund shall be held by the Escrow Bank in the Escrow Fund solely for the uses and purposes set forth herein. The Escrow Bank shall have no lien upon or right of set off against the funds at any time on deposit in the Escrow Fund.

Section 4. Instructions as to Application of Deposit. The total amount held in the Escrow Fund pursuant to Section 3 shall be applied by the Escrow Bank to redeem in full the 2004-B Bonds on September 2, 2014, by paying on such date from the amount in the Escrow Fund the redemption price of the 2004-B Bonds, being 100% of the then outstanding principal amount thereof, plus accrued interest to the Redemption Date, as more fully set forth in Exhibit A hereto.

The Escrow Bank, in its capacity as paying agent for the 2004-B Bonds, is hereby irrevocably authorized and directed by the City to provide notice of the redemption of the 2004-B Bonds pursuant to Section 2.03(C)(ii) of the 2004 Resolution by giving at least 30 days notice (but not more than 60 days notice) by registered or certified mail, or by personal service, to the registered owners of the 2004-B Bonds at their addresses as they appear in the registration books for the 2004-B Bonds maintained by the Escrow Bank, as paying agent for the 2004-B Bonds, pursuant to Section 2.07 of the 2004 Resolution, and to the Information Services (as such term is defined in, and as otherwise required by Section 2.03(C)(ii) of, the 2004 Resolution). The notice of redemption shall be in a form customarily used by the Escrow Bank for similar bond redemptions.

Following the final payment of the 2004-B Bonds, the Escrow Bank shall transfer any remaining amounts held by it as Escrow Bank relating to the 2004-B Bonds or the 2004 Resolution on September 3, 2014, to the City for deposit by the City's Finance Director in the Redemption Fund established under the Fiscal Agent Agreement.

Section 5. Compensation to Escrow Bank. The City shall pay the Escrow Bank compensation for its duties under this Escrow Agreement, including out-of-pocket costs such as publication costs, legal fees and other costs and expenses relating hereto, pursuant to a separate agreement between the City and the Escrow Bank. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes. The obligation of the City under this Section 5 to pay compensation already earned by the Escrow

Bank and to pay costs and expenses already incurred shall survive termination of this Escrow Agreement and shall survive the resignation or removal of the Escrow Bank.

Section 6. Liabilities and Obligations of Escrow Bank. The Escrow Bank shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Escrow Agreement unless the City shall have deposited sufficient funds with the Escrow Bank. The Escrow Bank may rely and shall be protected in acting upon the written or oral instructions of the City or its agents relating to any matter or action as Escrow Bank under this Escrow Agreement. The protections, immunities and limitations from liability provided to the Fiscal Agent under the Fiscal Agent Agreement shall be afforded the Escrow Bank hereunder and are incorporated herein by this reference.

The Escrow Bank and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the acceptance of the moneys deposited therein, the sufficiency of the moneys held in the Escrow Fund hereunder to accomplish the discharge of the 2004-B Bonds, or any payment, transfer or other application of moneys by the Escrow Bank in accordance with the provisions of this Escrow Agreement or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Bank made in good faith in the conduct of its duties. The recitals of fact contained in the recital clauses herein shall be taken as the statements of the City and the Escrow Bank assumes no responsibility for the correctness thereof. The Escrow Bank makes no representations as to the sufficiency of the moneys in the Escrow Fund to accomplish the redemption of the 2004-B Bonds pursuant to the 2004 Resolution, or to the validity of this Escrow Agreement as to the City and, except as otherwise provided herein, the Escrow Bank shall incur no liability in respect thereof. The Escrow Bank shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence, willful misconduct or default, and the duties and obligations of the Escrow Bank shall be determined by the express provisions of this Escrow Agreement and no implied duties shall be read into this Escrow Agreement against the Escrow Bank. The Escrow Bank may consult with counsel, who may or may not be counsel to the City, and in reliance upon the written opinion of such counsel selected by it with due care shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith.

The City hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated), to the extent permitted by law, to indemnify, protect, save and hold harmless the Escrow Bank and its respective successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Bank (whether or not also indemnified against by any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the retention of the moneys therein and any payment, transfer or other application of moneys by the Escrow Bank in accordance with the provisions of this Escrow Agreement, or as may arise by reason of any act, omission or error of the Escrow Bank made in good faith in the conduct of its duties; *provided, however*, that the City shall not be required to indemnify the Escrow Bank against its own negligence or willful misconduct and any liability of the City under this paragraph shall be payable solely from funds legally available for such purpose. The indemnities contained in this Section 6 and the compensation and

reimbursement of expenses set forth in Section 5 shall survive the termination of this Escrow Agreement.

Whenever, in the administration of this Escrow Agreement, the Escrow Bank shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Escrow Bank, be deemed to be conclusively proved and established by a certificate of an authorized representative of the City, and such certificate shall, in the absence of negligence or willful misconduct on the part of the Escrow Bank, be full warrant to the Escrow Bank for any action taken or suffered in good faith by it under the provisions of this Escrow Agreement.

The Escrow Bank shall not be responsible for any of the recitals or representations contained herein.

The Escrow Bank shall not be liable for the accuracy of any calculations provided as to the sufficiency of moneys deposited with it to pay the redemption price of the 2004-B Bonds.

The Escrow Bank shall incur no liability for losses arising from any disposition made pursuant to and in accordance with this Escrow Agreement.

No provision of this Escrow Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder or in the exercise of its rights or powers.

Any bank, federal savings association or trust company into which the Escrow Bank may be merged or with which it may be consolidated shall become the Escrow Bank without any action of the City.

The Escrow Bank shall have no liability or obligation to the holders of the 2004-B Bonds with respect to the payment of debt service by the City on any of such bonds or with respect to the observance or performance by the City of the other conditions, covenants and terms contained in the 2004 Resolution, or with respect to the investment of any moneys in any fund or account established, held or maintained by the City pursuant to the 2004 Resolution.

The Escrow Bank shall not be liable for any error of judgment made in good faith by an authorized officer.

The Escrow Bank may at any time resign by giving written notice to the City, which notice shall indicate the date (not earlier than 60 days after receipt by the City of such notice) on which the resignation is to be effective (the "resignation date"). The City shall promptly appoint a successor Escrow Bank by the resignation date. Resignation of the Escrow Bank will be effective upon acceptance of appointment by a successor Escrow Bank. If the City does not appoint a successor Escrow Bank by the resignation date, the Escrow Bank may petition any court of competent jurisdiction for the appointment of a successor Escrow Bank, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Escrow Bank. The City may at any time terminate the services of the Escrow Bank and appoint a new Escrow Bank hereunder, such termination to take effect only upon acceptance of the appointment by the replacement Escrow Bank.

Section 7. Amendment. This Escrow Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents thereto of the owners of one hundred percent (100%) in aggregate principal amount of the 2004-B Bonds then outstanding shall have been filed with the Escrow Bank. This Escrow Agreement may be modified or amended at any time by a supplemental agreement, without the consent of any such 2004-B Bondowners, but only (a) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to the City, (b) to cure, correct or supplement any ambiguous or defective provision contained herein, or (c) in regard to questions arising hereunder as the parties hereto may deem necessary or desirable and which, in the opinion of counsel, shall not materially adversely affect the interests of the owners of the 2004-B Bonds, and that such amendment will not cause interest on the 2004-B Bonds to become subject to federal income taxation.

Section 8. Severability. If any section, paragraph, sentence, clause or provision of this Escrow Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, sentence, clause or provision shall not affect any of the remaining provisions of this Escrow Agreement.

Section 9. Notices to Escrow Bank and City. Any notice to or demand upon the Escrow Bank may be served and presented, and such demand may be made, at the principal corporate trust office of the Escrow Bank at U.S. Bank National Association, One California Street, Suite 1000, San Francisco, CA 94111, Attention: Corporate Trust Services (or such other address as may have been filed in writing by the Escrow Bank with the City). Any notice to or demand upon the City shall be deemed to have been sufficiently given or served for all purposes by being mailed by registered or certified mail, and deposited, postage prepaid, in a post office letter box, addressed to the City of Benicia, 250 East L Street, Benicia, California 94510, Attention: Finance Director (or such other address as may have been filed in writing by the City with the Escrow Bank).

Section 10. Merger or Consolidation of Escrow Bank. Any company into which the Escrow Bank may be merged or converted or with which may it be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible to act as paying agent under the 2004 Resolution, shall be the successor hereunder to the Escrow Bank without the execution or filing of any paper or any further act.

Section 11. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Escrow Bank in trust for the payment and discharge of the principal of, and the interest and any premium on, the 2004-B Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become payable, if such moneys were held by the Escrow Bank at such date, shall be repaid by the Escrow Bank to the City as its absolute property free from any trust, and the Escrow Bank shall thereupon be released and discharged with respect thereto and the owners of such 2004-B Bonds shall look only to the City for the payment of the principal of, and interest and any premium on, such 2004-B Bonds. Any right of any 2004-B Bondowner to look to the City for such payment shall survive only so long as required under applicable law.

Section 12. Execution of Counterparts. This Escrow Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

Section 13. Governing Law. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in such State.

IN WITNESS WHEREOF, the CITY OF BENICIA, CALIFORNIA has caused this Escrow Agreement to be signed in its name by its City Manager, and U.S. BANK NATIONAL ASSOCIATION, has caused this Escrow Agreement to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

CITY OF BENICIA, CALIFORNIA

By: \_\_\_\_\_  
Brad Kilger,  
City Manager

U.S. BANK NATIONAL ASSOCIATION, as  
Escrow Bank

By: \_\_\_\_\_  
Authorized Officer

02017.06:J12686

**EXHIBIT A**

**REDEMPTION SCHEDULE FOR THE 2004-B BONDS**

<u>Redemption Date</u>	<u>Maturing Principal</u>	<u>Principal Redeemed</u>	<u>Accrued Interest</u>	<u>Total Payment</u>
September 2, 2014	\$330,000.00	\$8,500,000.00	\$252,262.50	\$9,082,262.50

---

**BOND PURCHASE AND RATE LOCK AGREEMENT**

---

July \_\_, 2014

City of Benicia, California  
250 East L Street  
Benicia, California 94510

Ladies and Gentlemen:

\_\_\_\_\_ (the "Purchaser") offers to enter into this Bond Purchase and Rate Lock Agreement (this "Purchase Agreement") with the City of Benicia, California (the "City"), which, upon your acceptance of this offer, will be binding upon the Purchaser and the City. This offer is made subject to the City's acceptance by its execution of this Purchase Agreement and its delivery to the Purchaser on or before 1:00 P.M. Pacific Time on the date hereof.

Capitalized terms used herein and which are not otherwise defined herein have the meanings given to such terms in the Fiscal Agent Agreement, dated as of July 1, 2014 (the "Fiscal Agent Agreement"), between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent").

Section 1. Purchase, Sale and Delivery of the Bonds. Subject to the terms and conditions, and in reliance upon the representations, warranties and agreements set forth herein, the Purchaser hereby agrees to purchase from the City, and the City hereby agrees to sell to the Purchaser, the \$\_\_\_\_\_ principal amount of the Limited Obligation Refunding Bonds, City of Benicia, Benicia McAllister Area Assessment District (Reassessment and Refunding of 2014) (the "Bonds"), dated July \_\_, 2014, bearing interest at the rate of \_\_\_% per annum, and maturing on September 2, 2030. The Bonds will be subject to redemption as set forth in Exhibit A hereto. The purchase price for the Bonds is \$\_\_\_\_\_.

Section 2. Use of Funds. The purchase price paid by the Purchaser shall be used by the City to (a) defease and refund the Prior Bonds, (b) fund a reserve fund for the Bonds, (c) fund the September 2, 2014 interest payment on the Bonds, and (d) pay the costs related to the issuance of the Bonds and the refunding of the Prior Bonds

Section 3. Disposition of Proceeds. On the Closing Date, as defined below, the purchase price paid by the Purchaser (\$\_\_\_\_\_) will be remitted by the Purchaser to the Fiscal Agent, to be disposed of by the Fiscal Agent as follows:

(a) The Fiscal Agent shall transfer to the Escrow Bank the amount of \$\_\_\_\_\_ to be deposited in the Escrow Fund and applied, with other moneys, on September 2, 2014, to the redemption of the Prior Bonds.

(b) The Fiscal Agent shall remit \$\_\_\_\_\_ to the City, for deposit by the City \$\_\_\_\_\_ in the Reserve Fund (being an amount equal to the Reserve Requirement), and \$\_\_\_\_\_ in the Redemption Fund (being an amount equal to the September 2, 2014 debt service payment on the Bonds).

(c) The Fiscal Agent shall deposit \$ \_\_\_\_\_ in the Costs of Issuance Fund.

Wire information will be provided prior to the Closing Date.

Section 4. Closing. At 8:00 A.M. California Time, on July \_\_, 2014, or at such other time on such earlier or later date as the Purchaser and the City mutually agree upon (the "Closing Date"), the City will deliver (or cause to be delivered) the Bonds executed by the City, and the Purchaser will pay the purchase price for the Bonds as set forth in Section 1 hereof in federal or other immediately available funds as described in Section 3 hereof.

Section 5. Representations, Warranties and Agreements of the City. The City represents, warrants to, covenants and agrees with, the Purchaser that:

(a) The City is a municipal corporation and general law city duly organized and validly existing under the Constitution and laws of the State of California, and the City has, and at the Closing Date will have, full legal right and power (i) to enter into, execute and deliver this Purchase Agreement, the Fiscal Agent Agreement, the Escrow Agreement and the Bonds, and (ii) to carry out, give effect to and consummate the transactions on its part contemplated hereby and thereby.

(b) The Resolution of Intention and the Resolution of Issuance have been duly adopted by the City Council and are in full force and effect; and the Fiscal Agent Agreement, the Escrow Agreement and this Purchase Agreement, when executed and delivered by the City and the other party or parties thereto, will constitute legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally. The City has complied, and will at the Closing Date be in compliance, in all respects with the Fiscal Agent Agreement, the Escrow Agreement, the Act, the Bond Law and this Purchase Agreement.

(c) The City Council has duly and validly: (i) made all the necessary findings and determinations required under the Act in connection with the authorization to levy and collect the Reassessments and the issuance of the Bonds, (ii) approved and authorized the execution and delivery by the City of the Fiscal Agent Agreement, the Escrow Agreement, the Bonds and this Purchase Agreement, and (iii) authorized and approved the performance by the City of its obligations contained in, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions on its part contemplated by, each of such documents. All consents or approvals necessary to be obtained by the City in connection with the foregoing have been received, and the consents or approvals so received are still in full force and effect.

(d) The City is not, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under, any law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, and the performance by the City of its obligations under the Fiscal Agent Agreement, the Bonds, the Escrow Agreement and this Purchase

Agreement and any other instruments contemplated by any of such documents, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, in any manner which would materially and adversely affect the performance by the City of its obligations under the Fiscal Agent Agreement, the Bonds, the Escrow Agreement or this Purchase Agreement.

(e) All approvals, consents, authorizations, elections and orders of, or filings or registrations with, any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect the performance by the City of its obligations hereunder or under the Fiscal Agent Agreement, the Bonds or the Escrow Agreement have been or will be obtained at the Closing Date and are or will be at the Closing Date in full force and effect.

(f) When delivered to the Purchaser, the Bonds will have been duly authorized by the City Council and duly executed, issued and delivered by the City and will constitute legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally. The Fiscal Agent Agreement creates a valid pledge of, first lien upon and security interest in, the Reassessments and the amounts in the Redemption Fund and the Reserve Fund established pursuant to the Fiscal Agent Agreement, on the terms and conditions set forth in the Fiscal Agent Agreement.

(g) No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency or public board or body to which the City is a party and has been served with a summons or other notice thereof, is pending, or to the knowledge of the City is threatened, in any way affecting the existence of the Assessment District, the existence of the City or the titles of its officers to their respective offices or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, the application of the proceeds thereof in accordance with the Fiscal Agent Agreement and the Escrow Agreement, the collection or application of the Reassessments pledged or to be pledged to pay the principal of, and interest on, the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Fiscal Agent Agreement, the Bonds, the Escrow Agreement or this Purchase Agreement, any action of the City contemplated by any of such documents, or in any way contesting the powers of the City with respect to the Fiscal Agent Agreement, the Bonds, the Escrow Agreement or this Purchase Agreement or any action of the City contemplated by any of such documents, or which contests the exclusion from gross income for federal income tax purposes of interest paid on the Bonds or the exemption of interest paid on the Bonds from State of California personal income taxation.

(h) Any certificate signed by any officer or employee of the City authorized to do so and delivered to the Purchaser in connection with the transactions contemplated by this Purchase Agreement shall be deemed a representation and warranty by the City as to the statements made therein.

(i) The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

(j) The Reassessments may lawfully be levied as detailed in the Reassessment Report, dated as of July 1, 2014 (the "Reassessment Report") prepared by Willdan Financial Services (the "Reassessment Engineer") for the Assessment District, and, when levied, the Reassessments so levied will be secured by a lien on the property on which they are levied.

Section 6. Conditions Precedent to the Closing. Other conditions precedent to the Closing are:

(a) The delivery by the City of a certified copy of the Resolution of Issuance, together with a certificate of the City Clerk, dated as of the Closing Date, to the effect that attached thereto is a true, correct and complete copy of the Resolution of Issuance, which has not been amended, supplemented or repealed and is in full force and effect;

(b) The delivery by the City of the Fiscal Agent Agreement duly executed and delivered by the City and the Fiscal Agent and the Escrow Agreement duly executed by the City and the Escrow Bank;

(c) The delivery by the City of an opinion, dated the Closing Date and addressed to the City, of Bond Counsel, to the effect that the Bonds are the valid, legal and binding obligations of the City and that the interest thereon is excluded from gross income for federal income tax purposes and exempt from personal income taxes of the State of California, together with a letter of Bond Counsel, dated the Closing Date and addressed to the Purchaser, to the effect that such opinion addressed to the City may be relied upon by the Purchaser to the same extent as if such opinion was addressed to the Purchaser;

(d) The delivery by the City of a supplemental opinion, dated the Closing Date and addressed to the Purchaser, of Bond Counsel to the effect that (i) this Purchase Agreement and the Escrow Agreement have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the Purchaser and the Escrow Bank, respectively, constitute legal, valid and binding agreements of the City, each enforceable against the City in accordance with their respective terms, except to the extent that enforceability may be limited by moratorium, bankruptcy, reorganization insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity or otherwise in appropriate cases; and (ii) the Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Fiscal Agent Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(e) The delivery by the City of a certificate of the City, dated the Closing Date and signed by the City Manager, or another Authorized Officer, to the effect that (i) the representations and warranties of the City contained herein are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; and (ii) the City has complied with all the agreements and satisfied all the

conditions on its part to be satisfied under this Purchase Agreement, the Fiscal Agent Agreement and the Escrow Agreement at or prior to the Closing Date;

(f) The delivery by the City of an opinion, dated the Closing Date and addressed to the Purchaser, of the City Attorney, to the effect that:

(i) the City is a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State;

(ii) the Resolution of Issuance approving and authorizing the execution and delivery of the Bonds, the Fiscal Agent Agreement and the Escrow Agreement was duly adopted at a regular meeting of the City Council of the City which was called and held on July 1, 2014, pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the Resolution of Issuance is in full force and effect and has not been modified, amended or rescinded;

(iii) there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, governmental agency or body, pending notice of which has been served on and received by the City or, to the best of knowledge of such counsel, threatened against the City, challenging the creation, organization or existence of the City or the Assessment District, or the validity of the Bonds, the Fiscal Agent Agreement or the Escrow Agreement or contesting the authority of the City to enter into or perform its obligations under any of such documents, or which, in any manner, questions the right of the City to issue the Bonds, or to levy and collect the Reassessments as contemplated by the Fiscal Agent Agreement; and

(iv) to the best of such counsel's knowledge, the authorization, execution and delivery of the Bonds, the Fiscal Agent Agreement and the Escrow Agreement by the City, the compliance with the provisions thereof by the City, and the performance by the City of its obligations thereunder, will not conflict with, or constitute a breach or default under, in any material respect, any law, administrative regulation, court decree, resolution, ordinance or other agreement to which the City is subject or by which the City is bound;

(g) The delivery by the City of a certificate of U.S. Bank National Association to the effect that (i) it is authorized to carry out corporate trust powers, and has full power and to perform its duties under the Fiscal Agent Agreement and the Escrow Agreement; (ii) it is duly authorized to execute and deliver the Fiscal Agent Agreement and the Escrow Agreement, to accept the obligations created by the Fiscal Agent Agreement and the Escrow Agreement, and to authenticate the Bonds pursuant to the terms of the Fiscal Agent Agreement; (iii) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over it that has not been obtained is or will be required for the authentication of the Bonds, of the consummation by it of the other transactions contemplated to be performed by it in connection with the authentication of the Bonds and the acceptance and performance of the obligations created by the Fiscal Agent Agreement and the Escrow Agreement; and (v) to the best of its knowledge, compliance with the terms of the Fiscal Agent Agreement and the Escrow Agreement will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, fiscal agent agreement, bond, note, resolution or

any other agreement or instrument to which it is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over it or any of its activities or properties;

(h) The delivery by the City of a certificate dated the Closing Date from the Reassessment Engineer to the effect that the Reassessment Report complies with the requirements of California Streets and Highways Code Section 9523 and, in the opinion of the Reassessment Engineer, the Reassessments, as set forth in the Reassessment Report, comply with California Streets and Highways Code Section 9525(a);

(i) The delivery by the City of a certificate as to arbitrage of the City in form and substance acceptable to Bond Counsel;

(j) The delivery by the City of an opinion of counsel to the Fiscal Agent and Escrow Bank dated the Closing Date and addressed to the City and the Purchaser to the effect that U.S. Bank National Association has duly authorized the execution and delivery of the Fiscal Agent Agreement and the Escrow Agreement, and that such documents are valid and binding obligations of U.S. Bank National Association enforceable in accordance with their respective terms;

(k) The delivery by the City of an opinion of Bond Counsel addressed to the City and the Purchaser to the effect that, assuming amounts held by the Escrow Bank under the Escrow Agreement are sufficient to pay the full redemption price of the Prior Bonds on the Redemption Date (as defined in the Escrow Agreement), upon the execution and delivery of the Escrow Agreement by the parties thereto and the funding of the Escrow Fund thereunder, the Prior Bonds will have been legally defeased and will no longer be outstanding under the fiscal agent agreement pursuant to which they were issued;

(l) The delivery by the Purchaser of a letter substantially in the form of Exhibit B hereto;

(m) The delivery by the City of evidence of the recordation in the records of Solano County, California of the Notice of Reassessment required to be recorded for the collection of Reassessments in the Assessment District;

(n) The delivery by the City of a copy of the Reassessment Report, prepared and executed by the Reassessment Engineer; and

(o) The delivery by the City of such additional legal opinions, certificates, instruments and other documents as the Purchaser may reasonably request.

Section 7. Events Permitting the Purchaser to Terminate. The Purchaser may terminate its obligation to purchase the Bonds if any of the following occurs before the Closing Date:

(a) any legislative, executive or regulatory action (including the introduction of legislation) or any court decision that, in the judgment of the Purchaser, casts sufficient doubt on the legality of, or the tax-exempt status of the interest on, obligations such as the Bonds so as to materially impair the marketability or to materially reduce the market price of the Bonds, in the reasonable opinion of the Purchaser;

(b) any action by the Securities and Exchange Commission or a court that would require registration of the Fiscal Agent Agreement under the Securities Act of 1933, as amended; or

(c) any event occurs or becomes known that has a material adverse effect on the financial condition of the City or on the ability of the City to perform under the Fiscal Agent Agreement or the Escrow Agreement.

Section 8. Execution in Counterparts. This Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 9. Governing Law. This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California, applicable to contracts made and performed within the State of California.

Section 10. Effective Date. This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the City and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

[Purchaser]

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

Its: \_\_\_\_\_

The foregoing is hereby accepted and agreed to as of the date first written above:

CITY OF BENICIA, CALIFORNIA

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

Brad Kilger,  
City Manager

02017.06:J12705

**EXHIBIT A**

**REDEMPTION PROVISIONS**

*Optional Redemption.* Each Bond, or any portion of the principal thereof in the principal amount of \$1,000 or any integral multiple of \$1.00 in excess thereof, may be redeemed and paid in advance of maturity from prepayments of Reassessments, on any Interest Payment Date in any year by giving at least 30 days notice to the Owner thereof in accordance with the Bond Law and by paying the principal amount thereof, plus interest to the date of redemption, unless sooner surrendered, in which event said interest will be paid to the date of payment, together with a redemption premium of \_\_\_\_\_ percent (\_\_\_\_%) of the principal amount of Bonds being redeemed.

*Mandatory Sinking Payment Redemption.* The Bonds are subject to mandatory sinking payment redemption in part on September 2, 2015, and on each September 2 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

<u>Redemption Date</u> <u>(September 2)</u>	<u>Sinking Payments</u>
2015	[to come]
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030 (maturity)	

**EXHIBIT B**  
**INVESTOR'S LETTER**

July \_\_, 2014

City of Benicia, California  
250 East L Street  
Benicia, California 94510

U.S. Bank National Association, as Fiscal Agent  
One California Street, Suite 1000  
San Francisco, California 94111

Re: Limited Obligation Refunding Bonds, City of Benicia, Benicia McAllister Area Assessment District (Reassessment and Refunding of 2014)

Ladies and Gentlemen:

The undersigned (the "Purchaser"), being the purchaser of \$\_\_\_\_\_ principal amount of the above-referenced bonds (the "Bonds") issued pursuant to the Fiscal Agent Agreement, dated as of July 1, 2014 (the "Agreement"), between the City of Benicia, California (the "City") and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent") does hereby certify, represent and warrant for the benefit of the City and the Fiscal Agent that (capitalized terms used below have the meanings given to them in the Agreement):

(a) The Purchaser is an Approved Institutional Buyer.

(b) The Purchaser has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of tax-exempt obligations, and is capable of evaluating the merits and risks of its investment in the Bonds. The Purchaser is able to bear the economic risk of, and an entire loss of, an investment in the Bonds.

(c) The Purchaser is acquiring the Bonds solely for its own account for investment purposes, and does not presently intend to make a public distribution of, or to resell or transfer, all or any part of the Bonds.

(d) The Purchaser understands that the Bonds have not been registered under the United States Securities Act of 1933, as amended, or under any state securities laws. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Bonds by it, and further acknowledges that any current exemption from registration of the Bonds does not affect or diminish such requirements.

(e) The Purchaser understands that the Bonds are payable solely from the Reassessments and amounts in the Payment Fund under the Agreement. The Purchaser has been provided an opportunity to ask questions of, and the Purchaser has received answers from, representatives of the City regarding the terms and conditions of the Bonds and the status of the Assessment District. The Purchaser has obtained all

information requested by it in connection with the issuance of the Bonds as it regards necessary to evaluate all merits and risks of its investment in the Bonds. The Purchaser has reviewed the documents executed in conjunction with the issuance of the Bonds, including, without limitation, the Agreement.

(f) The Purchaser has authority to purchase the Bonds and to execute this letter. The individual who is signing this letter on behalf of the Purchaser is a duly appointed, qualified, and acting officer of the Purchaser and is authorized to cause the Purchaser to make the certificates, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.

(g) In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the City or the Fiscal Agent relating to the legal consequences or other aspects of its investment in the Bonds, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Assessment District.

(h) The Purchaser understands that the Bonds are not secured by any pledge of any moneys received or to be received by the City (other than the Reassessments), the State of California or any political subdivision thereof; that the Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the City, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the State of California or any political subdivision thereof for the payment of principal and interest on the Bonds; and that the liability of the City with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Agreement.

(i) The Purchaser has been informed that the Bonds (i) have not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

(j) The Purchaser acknowledges that it has the right to sell and transfer the Bonds, subject to compliance with the transfer restrictions set forth in Section 2.07 of the Agreement, including the requirement for the delivery to the City and the Fiscal Agent of an investor's letter in the same form as this Investor's Letter, including this paragraph. Failure to comply with the provisions of Section 2.07 of the Agreement shall cause the purported transfer to be null and void. The Purchaser agrees to indemnify and hold harmless the City with respect to any claim asserted against the City that arises with respect to any sale, transfer or other disposition of the Bonds by the Purchaser or any transferee thereof in violation of the provisions of the Agreement.

(k) The Purchaser acknowledges that the Bonds are exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission.

The Purchaser acknowledges that the sale of the Bonds to the Purchaser is made in reliance upon the certifications, representations and warranties herein by the addressees hereto.

Dated: \_\_\_\_\_, 2014

[PURCHASER]

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

Name:

Title: \_\_\_\_\_

**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**BUSINESS ITEMS**

**DATE** : June 24, 2014

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **REVIEW OF JUNE WATER REPORT AND ADOPTION OF EMERGENCY OUTDOOR WATER RESTRICTIONS ORDINANCE**

**RECOMMENDATION:**

1. Receive the City's water supply and usage update;
2. Adopt, by a 4/5<sup>th</sup> vote, an emergency outdoor water restrictions ordinance; and
3. Introduce an outdoor water restrictions ordinance.

**EXECUTIVE SUMMARY:**

The City has been able to utilize more State Water Project (SWP) water than anticipated earlier this year. Over the three month period from March 1<sup>st</sup> through May 31<sup>st</sup>, 2014, the community has conserved 10% percent as compared to the same period in 2012. In order to meet the 20% conservation goal over the course of the year established by the Council and minimize the need to purchase water, the staff is recommending that the Council adopt, as an urgency measure, an ordinance that would limit outdoor watering. This has the potential to save significant amounts of water during the peak, dry, hot summer months. The ordinance, if approved, will take effect immediately. The ordinance should also be adopted as a non-urgent ordinance because urgency measures are only in effect for a limited period of time and the need for water conservation will extend beyond a couple months.

**BUDGET INFORMATION:**

The City included \$60,000 in the drought surcharge water conservation budget in order to hire part-time temporary staff to educate the community and enforce the ordinance.

**GENERAL PLAN:**

Relevant General Plan Goals:

- Overarching Goal of the General Plan: Sustainability
- Goal 2.36: Ensure an adequate water supply for current and future residents and businesses.

## **STRATEGIC PLAN:**

Relevant Strategic Plan Issue and Strategy:

- Strategic Issue #1: Protecting Community Health and Safety
- Strategy #5: Promote community and personal health

## **BACKGROUND:**

The drought conditions remain very serious. As of May 15, 2014, precipitation is about half of average. The 2013/14 water year will probably end up being the third to fifth driest year in the last 90 years of recordkeeping. Since the previous two years were also dry, the State's largest reservoirs are at less than 50% of their average storage for this time of year.

In a normal year, 85% of the City's water supply comes from the State Water Project (SWP). The SWP includes a standard contract, carryover water from previous years, settlement water from a lawsuit, and agreements with other SWP contract agencies. The standard contract alone is for over 17,000 acre-feet and would be more than enough to meet the City's 10,000 annual acre foot need. However, the State has never been able to deliver the contracted amount for a variety of reasons.

In early January the State said that contract deliveries would be limited to 5% (860 acre feet for Benicia) and that contract carryover water from previous years could be used (5,000 acre feet in Benicia's case). Within weeks, the Governor declared a drought emergency and the contract amount was reduced to zero. Since mid-April, as the impacts of the State actions played out, the State has loosened its restrictions and is now saying that the 5% contract amount is restored, some settlement water related to a previous lawsuit over water rights can be used, and some exchanges can take place. The State has also taken varying positions on when water can be used, restricting some use to after September 1. These additional changes have occurred even though the drought conditions remain very severe and there has been little substantial rainfall since mid-April.

The City has taken a variety of actions in the short term to deal with the challenge. The Council authorized up to \$900,000 at the March 4, 2014 meeting to purchase additional water, initiated a voluntary 20% water conservation program, and directed staff to work toward a 20% reduction in City's water usage. In addition, the City is managing its water supply to maximize the use of the allocated SWP water, minimize the use of non SWP water that can be stored in Lake Berryessa, maximize Lake Herman water storage and delivery, and make improvements to components of the water infrastructure to ensure reliability and redundancy. All of these efforts, as well as those recommended in this report, are intended to ensure, to the

extent feasible, an adequate water supply through February 2016 if the drought continues.

### MONTHLY WATER UPDATE

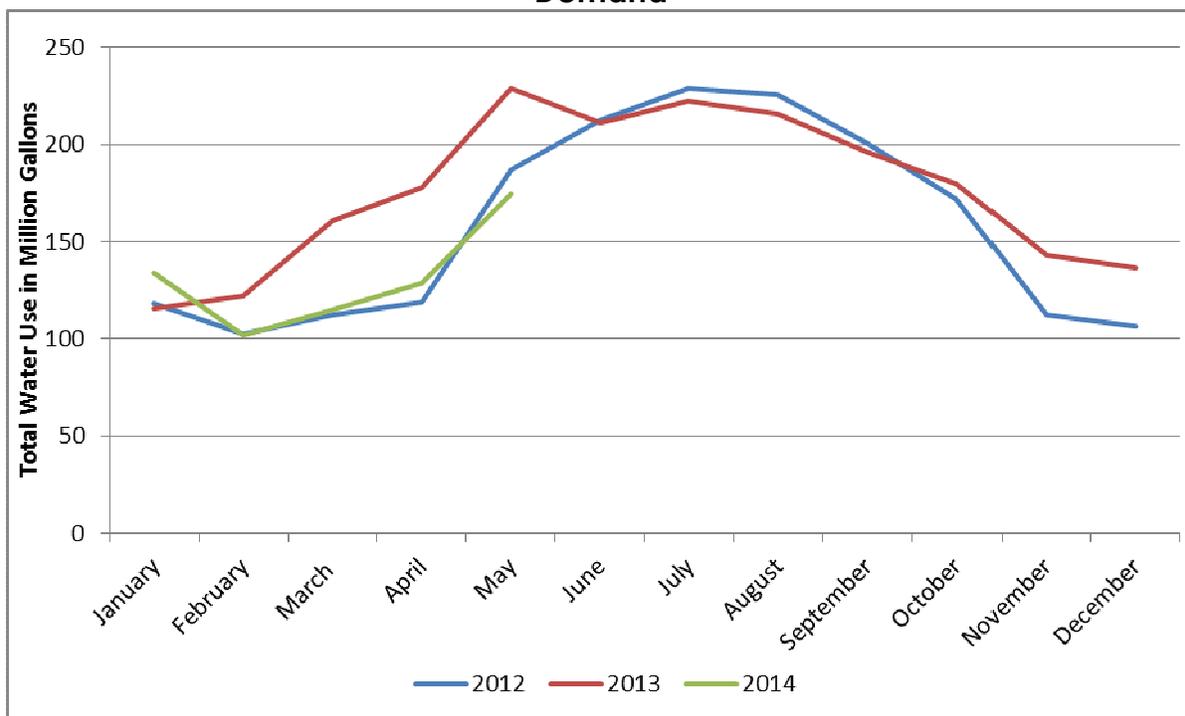
The Table and Graph below show the water used since January 1, 2014.

**Table 1**  
**2014 Source Water Update 1/1/2014 through 5/30/2014**  
**in acre-feet (AF)**

Month	State Water Project	Solano Project	Lake Herman	Total Used
January	779	0	0	779
February	320	229	79	628
March	0	454	294	748
April	737	310	0	1,047
May	765	239	6	1,010
<i>Sub-Total</i>	<i>2,601</i>	<i>1,232</i>	<i>379</i>	<b>4,212</b>

Footnote: Since previous monthly updates, some figures above have been adjusted to maximize use of State Water Project resources.

**Graph 1**  
**2014 Treated Water Demand**



## Actual Water Usage/Conservation

The City Council initiated the 20% voluntary water conservation goal at the February 18, 2014 meeting. This voluntary water reduction plan was made official at the April 29, 2014 Council meeting when Resolution No. 14-40 was adopted. The Resolution urges all water customers to participate in a voluntary effort to reduce water use by 20%. Water usage in 2014 has decreased by 10% as compared to the March through May period in 2012. Year 2012 was a typical water use year versus 2013, which was a more extreme dry year resulting in higher than average water consumption. Staff is using 2012 as a base year to monitor and measure water conservation effort. Year 2013 is shown as a comparison.

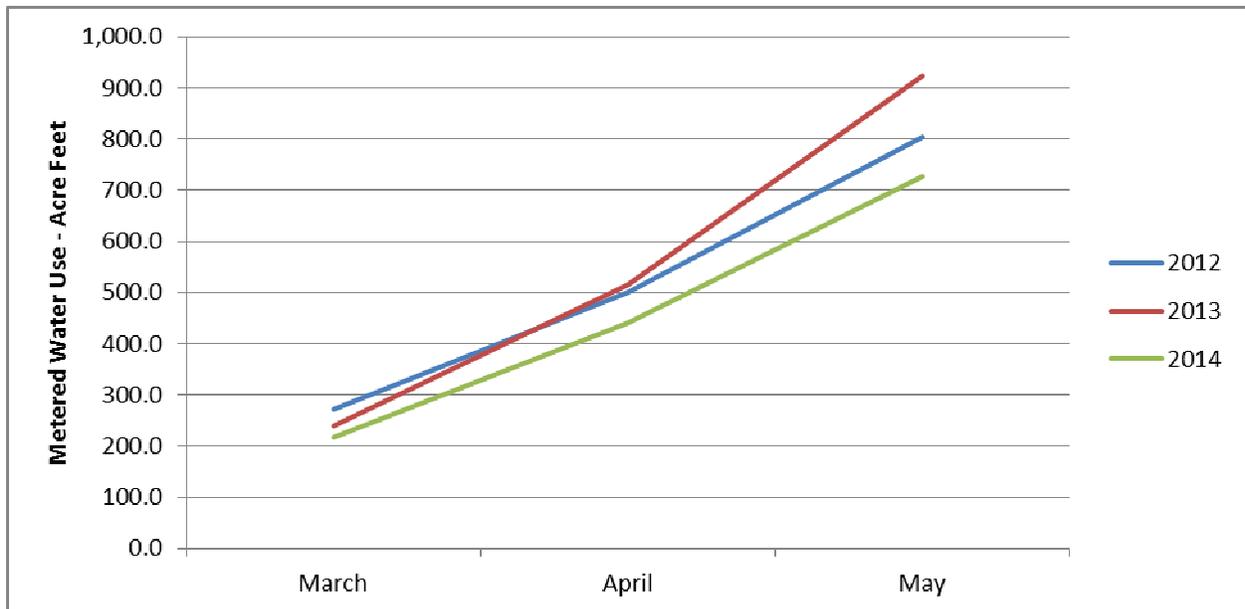
**Table 2**  
**Metered Water Use Since Call for Voluntary 20% Conservation**  
**(in acre-feet)**

<b>Year</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>Sub- Total for 3 months</b>	<b>Total for year</b>	<b>20% Reduction</b>
2012	273	228	303	804	4,481	896
2013	239	277	408	924	4,854	971
2014	217	224	285	726		

78 acre feet or 10% less was used in 2014 than 2012

198 acre feet or 21% less was used in 2014 than 2013

**Graph 2  
Cumulative Metered Water Use Since Call for Voluntary 20% Conservation**



**Status of Water Conservation Outreach Campaign Efforts**

Attached is a table showing the status of the water conservation outreach campaign efforts to date. More vehicle magnets will be ordered in the near future for safety vehicles. A new flyer promoting all rebates and incentive programs for both residential and business customers has been created that is posted to the city's website and is available at various City departments and display cases.

On June 18 door-to-door outreach to businesses began along First Street to offer window clings, tip cards, and/or restaurant table tent cards. Window clings, available in 6" x 6" or 12" x 12", are for businesses and restaurants to show their commitment to using water efficiently. The tip cards promote water saving tips, rebates and key messages for businesses to distribute. The tent cards are for restaurants to advertise that water is provided upon request only.

**Water Purchase Update**

Based on Council direction received at the February 18, 2014 meeting, staff has been in the process of purchasing sufficient water to meet the City's projected water demand through February 2016, assuming the drought continues. The

original intent was to purchase up to 6,000 acre feet of water. That amount has been adjusted downward due to actions by the State, which has enabled the use of more State Water Project water than anticipated earlier this year. The City has been able to 1) use 1,472 acre feet of Settlement water, 2) use 1,000 acre feet of Mojave Agency water (a banking agreement), 3) has been allocated 860 acre feet of contract water, and 4) has been drawing State Water Project carryover water.

The water purchase is designed to specifically allow the City to acquire water, which can be stored in Lake Berryessa and used in the future at the City's discretion. In May, with the prior authorization provided by the City Council, staff was able to purchase 245 acre-feet of State Water Project (Yuba Accord water) for \$25,000 at \$102 per acre foot. The availability of the SWP-Yuba Accord water was a unique one-time opportunity. Staff is moving forward with the purchase of a total of 2,000 acre feet of Solano Project water by 7/1/2014 from the City of Vacaville and the Solano Irrigation District. The City is maximizing as much State Water Project as possible to potentially limit the purchases. The Council would have until the end of 2014 to decide to purchase up to another 2,000 acre feet of Solano Project water by the end of 2014.

The table below assumes that if the drought continues, the State will institute in 2015 and possibly in 2016 the supply restrictions it temporarily imposed in early 2014, and that the community would need to continue to conserve. If water conservation reaches 20% through November 2014 as compared to 2012, staff may recommend the purchase of less. This recommendation gives the Council time to assess the level of conservation, the use of State water, and the overall situation. If the drought continues, it is projected that less State Water Project supply will be available in 2015 and 2016, and the City will rely more on the Solano Project supplies it has banked in Lake Berryessa.

## **VIII.D.6**

**Table 3  
2014 -2016 Benicia Water Supply versus Demand**

	2014 Available Water Supply (AF) 1	2014 Projected Water Usage (AF)	2015 Available Water Supply (AF)	2015 Projected Water Usage (AF)	3/1/2016 Available Water Supply (AF)
<b>State Water Project</b>	8,685	7,711	974	974	0
<b>Solano Project Water</b>	9,797	2,489	10,408	9,241	4,267
<b>Lake Herman</b>	600	541	600	505	600
<b>Total Water Supply (AF)</b>	<b>19,082</b>	<b>10,741</b>	<b>11,982</b>	<b>10,720</b>	<b>4,867</b>

1 Purchasing 2,000 AF of Solano Project water by July 1, 2014

Table 3 shows 4,867 acre feet available on 3/1/2016. However, it does not include the potential purchase of 2,000 acre feet of Solano Water by the end of 2014. It also does not include the impact of conservation. If 900 acre feet of treated water was saved by the community in each of the 3 years and the additional water was purchased, there could be 9,567 acre feet water available on 3/1/2016.

**Outdoor Water Restrictions Ordinance**

Attached is an emergency “Outdoor Water Restrictions” ordinance. This ordinance would establish outdoor water restrictions including establishing certain days and hours that outdoor irrigation can occur. More specifically, beginning immediately and extending until October 15<sup>th</sup> (and then April 1<sup>st</sup> – October 15<sup>th</sup> in subsequent years until the City Council determines the drought is over) landscape irrigation can only occur between the hours of 7:00 pm and 8:00 am. Additionally, residential and commercial addresses ending in an odd number can only irrigate on Mondays, Wednesdays and Fridays, and addresses ending in an even number can only irrigate on Tuesdays, Thursdays, and Saturdays. No landscape irrigation will be allowed on Sundays. Then beginning, October 16, 2014 until March 31, 2015 and subsequent years, all residential and commercial locations can only irrigate on Saturdays or Sundays.

The limitations described above do not apply to landscape irrigation that utilizes a low volume irrigation system (e.g. drip irrigation.) Additionally, the ordinance does not restrict watering using a hand-held bucket or watering for very short

periods while adjusting or repairing an irrigation system. Maintenance of turf at private schools, day cares, sports fields, playing fields, and other active recreation use areas within public parks, school grounds, and day care facilities is permitted four days per week during April 1 and October 15 and two days per week during October 16 and March 31. The ordinance also allows new landscaping to be irrigated four times per week throughout the first year of establishment as long as certain conditions are met.

Staff is recommending adoption of the ordinance because it is now the peak water usage time and reducing outdoor water use can have the greatest impact in achieving the City's conservation goals. At a typical home, more than 50% of the water use goes to watering on lawns and outdoor landscaping, and about 30% of that is lost due to overwatering and evaporation from wind and sun. In addition it is Staff's belief that such an approach will be more productive and better accepted by the community than a punitive, mandatory approach to restrict overall water use.

It should be noted that the guidelines in the attached draft "Outdoor Water Restrictions" ordinance would be in addition to the water waste restrictions already in effect. These provisions are set forth in the existing "Emergency Water Conservation Plan", which is in Chapter 13.35 of the Benicia Municipal Code (Ordinance No. 12-02, attached). The following is an excerpt from the existing Ordinance:

A. Stage 1 – Voluntary Conservation.

1. Customers of the city are requested to voluntarily limit the amount of water used to that amount absolutely necessary for health, business, and irrigation.
2. In addition to the voluntary water use reductions of subsection (A)(1) of this section, and in compliance with BMC [13.35.070](#), the following restrictions shall apply to all persons:
  - a. The following uses of water are defined as "waste of water" and are absolutely prohibited:
    - i. Allowing water to run off unused to a gutter, ditch, or drain;
    - ii. Failing to repair a controllable leak;
    - iii. Washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, unless the concrete foundation is in the process of curing during construction, and except to alleviate immediate fire hazards, or for the protection of health and safety;
    - iv. Utilizing a hand-held hose without an automatic shut-off nozzle;
    - v. Irrigating during rain.

- b. The following water use prohibitions apply to new development only:
- i. Single pass-through cooling water systems;
  - ii. Commercial car washes and laundries without recirculating water systems;
  - iii. Decorative fountains without recirculating water systems.

It is recommended that the Council adopt the ordinance as an urgency ordinance by a 4/5<sup>th</sup> vote. This allows the restrictions to become effective immediately without the first and second reading and 30 day wait period. The ordinance will remain in effect until the City Council declares that the water shortage emergency has ended.

It is also recommended that the ordinance be introduced and adopted with a first and second reading as usual. This allows the ordinance to continue in place beyond an interim period. The wording of the ordinance is the same as the urgency ordinance. The first reading/introduction will take place at this council meeting. The second reading/adoption of the ordinance will take place at the July 15, 2014 meeting.

If the emergency outdoor water restrictions ordinance is adopted, staff will begin outreach efforts immediately. Outreach will include a direct mailer to all water customers explaining the water restrictions along with website postings and ads in the newspaper. For the first month following adoption of the ordinance, no penalties will be assessed. Staff recognizes that public education is necessary. The ordinance is not intended as a revenue-generating measure. The purpose is to modify behavior since reducing water use outdoors can make the biggest difference of all.

Attachments:

- Emergency Outdoor Water Restrictions Ordinance
- Outdoor Water Restrictions Ordinance
- Current Emergency Water Conservation Plan Ordinance 12-02
- Status of Water Conservation Outreach Campaign Efforts
- Flyer for Rebates/Incentive Programs



**CITY OF BENICIA**

**ORDINANCE NO. 14-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE BY ADDING CHAPTER 13.36 (EMERGENCY OUTDOOR WATER RESTRICTIONS)**

**THE CITY COUNCIL OF THE CITY OF BENICIA DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.**

**Title 13 (Public Services) of the Benicia Municipal Code is amended by adding a new Chapter 13.36 (Emergency Outdoor Water Restrictions) to read as follows:**

**Chapter 13.36**

**EMERGENCY OUTDOOR WATER RESTRICTIONS**

**Sections:**

- 13.36.010 Findings.
- 13.36.020 Definitions.
- 13.36.030 Authorization.
- 13.36.040 Outdoor Conservation of Water.
- 13.36.050 New Landscaping.
- 13.36.060 Violation – Enforcement.

**13.36.010 Findings.** The city council finds that:

- A. The city of Benicia is facing a serious water shortage.
- B. The city's main water supply source is the State Water Project (SWP).
- C. During normal years the SWP supplies approximately 85% of the city's water demand.
- D. On April 22, 2014 the California Department of Water Resources announced that city's water supply allocation from the SWP would be 5% due to exceptionally dry conditions and low water levels in the reservoirs.
- E. To prevent waste and ensure reasonable use of water supplied by the city water distribution system, it is necessary to enact certain limitations to promote water conservation by city customers.
- F. These limitations are focused on outdoor water use, because at a typical home, more than 50% of the water use goes on lawns and outdoor landscaping, and about 30% of that is lost due to overwatering and evaporation from wind and sun.

- G. Water use limitations are designed to promote the use of drip irrigation and other low volume irrigation methods that reduce outdoor water use by applying water more efficiently than traditional irrigation methods.
- H. Reduction of water use through water conservation will protect and promotes the public health, safety, and welfare by conserving a vital resource that is subject to ever increasing demands.

**13.36.020 Definitions.**

As used in this chapter, the following words, phrases and terms shall have the following definitions:

“City water” means any water delivered by the city’s water distribution system.

“Director” means the public works director or designee.

“Low volume irrigation” means any irrigation system that applies irrigation water at low pressure through a system of tubing or lateral lines and low volume emitters such as drip, drip lines, and bubblers with a flow rate measured in gallons per hour, and that is designed to apply small volumes of water slowly at or near the root zone of plants. This includes but is not limited to properly functioning drip irrigation systems and soaker hoses.

“New landscaping” means any lawn, plant or other landscaping planted after the effective date of this chapter.

“Water runoff” means water flowing away from the property in any gutter, ditch, or other manner over the surface of the ground due to excessive application of city water.

“Water customer” means the name of the water account holder who is listed in the city’s utility billing system.

**13.36.030 Authorization**

The city manager or his or her designee, upon the recommendation of the director, has the authority to develop administrative rules and regulations to implement this ordinance. The city manager or his or her designee, upon the recommendation of the director, is authorized and directed to implement the applicable provisions of this chapter upon the city manager and director’s determination that such implementation is necessary to protect the public welfare and safety.

**13.36.040 Outdoor Conservation of Water.**

- A. Beginning April 1<sup>st</sup> and extending until October 15<sup>th</sup>:

1. No person shall use, or cause to be used, any city water for landscape irrigation between the hours of 8:00 am and 7:00 pm, unless the director provides prior written consent to a different time limitation.

2. Residential and commercial locations bearing a street address ending in an odd number (1, 3, 5, 7, 9) shall be permitted to irrigate with city water only on Monday, Wednesday, and Friday, and locations bearing a street address ending in an even number (0, 2, 4, 6, 8) shall be permitted to irrigate with city water on Tuesday, Thursday, and Saturday, unless the director provides prior written consent to a different irrigation schedule.

3. No landscape irrigation shall be allowed on Sundays.

D. Beginning on October 16<sup>th</sup> until March 31<sup>st</sup> all residential and commercial/industrial locations shall be permitted to irrigate with city water only on Saturday or Sunday, and landscape irrigation shall be prohibited on any other days of the week, unless the director provides prior written consent to a different irrigation pattern.

E. The limitations specified in subsections C and D shall not apply to landscape irrigation using a low volume irrigation system, nor to the irrigation of container plants.

F. This section does not apply to the following categories of use:

1. Watering or irrigating by use of a hand-held bucket or similar container;

2. Watering for very short periods of time for the express purpose of adjusting or repairing an irrigation system; or

3. Maintenance of turf at private schools, day cares, sports fields, playing fields, and other active recreation use areas within public parks, school grounds, and day care facilities provided that such irrigation does not exceed four days per week for the period of April 1 and October 15<sup>th</sup> and two days per week for the period of October 16 to March 31<sup>st</sup>.

#### **13.36.050 New Landscaping.**

Use of water for the irrigation of new landscape installed after the effective date of this ordinance cannot be more frequent than four times per week throughout the first year of establishment of the new landscape, provided that all of the following conditions are met:

1. The newly installed landscape replaces turf grass that was regularly maintained and irrigated;

2. The new landscape consists solely of drought tolerant plants and is consistent with requirements for drought tolerant landscaping established in Solano County Water Agency's Turf Replacement Program;

3. The new landscape is irrigated solely by a low volume irrigation system; and
4. Mulch is used around the new landscaping to minimize evaporative losses.

**13.36.060 Violation – Enforcement.**

It shall be a violation of this chapter for any water customer to violate any of the provisions of this chapter or of the administrative rules and regulations promulgated hereunder or to waste any water obtained from or through the distribution facilities of the city, or from any person to engage in wasting water as defined herein. The violation of each specific provision of this chapter, and each separate violation thereof, shall be deemed a separate offense, and shall be enforced accordingly.

A. Violations.

1. For the first violation within the preceding twelve calendar months, the director or his designee shall issue a written notice of the fact of such violation. No penalty will be imposed for first violations. The City recognizes there is a certain amount of public education necessary so first violations are warnings accompanied by city water conservation information.

2. For the second violation within the preceding twelve calendar months, the director or his designee shall impose a penalty of fifty dollars (\$50) against the water customer for the property where the violation occurred.

3. For the third violation within the preceding twelve calendar months, the director or his designee shall impose a penalty of one hundred dollars (\$100) against the water customer for the property where the violation occurred.

4. For a fourth and any subsequent violation within the preceding twelve calendar months, the director or his designee shall impose a penalty of two hundred fifty dollars (\$250) against the water customer for the property where the violation occurred.

Further, the director or his/her designee may:

- a. Install a flow restrictor on the property where the violation occurred or is occurring, for a length of time to be determined by the director or his/her designee, but in no event for more than one year; or
- b. Disconnect service on the property where the violation occurred or is occurring, for a length of time not to exceed sixty days in length.
- c. Reimbursement of City Expenses. If violations result in the installation of a flow restrictor, discontinuation of water service, or injunctive relief sought and obtained by the city pursuant to this chapter, the account

holder whose service is affected shall reimburse the city for all costs incurred, including attorney's fees.

B. Time Period for Accounting Violations. Accrued violations will be based on acts of noncompliance occurring within the preceding twelve-month period. Each successive twenty-four-hour period of any violation or failure to comply shall be a separate and distinct violation.

C. Notice of Violation. For each violation, city staff designated by the public works director shall have the authority to enforce the provisions of this chapter and shall give notice as follows:

1. Written notice of violation may be in the form of a door hanger that is personally attached to the front door or a letter sent through the U.S. mail, first-class prepaid, to the address of the account holder as shown on current water billing records or personally served on the water customer. The notice will be considered to have been served upon the water customer either upon depositing the notice in the U.S. mail or when personally served, whichever methodology is utilized.

2. Written notice of violation shall include the date, time, and location of the violation; a description of the violation; provisions of the ordinance violated; a statement of the assessed penalty or other enforcement action; and the appeal procedures.

D. Right of Appeal. Any water customer provided a notice of violation in accordance with the provisions of this chapter shall have the right of appeal. A request for hearing must be made in writing, mailed or hand-delivered to the City of Benicia, 250 East L Street, Benicia CA 94510, Attn: public works director, and must be received by the director within ten calendar days from the date of personal or mailed service of the notice of violation. An appeal processing fee of \$100 (adjusted annually by the Consumer Price Index, All Urban Consumers for the San Francisco region) will be charged for staff's time.

E. Determination of Appeal. The appeal will be heard and determined by director or the designee of the director within ten calendar days. The determination of the director will be final and conclusive.

F. Payment of Penalties and Charges. Any penalty imposed pursuant to this section, and/or reimbursement of city expenses, shall be added to the account of the water customer for the property where the violation occurred and shall be due and payable on the same terms and subject to the same conditions as any other charge for regular water service.

G. Reimbursement from Tenants. Nothing in this chapter shall limit or be construed to limit the right of a water customer to seek reimbursement of a penalty or other costs from a tenant or other consumer.

**Section 2.**

**Effective Date.** This is an emergency Ordinance and shall take effect immediately and shall remain in effect until the city council declares that the water shortage emergency has ended.

**Section 3.**

**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 or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

\*\*\*\*\*

On the motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was adopted as an urgency ordinance by a 4/5 vote, at the regular meeting of the City Council on the 1<sup>st</sup> day of July, 2014, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**CITY OF BENICIA**

**ORDINANCE NO. 14-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE BY ADDING CHAPTER 13.36 (EMERGENCY OUTDOOR WATER RESTRICTIONS)**

**THE CITY COUNCIL OF THE CITY OF BENICIA DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.**

**Title 13 (Public Services) of the Benicia Municipal Code is amended by adding a new Chapter 13.36 (Emergency Outdoor Water Restrictions) to read as follows:**

**Chapter 13.36**

**EMERGENCY OUTDOOR WATER RESTRICTIONS**

**Sections:**

- 13.36.010 Findings.
- 13.36.020 Definitions.
- 13.36.030 Authorization.
- 13.36.040 Outdoor Conservation of Water.
- 13.36.050 New Landscaping.
- 13.36.060 Violation – Enforcement.

**13.36.010 Findings.** The city council finds that:

- A. The city of Benicia is facing a serious water shortage.
- B. The city's main water supply source is the State Water Project (SWP).
- C. During normal years the SWP supplies approximately 85% of the city's water demand.
- D. On April 22, 2014 the California Department of Water Resources announced that city's water supply allocation from the SWP would be 5% due to exceptionally dry conditions and low water levels in the reservoirs.
- E. To prevent waste and ensure reasonable use of water supplied by the city water distribution system, it is necessary to enact certain limitations to promote water conservation by city customers.
- F. These limitations are focused on outdoor water use, because at a typical home, more than 50% of the water use goes on lawns and outdoor landscaping, and about 30% of that is lost due to overwatering and evaporation from wind and sun.

- G. Water use limitations are designed to promote the use of drip irrigation and other low volume irrigation methods that reduce outdoor water use by applying water more efficiently than traditional irrigation methods.
- H. Reduction of water use through water conservation will protect and promotes the public health, safety, and welfare by conserving a vital resource that is subject to ever increasing demands.

**13.36.020 Definitions.**

As used in this chapter, the following words, phrases and terms shall have the following definitions:

“City water” means any water delivered by the city’s water distribution system.

“Director” means the public works director or designee.

“Low volume irrigation” means any irrigation system that applies irrigation water at low pressure through a system of tubing or lateral lines and low volume emitters such as drip, drip lines, and bubblers with a flow rate measured in gallons per hour, and that is designed to apply small volumes of water slowly at or near the root zone of plants. This includes but is not limited to properly functioning drip irrigation systems and soaker hoses.

“New landscaping” means any lawn, plant or other landscaping planted after the effective date of this chapter.

“Water runoff” means water flowing away from the property in any gutter, ditch, or other manner over the surface of the ground due to excessive application of city water.

“Water customer” means the name of the water account holder who is listed in the city’s utility billing system.

**13.36.030 Authorization**

The city manager or his or her designee, upon the recommendation of the director, has the authority to develop administrative rules and regulations to implement this ordinance. The city manager or his or her designee, upon the recommendation of the director, is authorized and directed to implement the applicable provisions of this chapter upon the city manager and director’s determination that such implementation is necessary to protect the public welfare and safety.

**13.36.040 Outdoor Conservation of Water.**

- A. Beginning April 1<sup>st</sup> and extending until October 15<sup>th</sup>:

1. No person shall use, or cause to be used, any city water for landscape irrigation between the hours of 8:00 am and 7:00 pm, unless the director provides prior written consent to a different time limitation.

2. Residential and commercial locations bearing a street address ending in an odd number (1, 3, 5, 7, 9) shall be permitted to irrigate with city water only on Monday, Wednesday, and Friday, and locations bearing a street address ending in an even number (0, 2, 4, 6, 8) shall be permitted to irrigate with city water on Tuesday, Thursday, and Saturday, unless the director provides prior written consent to a different irrigation schedule.

3. No landscape irrigation shall be allowed on Sundays.

D. Beginning on October 16<sup>th</sup> until March 31<sup>st</sup> all residential and commercial/industrial locations shall be permitted to irrigate with city water only on Saturday or Sunday, and landscape irrigation shall be prohibited on any other days of the week, unless the director provides prior written consent to a different irrigation pattern.

E. The limitations specified in subsections C and D shall not apply to landscape irrigation using a low volume irrigation system, nor to the irrigation of container plants.

F. This section does not apply to the following categories of use:

1. Watering or irrigating by use of a hand-held bucket or similar container;

2. Watering for very short periods of time for the express purpose of adjusting or repairing an irrigation system; or

3. Maintenance of turf at private schools, day cares, sports fields, playing fields, and other active recreation use areas within public parks, school grounds, and day care facilities provided that such irrigation does not exceed four days per week for the period of April 1 and October 15<sup>th</sup> and two days per week for the period of October 16 to March 31<sup>st</sup>.

#### **13.36.050 New Landscaping.**

Use of water for the irrigation of new landscape installed after the effective date of this ordinance cannot be more frequent than four times per week throughout the first year of establishment of the new landscape, provided that all of the following conditions are met:

1. The newly installed landscape replaces turf grass that was regularly maintained and irrigated;

2. The new landscape consists solely of drought tolerant plants and is consistent with requirements for drought tolerant landscaping established in Solano County Water Agency's Turf Replacement Program;

3. The new landscape is irrigated solely by a low volume irrigation system; and
4. Mulch is used around the new landscaping to minimize evaporative losses.

**13.36.060 Violation – Enforcement.**

It shall be a violation of this chapter for any water customer to violate any of the provisions of this chapter or of the administrative rules and regulations promulgated hereunder or to waste any water obtained from or through the distribution facilities of the city, or from any person to engage in wasting water as defined herein. The violation of each specific provision of this chapter, and each separate violation thereof, shall be deemed a separate offense, and shall be enforced accordingly.

A. Violations.

1. For the first violation within the preceding twelve calendar months, the director or his designee shall issue a written notice of the fact of such violation. No penalty will be imposed for first violations. The City recognizes there is a certain amount of public education necessary so first violations are warnings accompanied by city water conservation information.

2. For the second violation within the preceding twelve calendar months, the director or his designee shall impose a penalty of fifty dollars (\$50) against the water customer for the property where the violation occurred.

3. For the third violation within the preceding twelve calendar months, the director or his designee shall impose a penalty of one hundred dollars (\$100) against the water customer for the property where the violation occurred.

4. For a fourth and any subsequent violation within the preceding twelve calendar months, the director or his designee shall impose a penalty of two hundred fifty dollars (\$250) against the water customer for the property where the violation occurred.

Further, the director or his/her designee may:

- a. Install a flow restrictor on the property where the violation occurred or is occurring, for a length of time to be determined by the director or his/her designee, but in no event for more than one year; or
- b. Disconnect service on the property where the violation occurred or is occurring, for a length of time not to exceed sixty days in length.
- c. Reimbursement of City Expenses. If violations result in the installation of a flow restrictor, discontinuation of water service, or injunctive relief sought and obtained by the city pursuant to this chapter, the account

holder whose service is affected shall reimburse the city for all costs incurred, including attorney's fees.

B. Time Period for Accounting Violations. Accrued violations will be based on acts of noncompliance occurring within the preceding twelve-month period. Each successive twenty-four-hour period of any violation or failure to comply shall be a separate and distinct violation.

C. Notice of Violation. For each violation, city staff designated by the public works director shall have the authority to enforce the provisions of this chapter and shall give notice as follows:

1. Written notice of violation may be in the form of a door hanger that is personally attached to the front door or a letter sent through the U.S. mail, first-class prepaid, to the address of the account holder as shown on current water billing records or personally served on the water customer. The notice will be considered to have been served upon the water customer either upon depositing the notice in the U.S. mail or when personally served, whichever methodology is utilized.

2. Written notice of violation shall include the date, time, and location of the violation; a description of the violation; provisions of the ordinance violated; a statement of the assessed penalty or other enforcement action; and the appeal procedures.

D. Right of Appeal. Any water customer provided a notice of violation in accordance with the provisions of this chapter shall have the right of appeal. A request for hearing must be made in writing, mailed or hand-delivered to the City of Benicia, 250 East L Street, Benicia CA 94510, Attn: public works director, and must be received by the director within ten calendar days from the date of personal or mailed service of the notice of violation. An appeal processing fee of \$100 (adjusted annually by the Consumer Price Index, All Urban Consumers for the San Francisco region) will be charged for staff's time.

E. Determination of Appeal. The appeal will be heard and determined by director or the designee of the director within ten calendar days. The determination of the director will be final and conclusive.

F. Payment of Penalties and Charges. Any penalty imposed pursuant to this section, and/or reimbursement of city expenses, shall be added to the account of the water customer for the property where the violation occurred and shall be due and payable on the same terms and subject to the same conditions as any other charge for regular water service.

G. Reimbursement from Tenants. Nothing in this chapter shall limit or be construed to limit the right of a water customer to seek reimbursement of a penalty or other costs from a tenant or other consumer.

**Section 2.**

**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 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 foregoing Ordinance was introduced at a regular meeting of the City Council on the 1<sup>st</sup> day of July, 2014, and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_ 2014, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

CITY OF BENICIA

ORDINANCE NO. 12- 02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 13.35 (EMERGENCY WATER CONSERVATION PLAN) OF TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE BY REPLACING IT IN ITS ENTIRETY

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

**Section 1.**

Chapter 13.35 (Emergency Water Conservation Plan) of Title 13 (Public Services) of the Benicia Municipal Code relating to the use of water during emergency drought conditions is amended by replacing it in its entirety to read as follows:

**Chapter 13.35**

**EMERGENCY WATER CONSERVATION PLAN**

**Sections:**

- 13.35.010 Scope.
- 13.35.020 Purpose.
- 13.35.030 Definitions.
- 13.35.040 Authorization.
- 13.35.050 Application.
- 13.35.060 Water conservation stages.
- 13.35.070 Mandatory conservation phase implementation.
- 13.35.080 Duration of conservation stages.
- 13.35.090 Drought penalty.
- 13.35.100 Drought surcharge.
- 13.35.110 Exceptions and application procedures for exceptions.
- 13.35.120 Violation – Enforcement.
- 13.35.130 Violation – Additional remedy.

**13.35.010    Scope.**

There is established a city emergency water conservation plan.

**13.35.020    Purpose.**

The purpose of this ordinance is:

During periods of water shortages, the public health and welfare requires that the water resources available to the city be put to maximum beneficial use to the extent to which they are capable, and that the waste or unreasonable use, or unreasonable method of use of water be prevented, and the conservation of such water is to be extended with a view to the reasonable and beneficial use thereof in the interests of the people of the city and for the public welfare.

**13.35.030    Definitions.**

**Base Year.** A water year selected by the city manager for purposes of calculating the baseline amount.

**Baseline Amount.**

- For residential customers, the average gallons per day of water used by that customer class during the base year.
- For industrial, commercial or municipal customers, the average amount of water used by that customer during the corresponding bimonthly billing period of the base year.

**City.** The city of Benicia acting by and through the public works and community development department as operator of the city water system.

**Customer.** Any person, whether within or without the geographic boundaries of the city of Benicia, who uses water supplied by the city.

**Director.** The director of public works and community development for the city or designee.

**GPD.** Gallons per day.

**HCF.** 100 cubic feet, where a cubic foot is 7.48 gallons.

**Person.** Any person, firm, partnership, association, corporation, company, organization, or governmental entity.

**13.35.040    Authorization.**    The city manager or his designee, upon the recommendation of the director, is authorized and directed to implement the applicable provisions of this chapter upon their determination that such implementation is necessary to protect the public welfare and safety.

**13.35.050    Application.**    The provisions of this chapter shall apply to all persons, customers, and property served by the city.

**13.35.060    Water Conservation Stages.**    No customer of the city shall knowingly make, cause, use, or permit the use of water from the city for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any

provision of this chapter, or in an amount in excess of that use permitted by the conservation stage in effect pursuant to action taken by the city manager, or his designee, in accordance with the provisions of this chapter. When a conservation stage is declared, the city manager shall select the appropriate base year based on the recommendation of the director. Baseline water use amounts for all conservation stages are listed in the table below for ease of reference.

Baseline Amounts for Water Use Penalties			
Conservation Stage	Residential	Commercial/Industrial/ Municipal	Landscape Irrigation (dedicated meter)
1-Voluntary	Voluntary Conservation	Voluntary Conservation	Voluntary Conservation
2-Water Alert	10% reduction from base year use.  (Penalty assessed when customer uses >90% of base year use.)  (City Manager to select appropriate base year.)	10% reduction from base year use.  (Penalty assessed when customer uses >90% of base year use.)  (City Manager to select base year.)	25% reduction from base year use.  (Penalty assessed when customer uses >75% of base year use.)  (City Manager to select base year.)
3-Water Warning	25% reduction from base year use (>75% of base year use)	15% reduction from base year use (>85% of base use)	30% reduction from base year use (>70% of base use)
4-Water Emergency	35% reduction from base year use (>65% of base year use)	30% reduction from base year use (>70% of base use)	40% reduction from base year use (>60% of base use)
5-Water Crisis	50% reduction from base year use (>50% of base year use)	50% reduction from base year use (>50% of base use)	50% reduction from base year use (>50% of base use)

A. Stage 1. Voluntary Conservation.

1. Customers of the city are requested to voluntarily limit the amount of water used to that amount absolutely necessary for health, business, and irrigation.

2. In addition to the voluntary water use reductions of subsection (A)(1) of this section, and in compliance with BMC 13.35.070, the following restrictions shall apply to all persons:

a. The following uses of water are defined as “waste of water” and are absolutely prohibited:

i. Allowing water to run off unused to a gutter, ditch, or drain;

ii. Failing to repair a controllable leak;

iii. Washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, unless the concrete foundation is in the process of curing during construction, and except to alleviate immediate fire hazards, or for the protection of health and safety;

iv. Utilizing a hand-held hose without an automatic shut-off nozzle;

v. Irrigating during rain.

b. The following water use prohibitions apply to new development only:

i. Single pass-through cooling water systems;

ii. Commercial car washes and laundries without recirculating water systems;

iii. Decorative fountains without recirculating water systems.

B. Stage 2. Mandatory Compliance – Water Alert.

1. No residential customer shall make, cause, use, or commence the use of water received from the city for any purpose in an amount in excess of 90 percent of the baseline amount. . Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

2. No industrial, commercial or municipal customer shall make, cause, use, or permit the use of water received for any purpose in an amount in excess of 90 percent of the baseline amount. . In addition to the above allotment, for meters that strictly serve

landscaping the allotment shall be 75 percent of the baseline amount. New services or services without a base year history shall be allotted on comparable customer usage.

Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

3. In addition to the above mandatory water use reductions of subsections (B)(1) and (2) of this section, and in compliance with BMC 13.35.070, the following restrictions shall apply to all persons:

a. Use of water from hydrants shall be limited to fire fighting and other activities necessary to maintain the health, safety, and welfare of the citizens of Benicia;

b. Lawn watering and landscape irrigation restricted to only when necessary and only between 6:00 p.m. and 9:00 a.m.;

c. Vehicle washing must be done using a bucket or hand-held hose with an automatic shut-off nozzle, or take place at a commercial car wash;

d. Restaurant drinking water shall be served only upon request;

e. Non-potable water shall be used for construction purposes unless the user presents a reasonable health and safety issue to the public works and community development director;

f. All "waste of water" elements as defined in Stage 1 shall remain in effect in Stage 2.

C. Stage 3. Mandatory Compliance – Water Warning.

1. No residential customer shall make, cause, use, or commence the use of water received from the city for any purpose in an amount in excess of 75 percent of the baseline amount.. Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

2. No industrial, commercial or municipal customer shall make, cause, use, or permit the use of water received for any purpose in an amount in excess of 85 percent of the baseline amount. . In addition to the above allotment, for meters that strictly serve landscaping the allotment shall be 70 percent of the baseline amount. New services or services without a base year history shall be allotted on comparable customer usage.

Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

3. In addition to the mandatory water use reductions of subsections (C)(1) and (2) of this section, and in compliance with BMC 13.35.070, the following restrictions shall apply to all persons:

- a. Landscape watering shall be limited to Mondays, Wednesdays and Fridays for odd numbered addresses; and Tuesdays, Thursdays and Saturdays for even numbered addresses; with no watering on Sundays; and
- b. All elements of Stage 2 shall remain in effect in Stage 3.

D. Stage 4. Mandatory Compliance – Water Emergency.

1. No residential customer shall make, cause, or commence the use of water received from the city for any purpose in an amount in excess of 65 percent of the baseline amount. Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

2. No industrial, commercial or municipal customer shall make, cause, use, or permit the use of water received for any purpose in an amount in excess of 70 percent of the baseline amount. In addition to the above allotment, for meters that strictly serve landscaping the allotment shall be 60 percent of the baseline amount. New services or services without a base year history shall be allotted on comparable customer usage.

Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

3. In addition to the mandatory water use reductions of subsections (D)(1) and (2) of this section, and in compliance with BMC 13.35.070, the following restrictions shall apply to all persons:

- a. Automatic timers shall be turned “off” on automatic sprinkler systems and watering shall occur manually on designated days except where provided for in 3b below. Micro irrigation systems (i.e., drip systems) may be used;
- b. Use of automatic sprinkler systems with timers in use shall be restricted to areas actively used by the public, e.g., park and school grounds; and
- c. All elements of Stage 3 shall be in effect in Stage 4.

E. Stage 5. Mandatory Compliance – Water Crisis.

1. No residential customer shall make, cause, use, or commence the use of water received from the city for any purpose in an amount in excess of 50 percent of the baseline amount. Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

2. No industrial, commercial or municipal customer shall make, cause, use, or permit the use of water received for any purpose in an amount in excess of 50 percent of the baseline amount. In addition to the above allotment, for meters that strictly serve landscaping, the allotment shall be 50 percent of the baseline amount. New services or services without a base year history shall be allotted on comparable customer usage.

Water used in excess of this amount shall be subject to a drought penalty as set forth in BMC 13.35.090. The customer of record may request an increase in the baseline amount as set forth in BMC 13.35.110.

3. In addition to the mandatory water use reductions of subsections (E)(1) and (2) of this section, and in compliance with BMC 13.35.070, all elements of Stage 4 shall remain in effect in Stage 5 except that BMC 13.35.110(A) does not apply in this stage. The customer of record may still apply for exceptions as outlined in BMC 13.35.110, but the reason for applying for an exception cannot be based on economic hardship.

**13.35.070 Mandatory conservation phase implementation.**

A. The public works and community development department shall monitor the projected supply and demand for water by its customers and shall recommend to the city manager the extent of the conservation required in order for the department to prudently plan for and supply water to its customers. Thereafter, the city manager may order that the appropriate phase of water conservation be implemented in accordance with the applicable provisions of this section. Said order shall be made by public announcement and shall be published a minimum of one time in a daily newspaper of general circulation and shall continue to be published on a weekly basis until such time as all restrictions are removed. Said order shall become effective immediately upon the first publication.

B. Conservation Stages. The various stages of water conservation shall be implemented upon authorization by the city manager.

**13.35.080 Duration of conservation stages.**

Stage 1 shall be effective upon the effective date of the ordinance codified in this chapter, and the restrictive provisions of Stage 1 as set forth in BMC 13.35.060 shall apply to all water consumption on and after said date. Stage 1 will be rescinded at such

time that conditions, as set forth in BMC 13.35.070, indicate a more restrictive stage is necessary.

**13.35.090 Drought penalty.**

- A. Customers will receive prior individual notification of the baseline amount, applicable rates, and the opportunity to request exceptions.
- B. Water use beyond the maximum allowed for each water conservation stage shall be subject to a drought penalty pursuant to the schedule set forth in subsection (C) of this section. The customer of record may request an increase in this baseline amount as set forth in BMC 13.35.110. Application forms and instructions will be provided to customers and will also be available at the city water billing office.
- C. In addition to the general water service rates, each customer shall pay, during each billing period, a drought penalty for water used in excess of the baseline amount for the declared conservation stage. The drought penalty is as follows:

<b>Excess Water Use Penalties</b>	
<b>Amount of Excess Water Use</b>	<b>Increased Rate for Use In Excess</b>
<=10% higher than baseline for conservation stage	2 times regular rate
10.01% to 20% higher than baseline for conservation stage	3 times the regular rate
>20% higher than the baseline for conservation stage	4 times the regular rate

For water used up to 10 percent in excess of the baseline amount there shall be a drought penalty equal to 2.0 times the applicable volume charge, in addition to the applicable service charge and volume charge;

For water used from 10.01 percent to 20 percent in excess of the baseline amount there shall be a drought penalty of 3.0 times the applicable volume charge levied on this excess only, in addition to the drought penalty on the first 10 percent and the applicable service charge and volume charge; and

For water used over 20 percent in excess of the baseline amount, there shall be a drought penalty of 4.0 times the applicable volume charge levied only on this excess over 20 percent, in addition to the drought penalties on the first 20 percent and the applicable service charge and volume charge.

- D. In addition to the drought penalty, if water usage exceeds the allowed baseline amount, a warning will be issued and enforcement actions may be taken as described in BMC 13.35.120.

**13.35.100 Drought surcharge.**

A. A drought surcharge may be imposed by the city council, upon the recommendation of the director, to compensate for a loss of water revenue or to pay an additional cost for the purchase of water by the city.

B. The drought surcharge amount and duration shall be established by the city council at the time of imposition. The surcharge levels can be modified by the city manager upon 30 days notice in order to provide for continued revenue sufficiency to maintain a safe and reliable water system.

**13.35.110 Exceptions and application procedures for exceptions.**

A. Any customer of record may apply to the director to increase the amount of water that may be used without exceeding the baseline amount for any one or more of the following reasons:

1. Medical requirements;
2. More than four residents in a single-family residential household. The additional amount allotted shall be 50 gpd per person;
3. Incorrect customer classification based on predominant use;
4. When failure to do so would cause severe economic hardship to the applicant, including, but not limited to, threat of imminent insolvency;
5. When failure to do so would cause an emergency condition affecting the health, sanitation, fire protection, or safety of the applicant or the public.
6. To protect mature trees providing a community benefit.

B. Written applications for such exceptions may be granted by the director based upon clear and convincing evidence that any one or more of the foregoing conditions has been satisfied and it is in the public interest to grant such application.

C. The quantity of water allowed in addition to the baseline amount shall be determined by the director, and shall not exceed that quantity necessary to alleviate the condition which justified granting the application for an exception.

**13.35.120 Violation – Enforcement.**

It shall be a violation of this chapter for any water customer or account holder to violate any of the provisions of this chapter or of the administrative rules and regulations promulgated hereunder or to waste any water obtained from or through the distribution facilities of the city, or from any person to engage in wasting water as defined herein. The violation of each specific provision of this chapter, and each

separate violation thereof, shall be deemed a separate offense, and shall be enforced accordingly.

A. Violations.

1. For the first violation within the preceding twelve calendar months, the director shall issue a written notice of the fact of such violation.

2. For the second violation within the preceding twelve calendar months, the director shall impose a surcharge of fifty dollars against the account holder for the property where the violation occurred.

3. For the third violation within the preceding twelve calendar months, the director shall impose a surcharge of one hundred dollars against the account holder for the property where the violation occurred.

4. For a fourth and any subsequent violation within the preceding twelve calendar months, the director or his designee shall impose a surcharge of two hundred fifty dollars against the account holder for the property where the violation occurred.

Further, the director may:

a. Install a flow restrictor on the property where the violation occurred or is occurring, for a length of time to be determined by the director, but in no event for more than one year; or

b. Disconnect service on the property where the violation occurred or is occurring, for a length of time not to exceed sixty days in length.

5. As an additional remedy, the violation of any provision of this chapter by any person who has received more than one written warning pursuant to subsection (A)(1) above or against whom the director has imposed a second violation in one consecutive twelve-month period is deemed to be and is hereby declared a public nuisance and may be subject to abatement by restraining order or injunction issued by a court of competent jurisdiction.

B. Time Period for Accounting Violations. Accrued violations will be based on acts of noncompliance occurring within a consecutive twelve-month period. Each successive twenty-four-hour period of any violation or failure to comply shall be a separate and distinct violation.

C. Notice of Violation. For each violation, the director shall give notice as follows:

1. Written notice of violation will be sent through the U.S. mail, first-class prepaid, to the address of the account holder as shown on current water billing

records or personally served on the account holder. The notice will be considered to have been served upon the account holder either upon depositing the notice in the U.S. mail or when personally served, whichever methodology is utilized.

2. Written notice of violation shall include the date, time, and location of the violation; a description of the violation; provisions of the ordinance violated; a statement of the assessed surcharge or other enforcement action; and the appeal procedures.

D. Right of Appeal. Any account holder provided a notice of violation in accordance with the provisions of this chapter shall have the right of appeal. A request for hearing must be made in writing and must be received by the director within ten calendar days from the date of personal or mailed service of the notice of violation. Upon receipt of an appeal and request for hearing, all applicable surcharges and enforcement actions will be suspended until such hearing has been completed and a final determination made.

E. Determination of Appeal. The appeal will be heard and determined by city manager or the designee of the city manager. The city manager shall consider whether the account holder knew or should have known of the violation at the time it occurred and whether the account holder took reasonable action to correct the violation upon notification of said violation. The determination of the city manager will be final and conclusive.

F. Payment of Penalties and Charges. Any surcharge imposed pursuant to this section, or reimbursement of city expenses, shall be added to the account of the account holder for the property where the violation occurred and shall be due and payable on the same terms and subject to the same conditions as any other charge for regular water service.

G. Reimbursement of City Expenses. If violations result in either installation of a flow restrictor, discontinuation of water service, or injunctive relief sought and obtained by the city pursuant to this chapter, the account holder whose service is affected shall reimburse the city for all costs incurred, including attorney's fees.

H. Reimbursement from Tenants. Nothing in this chapter shall limit or be construed to limit the right of an account holder to seek reimbursement of a surcharge or other costs from a tenant or other consumer. (Ord. 1431 §4(part), 1991).

**13.35.130    Violation – Additional remedy.**

As an additional remedy, the violation of any provision of this chapter by any person who has received more than one written warning pursuant to BMC 13.35.120 to refrain from the same or any other violation under this chapter in one calendar year shall be deemed, and is declared to be, a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

**Section 2.**

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 **Hughes**, seconded by Council Member **Strawbridge**, the foregoing ordinance was introduced at a regular meeting of the City Council on the 6<sup>th</sup> day of March, 2012, and adopted at a regular meeting of the Council held on the 17<sup>th</sup> day of April, 2012, by the following vote:

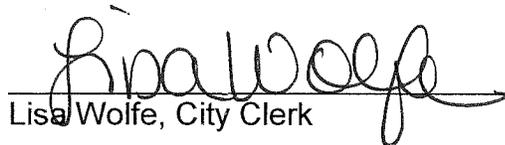
**Ayes: Council Members Campbell, Hughes, Schwartzman, Strawbridge and Mayor Patterson**

**Noes: None**

**Absent: None**

  
Elizabeth Patterson, Mayor

ATTEST:

  
Lisa Wolfe, City Clerk

**Status of Water Conservation Outreach Campaign Efforts**

<b>Public Outreach Activity</b>	<b>Description</b>	<b>Status</b>
Create Theme and Graphic Identity		Completed.
Create Key Messages and Frequently Asked Questions	Overarching key messages were developed for use in all outreach materials. And FAQs with common water conservation questions for distribution to the public.	Completed.
Create Hotline and Email	707-746-4380; water@ci.benicia.ca.us	Completed.
Website Enhancements	BeniciaSavesWater.org	Completed.
Banners for City Park and Ball Fields	Five water conservation banners, each with a different message, are displayed around town.	Completed.
Online Advertising	Advertisements on Facebook will run for 20 weeks that is targeted to Benicia's service area. The City only pays if a viewer clicks on the ad, which takes them to the City's website.	Completed. Ongoing.
City Vehicle Magnets	42 magnets with a water conservation message are on public works, parks, and city hall vehicles to carry a message throughout Benicia.	Completed.
Yard Signs	50 signs have been designed and printed that can be displayed in yards as a display of commitment to using water efficiently.	Majority have been distributed.
Media Outreach	Three press releases have been published by the Benicia Herald.	Ongoing.

Public Outreach Activity	Description	Status
Drought message on water utility bills	"DROUGHT EMERGENCY Please help the City meet our goal of reducing water use by 20%. You can help by cutting back on outdoor irrigation."	Completed.
Farmers' Market	FAQs, rebate information, and water conservation devices	Ongoing.
City Hall Display Case by Council Chamber	A display of water conservation information including rebates for customers to see when they walk in City Hall	Completed.
Library Display	A display showing what the City has done to conserve water is in the foyer of the Library.	Completed.
Articles in bimonthly City Manager Reports	Various topics pertaining to water conservation	Ongoing.
Channel 27 Public Service Announcements (PSAs)	Four "Don't Waste Water" PSAs created by the State (laundry, carwash, bathtub and everybody) run every 15 minutes.	Completed.
Annual Water Quality report to be inserted with water utility bills.	Water conservation information is included in this bill insert.	Scheduled for May and June utility bills.
Restaurant Table Tent Cards	Table toppers were given to local restaurants with the message: "If you'd like water, please ask. Water is happily provided upon request."	Completed.
Outreach to Targeted Partners	Public Works Director has done water conservation presentations at BIPA and Chamber of Commerce meetings. Others are planned.	Ongoing.
Postcard Direct Mailing	A postcard explaining why and how customers can reduce water use.	Mailed 5/28/14.

Public Outreach Activity	Description	Status
Water conservation message on Allied Waste bills	Residents Urged to Reduce Water Use City of Benicia urges residents to reduce their water use by 20%. Start by cutting back on outdoor irrigation – Rebates available – Visit: <a href="http://solanosaveswater.org">solanosaveswater.org</a> – Information available at the downtown Farmers Market each Thursday	Completed.
Water conservation tip card	A tip card to promote water saving tips, rebates and key messages for distribution to targeted partners and at City facilities. Will also be used as a utility bill insert in July and August.	Completed.
Pledge Banner and Form	A pledge banner for children and a pledge form for adults to select water conservation actions they promise to complete. This is an interactive way to teach customers how to use water wisely and they can earn a prize.	To be completed at upcoming Farmers' Markets.
Window clings	For businesses and restaurants to show their commitment to using water efficiently.	Clings have been received. Outreach began 6/18/14.
Flyer for Rebates/Incentive Programs	Working with CAP Coordinator on one comprehensive flyer to inform the public about all rebate and incentive programs available.	Completed on 6/4/14. Flyer attached. Will be updated as incentives change.



# Benicia Saving Water Starts With You

**RESIDENTIAL REBATES AVAILABLE:**

## **TURF REPLACEMENT REBATES**

\$1 per square foot of turf replaced up to \$1,000. Requires pre-inspection.

Program Contact: 707-455-1113

## **SMART IRRIGATION CONTROLLER REBATES**

Up to 50% of the cost of the controller. Requires pre-inspection.

Program Contact: 800-366-6995

## **\$200 HIGH EFFICIENCY TOILET REBATE**

(LIMITED QUANTITIES AVAILABLE: \$100 City Funded, \$100 County Funded, One Application)

## **\$225 in WASHING MACHINE REBATES**

(LIMITED QUANTITIES AVAILABLE: \$75 City Funded, \$75 County Funded, One Application,  
Must apply separately for PG&E \$75 Rebate)

Apply today at:

**SolanoSavesWater.org**

CITY OF BENICIA SPONSORED NO-COST

**Laundry-to-Landscape (L2L) Graywater Kits**

AND

**Showerstart Showerheads**

Are Now Available!

**BeniciaSavesWater.org**



**BeniciaSavesWater.org**

**REBATE HOTLINE: 707-746-4380 E-MAIL: water@ci.benicia.ca.gov VIII.D.39**

# Benicia Saving Water Starts With You

## Commercial Rebates and Services Available:

### **Business and Commercial Water Use Surveys**

are available for inside and outside water use. For more information, visit:  
[SolanoSavesWater.org/RebatesCommercial.html](http://SolanoSavesWater.org/RebatesCommercial.html)

### **Commercial Water Savings Incentive Program**

Businesses are given a 50% rebate of expenditures, excluding labor, on a pre-approved basis up to \$2,500 for water conservation projects  
For more information, visit:

[SolanoSavesWater.org/RebatesCommercial.html](http://SolanoSavesWater.org/RebatesCommercial.html)

### **Benicia Business Resource Incentive Program**

This program provides no cost assessments and reimbursement to business owners to assist them in reducing waste, fuel, water, and energy use.

For more information, visit:

[www.BeniciaBusiness.com/Business-Resource-Incentive-Program](http://www.BeniciaBusiness.com/Business-Resource-Incentive-Program)

[BeniciaSavesWater.org](http://BeniciaSavesWater.org)

**VIII.D.40**

**HOTLINE: 746-4380 E-MAIL: [water@ci.benicia.ca.us](mailto:water@ci.benicia.ca.us)**

**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - JULY 1, 2014**  
**BUSINESS ITEMS**

**DATE** : June 25, 2014

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **DISCUSSION AND DIRECTION ON PROPOSED DROUGHT SURCHARGE AND METER REPLACEMENT PROGRAM**

**RECOMMENDATION:**

Discuss and provide direction on proposed drought surcharge and meter replacement program.

**EXECUTIVE SUMMARY:**

The financial integrity of the water system and the ability to deliver water in a sustained and equitable manner are of paramount importance. The drought and related impacts are having a significant impact on the Water Enterprise Fund. A surcharge to cover costs and revenue losses is proposed to keep the Water Enterprise Fund in a sustainable financial position. Council direction on the structure of the surcharge is sought. An action item will be scheduled for July 15 to initiate the Proposition 218 process.

Twenty-six percent of the City's treated water is unaccounted for. This is the difference between the amount of water that leaves the treatment plant and the amount that is billed. A major component of this problem is the 30+ year age of the water meters which under-read as they age. Staff is recommending that the Council direct the creation of a meter replacement program.

**BUDGET INFORMATION:**

Total estimated drought-related impacts are approximately \$2.58 million. These impacts are comprised of estimated water purchases, conservation efforts and revenue loss due to a combination of the water conservation efforts outlined in this report. Page 4 of this report has a table identifying all of the drought-related expenses. Water enterprise fund reserves (cash less budgeted capital projects and liability reserves) have been declining over the past decade. Despite enacting five years of water rate increases beginning in January of 2013, these increases will not address the financial pressures brought about by declining reserves and the intensified financial impact of the drought.

## **GENERAL PLAN:**

Relevant General Plan Goals:

- Overarching Goal of the General Plan: Sustainability
- Goal 2.36: Ensure an adequate water supply for current and future residents and businesses.

## **STRATEGIC PLAN:**

Relevant Strategic Plan Issue and Strategy:

- Strategic Issue #1: Protecting Community Health and Safety
- Strategy #5: Promote community and personal health

## **Drought Surcharge**

The City of Benicia's water supply primarily comes from two sources – approximately 85% from the Sacramento Delta and the other 15% from Lake Berryessa. After three consecutive years of below-normal rainfall, California is facing a severe drought emergency. Governor Jerry Brown has called for Californians to reduce water use by 20 percent voluntarily and mandatory rationing could be declared in the near future. Moreover, the City's allocation from the State Water Project has been reduced substantially.

In response to the drought, the City has requested a citywide 20% reduction in water consumption. Staff is now proposing a drought surcharge to recover unbudgeted drought-related expenses as well as to recover decreased revenues as a result of reduced water consumption. During times of drought, a water utility has two core objectives: 1) to reduce the amount of water customers consume, and 2) to maintain an adequate amount of revenue to continue operations and to pay for drought-related expenses. The two competing objectives work against each other because as less water is sold the more difficult it is to maintain adequate revenue to cover an agency's costs.

The water enterprise fund does not have adequate reserves to pay for the unbudgeted drought-related costs and the loss of revenue. June 2015 is the expected low point in reserves. In fact, if the City does not implement the drought surcharge, the projected June 2015 reserve levels would decline from \$4.05 million to approximately \$2.15 million. Of the \$4.05 million projected for 7/1/2015, \$2 million of this is restricted to capacity-related capital projects. \$1.2 million is set aside in the reserve funds for replacement of vehicles, filters and systems. If the City were not to implement a drought surcharge, projected unrestricted reserve levels would decline to \$0.12 million at June 2015. This reserve clearly leaves little room for further negative events such as a prolonged drought, emergency repairs or consumption reductions beyond the 20% used to calculate the proposed drought surcharge. Even with the surcharge, to the extent possible, staff will continue to defer non-critical capital and operating

costs during this period. The net result is that the water enterprise reserve funds do not have sufficient funds to pay for the drought-related expenses.

Staff recommends that the drought surcharge be structured so that costs and revenue losses can be recovered over a 12 month period in order to maintain an adequate reserve. The impacts of the drought on the water enterprise fund started in early 2014. Approximately 95% of the projected drought impacts occur by June 2015, however, the drought impacts are not projected to be fully repaid until October of 2015.

The table below outlines unbudgeted costs and revenue losses that would be recovered through a 12-month surcharge. It would raise approximately \$2.58 million and is structured so that those using more water would pay a higher proportion of the total surcharge amount.

With the drought surcharge, a one month bill for the average single family residential user would increase to \$49.84 from \$40.28, a 23.7% increase. However, if the customer reduces water consumption by 20%, then the bill would only increase slightly to \$42.50, a 5.5% increase. For a business customer with a ¾" meter using 50 hcf/month, the current monthly bill is \$141.64. With the drought surcharge, the bill would increase to \$180.14 (a 27.2% increase). If the business reduces water consumption by 20%, the bill would increase to \$144.64 (a 2.1% increase). The draft Bartle Wells report (attached) contains more detail about the surcharge, its structure, and the impact on users.

No one knows how long the drought will last. The July 15 item will include options and recommendations on the potential to reduce the surcharge, and lengthen or shorten its term depending on the duration of the drought. The report will also make provisions for adjustments to the assumed split of water use between Valero and the rest of the City's customers.

It should be noted that Benicia's water rates, as shown on page 29 of the draft Bartle Wells report are near the bottom of the comparison agencies.

**Table 1  
Drought-Related Expenses**

DROUGHT-RELATED EXPENSES				
	2013/14	2014/15	2015/16 1st 6 mos. Only	Total
<b>WATER PURCHASES AND DELIVERY</b>				
Additional Water Purchases (4,000 AF)	\$0	\$776,000	\$0	\$776,000
PG&E/Utilities	\$0	\$0	\$104,900	\$104,900
<u>Terminal Reservoir Bar Screen</u>	<u>\$100,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$100,000</u>
Total Drought-Related Costs	\$100,000	\$776,000	\$104,900	\$980,900
<b>ADDITIONAL CONSERVATION COSTS</b>				
Water Outreach Consultant	\$30,000	\$17,000	\$0	\$47,000
Prop 218 Printing and Mailing	\$7,000	\$0	\$0	\$7,000
Prop 218 Soft Costs	\$10,000	\$0	\$0	\$10,000
Part-time, Temporary Staff	\$0	\$40,000	\$20,000	\$60,000
<u>Water Conservation Promotional Items</u>	<u>\$0</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$10,000</u>
Total Additional Conservation Costs	\$47,000	\$62,000	\$25,000	\$134,000
<b>WATER CONSERVATION PROJECTS</b>				
<i>Dept</i>		<i>Project</i>		
Parks & Community Services		Feasibility study irrigating Benicia Community Park with groundwater or Lake Herman	\$0	\$35,000
Public Works Maintenance	\$150,000	Comprehensive Leak Detection Survey (1)	\$0	\$150,000
Public Works Water	\$0	Water Reuse Studies (1)	\$40,000	\$40,000
Parks & Community Services	\$0	Install Evapotranspiration at remaining parks in City	\$158,000	\$158,000
<u>Parks &amp; Community Services</u>	<u>\$0</u>	<u>Install drip irrigation in median strips</u>	<u>\$80,000</u>	<u>\$80,000</u>
Total Water Conservation Projects	\$150,000		\$313,000	\$463,000
<b>OPERATING EXPENSES (2)</b>				
Operating Expenses to be Recovered via Drought Surcharges (Lost Revenue due to 20% Reduced Consumption)	\$136,376	\$862,741	\$0	\$999,117
<b>TOTAL DROUGHT-RELATED COSTS</b>	<b>\$433,376</b>	<b>\$2,013,741</b>	<b>\$129,900</b>	<b>\$2,577,017</b>
<p>1 - The City currently does not have funding to implement the results of these studies.</p> <p>2 - Assumes 14 months of lost revenue. Projected by BWA based on 2011/12 consumption.</p> <p>3 - Lost revenue is calculated for 14-months ending June 30, 2015. Additional lost revenues due to reduced consumption beyond this period or reduced consumption beyond 20% will result in an extension of the surcharge until Council deems the drought is over and drought-related impacts have been repaid.</p>				

## Overview of Surcharge Components

The City's water enterprise will incur substantial unbudgeted costs and reduced revenues that could total over \$2.5 million as shown in Table 1 above. The City's goal is to ensure, as much as possible, that there is an adequate water supply for all of its customers through February 2016, if the drought continues. The City has enough water to get through 2014. However, if the drought continues, there is a strong likelihood the City will run out of water in 2015 unless steps are taken to secure additional water. To that end, \$776,000 for water purchases is included in the drought surcharge. The City will also incur other added expenditures to deal with the water shortage, including additional utility costs, outreach expenses, and conservation projects. The conservation projects reduce the City's water demand and therefore the need to purchase water now and in the future.

The proposed drought surcharge rates are temporary and proposed to terminate within 12 months of enactment or when the City Council determines that water supply conditions have returned to normal or when drought-related costs have been recovered.

## **Valero Surcharge Participation**

As part of the proposed drought rate structure, staff is recommending that Valero pay 50% of the total surcharge costs based on the following. As the Council will recall Valero is the City's largest untreated water consumer. Of the 10,500 acre-feet of raw water used by the City, Valero consumes 45% of it in an average year. Unlike most of the community, Valero is very limited in its ability to conserve because of the nature of their operations. This means that if the community is successful in conserving, Valero's share of the City's water supply will increase from 45% to 50%. Valero will benefit from other customer conservation efforts because it reduces the amount of water the City has to buy which reduces the overall cost of the surcharge.

It should be acknowledged that Valero began water conservation efforts in 2000 when it acquired the Benicia refinery. In 2000 the raw water usage was 5,400 acre-feet and it has decreased to 4,750 acre-feet in 2013. The recently completed steam condensate recovery project, Phase 1, saves 23 million gallons of water per year. Early this year, when the Governor declared the drought, Valero stepped up immediately and began taking actions to reduce both its treated and raw water use. In addition, the boiler project for which the City Council authorized partial funding at the June 17, 2014 meeting will save additional water. It is expected that this project won't be fully implemented for the drought surcharge period.

## **Proposition 218 Process**

Any proposed increase to water rates, including a drought surcharge, is subject to Proposition 218, which requires that:

- City Council must hold a public meeting to review the rate studies and receive public testimony.
- After taking testimony, if the City Council decides to move forward with the drought surcharge, the Council will set a hearing date for adoption of the increases.
- City must notify property owners by mail of their right to protest the increases, 45 days prior to the scheduled hearing date.
  - For example: if the City Council sets a hearing date for September 2, 2014, notices would be sent out in mid-July.
- Each parcel represents one chance to protest.
- Only one protest for each property will be counted regardless of the number of owners.
- If, as of the scheduled hearing date, more than 50% of the property owners submit a written protest to the City, the rates cannot go into effect. Council can decrease the proposed drought surcharge rates but cannot increase from amounts stated in the public notice. At the close of the

public hearing, if a majority protest does not exist, the City Council will consider the adoption of the proposed drought surcharge.

If the City Council gives direction at the July 1 meeting, staff would place initiation of the Proposition 218 process on the July 15 agenda. There would be a notice mailed and a 45 day period where account holders could protest. A public hearing would be held in September.

### **Water Meter Replacement Program Proposal**

Prior to 2006, the City could not account for approximately 12.5% of its treated water leaving the water treatment plant. Today, the City cannot account for approximately 26% in the distribution system. Regarded as “Non-Revenue Water (NRW)”, this loss is based on four primary causes: 1) un-metered water, 2) main breaks or hydrant shears, 3) distribution system leakage, and 4) under-reading water meters. Of these four categories, staff estimates that system leakage and under-reading meters represent the major portion of the 26% NRW.

Staff is addressing system leakage by contracting with a leak detection firm to locate water leakage in older sections of the City (Lower Arsenal) or in areas of high water pressure (Lower Southampton), with an eventual goal of an on-going leak detection program throughout the entire distribution system. Under-reading water meters are a major problem and represent a significant loss of revenue for the City.

Due to inadequate resources in the Public Works/Maintenance Division, regular meter testing and scheduled meter replacement were suspended in 1998. Most of the water meters in the ground exceed 30 years in age and many are suspected of reading low (as mechanical meters age, they read progressively lower). Staff pulled 20 representative water meters to be tested by a certified water meter testing shop. Fifteen of the 20 meters tested outside of the AWWA Residential Accuracy Standards and measured less than they should have.

An engineering consulting firm that assists cities in resolving NRW problems associated with their water meters has suggested that if the existing mechanical meters were replaced with highly-accurate, ultrasonic water meters for residential customers and magnetic flow meters for commercial customers, the City could recoup a significant amount of the NRW.

To further improve meter reading efficiency and timely data collection, the consultant recommended that the City implement an “automated meter infrastructure” (AMI) that would allow the meters to transmit meter reads daily using radio telemetry. PG&E’s Smart Meter program is an example of an AMI system. AMI systems throughout the country have proven to cut water losses by

## **VIII.E.6**

providing real-time, accurate water reads to alerting the city of any abnormal water usage at a customer service. AMI would also eliminate the monthly routine of manually reading meters in the system, which accounts for five full-time employees working 3-4 days each month reading water meters.

The consultant further estimated the cost of replacing and installing all 9,865 meters to ultrasonic or magnetic flow meters (AMI ready) at \$2.51 million. The consultant estimates the cost of implementing an AMI system within the City and integrating into our billing system be \$1.35 million. Total project cost for meter replacement and AMI implementation would be \$3.86 million. The consultant estimated that based on the estimated City annual water revenues of \$6.8 million and the loss of NRW at just 20% - or \$1.26 million, the Meter Replacement/AMI Project would provide a positive Return on Investment (ROI). The consultant offers the following opinions:

- The project can be self-funding and financed at low interest rates
- Just the meter replacement phase could pay for itself in a short period of time
- The current system becomes more inequitable each year as the water meters age and read less in volume

Initial estimates of the effects of improving the ability to more accurately measure water use are encouraging. Staff will be doing further research and verifying the consultant recommendations before returning to Council with a request for action. If the City is serious about water conservation and delivering cost effective services, then upgrading the meters is mandatory.

### **Medium Term and Long Term Strategies**

The drought has highlighted a number of challenges the City Water system faces. The Council has taken and is considering a number of short term actions to ensure the water supply in the near term and reduce consumption. A large part of the supply challenge relates to the City's significant dependence on the State Water Project. It should be noted that over the decades, as the City came to rely on the SWP, it did so because that water was the least expensive alternative and there were far fewer restrictions on that supply than there are today. Even prior to the drought, the City had taken actions to diversify its portfolio. As recently as 2009 it entered into an agreement with the Solano Irrigation District to purchase 2,000 acre-feet of Solano Project water each year, and any unused water could be stored in Lake Berryessa. The Solano Project water is separate from the State Water Project and managed by the Solano County Water Agency.

The drought surcharge is intended to pay for the immediate needs of the water system because of the drought. It is also intended to maintain the financial health of the water system due to the decline in revenue due to conservation efforts by its treated water customers. The surcharge is proposed to be short term (approximately 12 months.) It will not pay for medium and long term projects that are needed to make the City's water system operate more cost effectively and/or reduce our water dependency.

In the future the City needs to work toward using the water it has more efficiently, aggressively monitoring its supply, and reducing treated water demand. A review and revision of the long term capital improvement program identified in the *2012 Water Master Plan* is warranted. A review and revision of the City code may enable private property owners to make changes to use water more efficiently. Prudent management will require the City to further study the current structure of the City's rate tiers in order to improve our ability to more accurately measure and fairly allocate the costs of water usage among users. Staff intends to return to the City Council in the winter of 2015 with a separate discussion of this needed study.

#### Ensuring the City's Supply Over the Long Term

The City has two major sources of water: the State Water Project and the Solano Project (Lake Berryessa). The City has the authority each year to store up to 2,000 acre-feet in Lake Berryessa of Solano Project water it purchases from the Solano Irrigation District. A long range policy to "bank" a reserve of Solano Project water (for example 10,000 acre-feet or one year's supply) may be appropriate. An annual report to the Council each March may also be considered so that the Council and community are aware of State Water Project carryover balances and the amount of Solano Project water stored in Lake Berryessa. Such a report is important even in wet years because that is when it is most cost effective to make adjustments to the supply portfolio.

#### Efficient Use of Water

As noted above, the City has a high percentage of unaccounted for water (approximately 26%). This is the difference between the amount of water that leaves the treatment plant and the amount that is billed. In addition to the age of the water meters, there are possible leaks in the distribution system. The City does not have a leak detection program, or an adequate capital plan to replace aging water mains, or a plan to replace the water meters. Unless these situations are addressed, the percentage of unaccounted for water will continue to rise.

## Other Capital

There are other capital needs within the Water Fund that are not funded. The drought has illustrated that the City's Cordelia Pump Station does not have the capacity to pump the full demand if the City is using Lake Berryessa as its main supply. An engineering consultant is currently reviewing the required upgrades to the pumping station. Depending on the initiation of the surcharge, there may be some restricted funds available to fund a portion of this capacity-related project.

Previous studies have indicated that major improvements need to be made in the City's distribution system. Improvements are needed to deliver water to the southern portion of Zone 1 (Downtown and Lower Arsenal) via Park Road. The capacity and age of the main in Military West is such that it cannot maintain adequate water pressure for fire and delivery purposes.

The Water Treatment Plant's Programmable Logic Controller (PLC) has reached its life expectancy and is no longer supported by the manufacturer. The "human-machine" interface software for its Supervisory Control and Data Acquisition system (SCADA) is also in need of an upgrade due to outdated software and hardware. The PLC is the most critical component of the Water Treatment Plant because of its capacity of managing flows, chemical dosages, and system controls. It is the "computer" that controls nearly all of the plant functions - 24/7.

There are a number of Parks & Community Services capital projects which would save or reuse water. Increasing drip irrigation in median strips and at some park locations and expansion of the Irrigation Control System are examples. Another idea is to explore the feasibility of irrigating the 50-acre Community Park with groundwater or a piped water system from Lake Herman.

A longer term project would be to re-use wastewater at the Wastewater Treatment Plant for its landscape irrigation, odor control scrubber, and other internal purposes.

The staff is aggressively pursuing the availability of loans and grants for some of these projects. However, the Water Enterprise must have adequate funding to provide matches for the grants, assure the delivery of the projects, and have sufficient reserves to satisfy lenders. As noted above, it is staff's intention to study these issues in the coming months for consideration by the Council in the winter of 2015.

Attachment:

- Draft Bartle Wells Drought Surcharge Memo





**DATE:** June 25, 2014  
**TO:** Steve Salomon, Contract Public Works Director  
**FROM:** Catherine Tseng, Senior Financial Analyst  
**SUBJECT:** Drought Surcharge Study

---

**DRAFT MEMORANDUM**

---

**DROUGHT SURCHARGE STUDY OVERVIEW**

The City of Benicia is considering temporary drought rates to fund additional expenditures needed to operate the water system during water shortage periods and to recover decreased revenues as a result of reduced consumption. The proposed drought rates are temporary and will terminate when the City determines that water supply conditions have returned to normal or when drought-related costs have been recovered.

The City of Benicia's water supply primarily comes from two surface water bodies – the Sacramento Delta and Lake Berryessa. The City receives approximately 85 percent of its water supply from the State Water Project in which water from the Delta is transported through the North Bay Aqueduct (NBA). To serve the remaining needs of the City, water from Lake Berryessa is conveyed through the Putah South Canal, providing 15 percent of Benicia's total water use. Lake Herman is used as an emergency source of water supply and for the Valero Refinery (Valero). The City's water supply contracts include the State Water Project, a 1962 agreement with the City of Vallejo, a Solano Irrigation District (SID) agreement, a water exchange and banking arrangement with the Mojave Water Agency with 2,000 AF, and a settlement agreement with the State as a result of an application for area of origin water rights.

After three consecutive years of below-normal rainfall, California is facing a severe drought emergency. Governor Jerry Brown has called for Californians to reduce water use by 20 percent voluntarily and mandatory rationing could be declared in the near future. Moreover, the City's allocation from the State Water Project has been reduced substantially.

In response to the drought, the City is requesting a 20 percent reduction in water consumption. The City Council will also be considering an emergency drought ordinance that restricts outdoor watering. A typical home uses approximately 50 percent of its water outside, and about 30 percent of that is lost due to overwatering and evaporation from wind and sun.

The City needs to purchase additional water to ensure sufficient supply through February 2016. The City will also incur added expenditures to address the water shortage, including additional utility costs, outreach expenses, and conservation projects. Furthermore, as consumption levels decrease, the water utility is experiencing a decrease in revenues, resulting in the City proceeding with the drought surcharges outlined in this memo.

Drought rates are designed to recover drought-related expenses as well as to achieve a targeted reduction in water consumption. During times of drought, a water utility has two core objectives: 1) to reduce the amount of water customers consume, and 2) to maintain an adequate amount of revenue to continue operations and to pay for drought-related expenses. The two competing objectives work against each other because as less water is sold the more difficult it is to maintain adequate revenue to cover an agency's costs.

In March 2014, the City retained Bartle Wells Associates (BWA) to evaluate drought rates/surcharges alternatives. This memo summarizes our work to date and presents a preliminary drought surcharge for consideration. The projections in this memo are draft and will be updated with input from staff and the City Council.

### **DROUGHT-RELATED EXPENSES**

In addition to funding its current operations, the City also needs to pay for additional costs to manage the drought. These drought-related costs include additional water purchases, added utility expenses to pump water, expenses related to promoting conservation, and water saving projects throughout the City. The City anticipates purchasing up to 4,000 acre-feet (AF) of water at an estimated cost of \$776,000 to assure sufficient supply through February 2016. The City will also incur additional energy costs to pump the additional water. Other expenditures include costs to promote conservation such as rebates and temporary staff for outreach and enforcement. Staff is also proposing several water conservation projects throughout the City. Projects include the leak detection study, water reuse/reduction studies, and installing evapotranspiration and drip irrigation at City parks. The objective of these projects is to enable the City to save water.

Another significant impact is the loss of water sales revenue due to the suggested voluntary 20 percent reduction in consumption. Due to the cutback in water use, a portion of revenues will not be covered from the regular service charges. These revenues are needed for everyday operations and maintenance costs that have already been budgeted. Unfortunately, as usage declines, the City does not experience a corresponding decrease in its operating expenses. Drought rates recognize that rates need to account for net revenue loss due to a decline in water sales.

Using 2011/12 consumption as the base year, the loss of revenues is derived by estimating the amount of revenue based on the current and adopted January 1, 2015 water rates and subtracting out the amount of revenue calculated taking into account a 20 percent reduction in use. Actual consumption may vary, but the projections assume a 20 percent reduction in each residential and commercial tier for the 14 month period from May 2014 through June 2015. The projection of decreased revenues is included in the appendix. (The City operates on a fiscal year basis from July 1 through June 30 of the following year. Accordingly, the City's water consumption and financial data is shown by fiscal year.)

The majority of water system expenses are fixed; these costs are essential regardless of the amount of water that is consumed. Fixed expenses include operational and staff costs, expenditures for building and maintaining infrastructure, and debt service. On the other hand, variable costs are incurred to provide water supply to meet customer demand and fluctuate based on usage. Examples of variable costs include purchased water, chemicals, and utilities.

The following table summarizes the additional costs to the water fund related to the drought.

<b>DROUGHT-RELATED EXPENSES</b>				
	2013/14	2014/15	2015/16 1st 6 mos. Only	Total
<b>WATER PURCHASES AND DELIVERY</b>				
Additional Water Purchases (4,000 AF)	\$0	\$776,000	\$0	\$776,000
PG&E/Utilities	\$0	\$0	\$104,900	\$104,900
<u>Terminal Reservoir Bar Screen</u>	<u>\$100,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$100,000</u>
Total Drought-Related Costs	\$100,000	\$776,000	\$104,900	\$980,900
<b>ADDITIONAL CONSERVATION COSTS</b>				
Water Outreach Consultant	\$30,000	\$17,000	\$0	\$47,000
Prop 218 Printing and Mailing	\$7,000	\$0	\$0	\$7,000
Prop 218 Soft Costs	\$10,000	\$0	\$0	\$10,000
Part-time, Temporary Staff	\$0	\$40,000	\$20,000	\$60,000
<u>Water Conservation Promotional Items</u>	<u>\$0</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$10,000</u>
Total Additional Conservation Costs	\$47,000	\$62,000	\$25,000	\$134,000
<b>WATER CONSERVATION PROJECTS</b>				
<u>Dept</u>		<u>Project</u>		
Parks & Community Services		Feasibility study irrigating Benicia Community Park with groundwater or Lake Herman	\$0	\$35,000
Public Works Maintenance	\$150,000	Comprehensive Leak Detection Survey (1)	\$0	\$150,000
Public Works Water	\$0	Water Reuse Studies (1)	\$40,000	\$40,000
Parks & Community Services	\$0	Install Evapotranspiration at remaining parks in City	\$158,000	\$158,000
<u>Parks &amp; Community Services</u>	<u>\$0</u>	<u>Install drip irrigation in median strips</u>	<u>\$80,000</u>	<u>\$80,000</u>
Total Water Conservation Projects	\$150,000	\$313,000	\$0	\$463,000
<b>OPERATING EXPENSES (2)</b>				
Operating Expenses to be Recovered via Drought Surcharges (Lost Revenue due to 20% Reduced Consumption)	\$136,376	\$862,741	\$0	\$999,117
<b>TOTAL DROUGHT-RELATED COSTS</b>	<b>\$433,376</b>	<b>\$2,013,741</b>	<b>\$129,900</b>	<b>\$2,577,017</b>
<small>1 - The City currently does not have funding to implement the results of these studies.                  2 - Assumes 14 months of lost revenue. Projected by BWA based on 2011/12 consumption.                  3 - Lost revenue is calculated for 14-months ending June 30, 2015. Additional lost revenues due to reduced consumption beyond this period or reduced consumption beyond 20% will result in an extension of the surcharge until Council deems the drought is over and drought-related impacts have been repaid.</small>				

## **2012 RATE STUDY**

The City's water utility is a self-supporting enterprise fund. Revenues are derived primarily from water charges and must be adequate to fund the City's operating and capital programs. The City completed a water rate study in 2012 that adopted five-years of rate adjustments beginning on January 1, 2013 through January 1, 2017. Prior to the 2012 rate study, the City had not increased water rates since 2006. To minimize the impact on ratepayers and to keep the rate increases as low as possible, the City scaled back the water capital program to only include crucial infrastructure improvements. Additionally, staff lowered the water fund budget by implementing significant cost savings measures including reduced salaries and long-term energy savings projects.

At that time, the adopted rate adjustments were considered "the bare minimum" increases needed to ensure that the water utility covered expenses, complied with debt service coverage requirements, and met the water reserve fund target at the end of the five-year period. Consequently, the adopted rates did not leave the water fund with the latitude to pay for unexpected expenditures, such as additional water purchases.

DRAFT

<b>ADOPTED MONTHLY WATER RATES</b>						
Effective Date		2012/13	2013/14	2014/15	2015/16	2016/17
		Jan 1, 2013	Jan 1, 2014	Jan 1, 2015	Jan 1, 2016	Jan 1, 2017
Rate Increase %		7.0%	12.9%	11.5%	6.8%	3.5%
<b>Residential Rates</b>						
Service Charge per meter	Single family	\$14.77	\$16.68	\$18.60	\$19.86	\$20.56
	Multi-family unit	\$11.09	\$12.52	\$13.96	\$14.91	\$15.43
Volume Charge per hcf (2)	0 - 8 hcf	\$1.46	\$1.65	\$1.84	\$1.97	\$2.04
	8 - 30 hcf	\$2.30	\$2.60	\$2.90	\$3.10	\$3.21
	Over 30 hcf	\$2.46	\$2.78	\$3.10	\$3.31	\$3.43
<b>Commercial / Industrial / Irrigation / Municipal Rates</b>						
Service Charge per meter	5/8 - 3/4"	\$19.08	\$21.54	\$24.02	\$25.65	\$26.55
	1"	\$33.90	\$38.27	\$42.67	\$45.57	\$47.16
	1½"	\$76.24	\$86.07	\$95.97	\$102.50	\$106.09
	2"	\$135.50	\$152.98	\$170.57	\$182.17	\$188.55
	3"	\$304.85	\$344.18	\$383.76	\$409.86	\$424.21
	4"	\$541.93	\$611.84	\$682.20	\$728.59	\$754.09
	6"	\$1,219.32	\$1,376.61	\$1,534.92	\$1,639.29	\$1,696.67
Volume Charge per hcf	0 - 30 hcf	\$1.99	\$2.25	\$2.51	\$2.68	\$2.77
	Over 30 hcf	\$2.33	\$2.63	\$2.93	\$3.13	\$3.24
<b>Automatic Sprinkler &amp; Private Fire Hydrant Rates</b>						
Flat Rate per meter	2"	\$10.03	\$11.32	\$12.62	\$13.48	\$13.95
	4"	\$17.55	\$19.81	\$22.09	\$23.59	\$24.42
	6"	\$24.84	\$28.04	\$31.26	\$33.39	\$34.56
	8"	\$32.55	\$36.75	\$40.98	\$43.77	\$45.30
	10"	\$40.01	\$45.17	\$50.36	\$53.78	\$55.66
	12"	\$47.51	\$53.64	\$59.81	\$63.88	\$66.12
Fire Hydrants	Double outlet & steamer	\$12.53	\$14.15	\$15.78	\$16.85	\$17.44
	Single outlet & wharf	\$3.77	\$4.26	\$4.75	\$5.07	\$5.25
<b>Untreated Water Rates</b>						
Minimum Charge per meter	2"	\$25.02	\$28.25	\$31.50	\$33.64	\$34.82
	3"	\$50.03	\$56.48	\$62.98	\$67.26	\$69.61
	4"	\$75.00	\$84.68	\$94.42	\$100.84	\$104.37
	6"	\$149.98	\$169.33	\$188.80	\$201.64	\$208.70
Volume Charge per hcf	0 - 150 hcf	\$0.90	\$1.02	\$1.14	\$1.22	\$1.26
	Over 150 hcf	by agmt				
(1) Customers are billed on a bi-monthly basis.						
(2) HCF = one hundred cubic feet = 748 gallons						
Source: City Ordinance Nos. 93-15, 95-11, 96-9, 00-13						

## **WATER UTILITY RESERVE FUNDS**

As of July 1, 2013, the water enterprise held total reserves of \$8.73 million in operations, capital, and replacement reserve funds as shown below. However, the majority of the reserves are restricted for specific capital projects. With a balance of \$1.96 million, the Water Operations Reserve (Fund 090) functions like a “checking account”.

Cash reserves in the water enterprise funds have been declining steadily over the past decade. A significant portion of the decline related to inadequate operating revenues generated to maintain stable cash levels. Between June 2009 and June 2013, total cash reserves declined from \$13.87 million to \$8.73 million. Approximately 47% of the amount depleted during this time related to net operating costs and debt payments.

Despite enacting five years of water rate increases beginning in January of 2013, such increases will not address the financial pressure brought about by declining reserves, and now intensified by the effects of the additional drought costs and reduced water revenues estimated between now and June 30, 2015.

The table below reflects estimated water enterprise operating cash reserves of \$1.82 and \$0.80 million as of June 30, 2014 and 2015, respectively. Such balances are difficult to estimate, and assume drought surcharge revenue is collected as recommended by staff beginning in September 2014. Any consumption reduction beyond the 20% estimated in the drought study or any unexpected expenditures will further reduce projected operating reserve balances. Conversely, any reduced expenditures or water consumption levels above the 20% predicted will result in increased reserves.

Estimated capital reserves are \$1.14 and \$1.21 million as of June 30, 2014 and 2015, respectively. It is also worth noting that the water system capital planning is currently on a “pay-as-you-go” basis for essential maintenance, repair, and replacement projects. These are the only funds available for such activity and the current projected levels should not be considered adequate over the long term for maintenance, repair, and replacement of capital infrastructure.

The Restricted Water Connection reserve consists of connection fee revenues. These revenues are restricted for funding capital projects related to the improvement or expansion of water system capacity. The table below reflects estimated restricted connection fee reserves of \$3.65 and \$2.0 million as of June 30, 2014 and 2015, respectively. Restricted capital reserves consist of estimated cash balances less budgeted capital projects.

In April 2011, the City adopted a “Fund Balance Reserve Policy” that requires a minimum operating fund reserve balance equivalent to 20 percent of enterprise revenues. For 2013/14, the water utility’s operating reserve target is about \$1.56 million.

Maintaining a prudent minimal level of fund reserves provides a financial cushion for dealing with unanticipated expenses, revenue shortfalls, and non-catastrophic emergency capital repairs. As the table below reflects, the “operating and capital” fund reserves will decline through June 2015 while the City absorbs drought-related costs ahead of the surcharge revenue that will be collected through September 2015 or beyond if the drought continues past June 2015. It is acceptable if reserves fall below the target on a temporary basis, provided action is taken to achieve the target over the longer run.

<b>WATER RESERVE FUND BALANCES</b>			
	<b>Actual July 1, 2013</b>	<b>Projected June 30, 2014</b>	<b>Projected (1) June 30, 2015</b>
<b>Operating Funds:</b>			
Water Operations and Reserves - 090	\$1,965,100	\$1,825,000	\$800,000
<b>Sub-total Operating Reserves</b>	<b>\$1,965,100</b>	<b>\$1,825,000</b>	<b>\$800,000</b>
<b>Capital Funds:</b>			
Vehicle/Equipment Replacement - 592,595	\$509,885	\$439,410	\$471,695
Filter Replacement - 593	\$86,510	\$67,285	\$200,000
System Replacement - 594	\$454,280	\$388,345	\$438,345
Major Capital - 596	\$608,775	\$249,325	\$104,325
<b>Sub-total Capital Replacement Reserves</b>	<b>\$1,659,450</b>	<b>\$1,144,365</b>	<b>\$1,214,365</b>
<b>Restricted:</b>			
Water Connection - 045	\$5,109,545	\$3,647,160	\$2,033,160
<b>Total Water Reserves</b>	<b>\$8,734,095</b>	<b>\$6,616,525</b>	<b>\$4,047,525</b>

1 - Projected Balances at June 30, 2015 assumed drought surcharge in effect beginning in September 2014.

## **WATER CONSUMPTION**

Over the five-year period from 2008/09 through 2012/13, total consumption has increased roughly 3 percent. It is important to note that City staff considers 2012/13 an above-average consumption year. A “normal” consumption year is 2011/12 in which annual consumption totaled 1,893,087 hundred cubic feet (hcf).

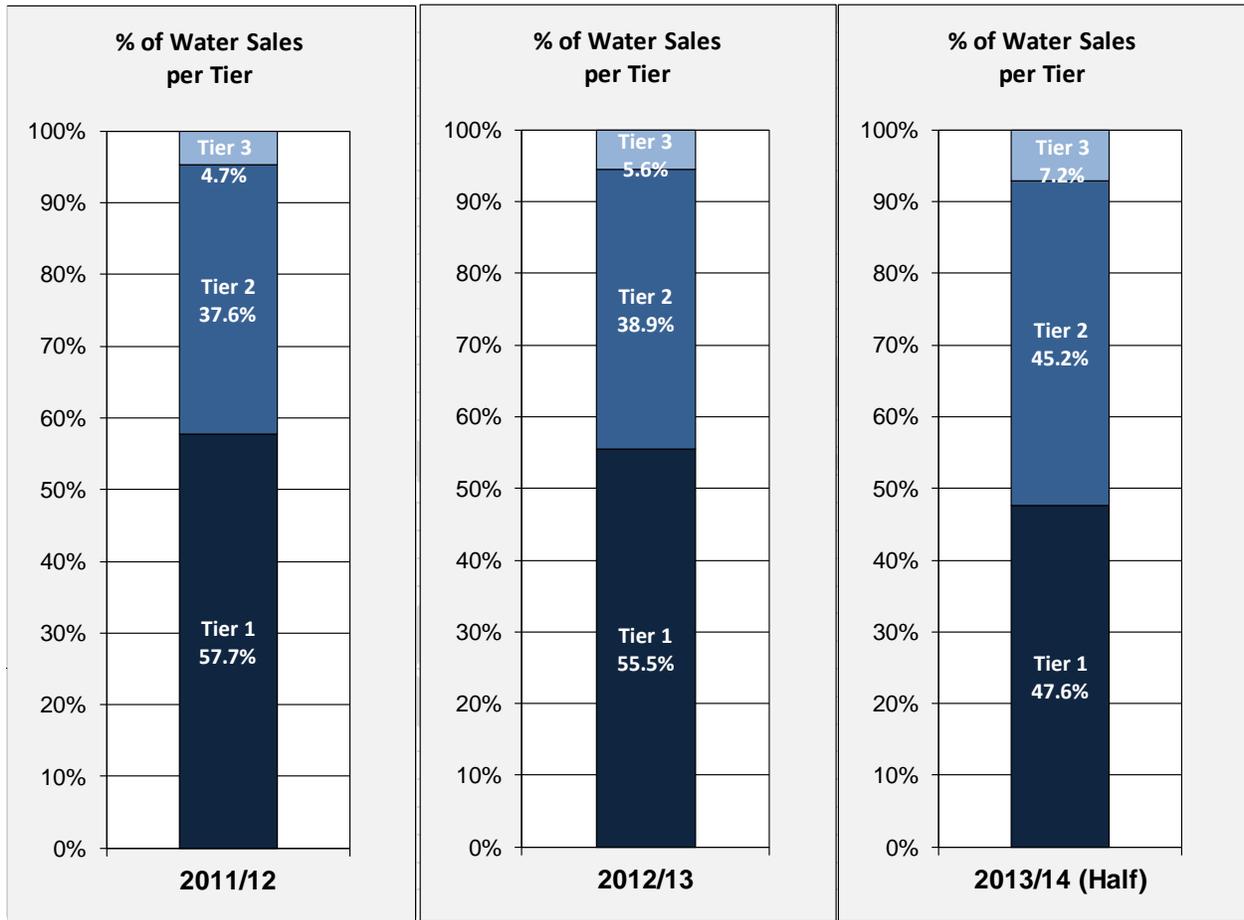
ANNUAL WATER CONSUMPTION										
Customer Category	2008/09		2009/10		2010/11		2011/12		2012/13	
	hcf	Percent								
<b>Residential</b>										
Single Family Resid.	917,557	46.8%	834,857	47.7%	836,445	46.8%	846,394	44.7%	891,504	44.1%
Senior Single Family Resid.	287,938	14.7%	270,007	15.4%	281,350	15.7%	345,584	18.3%	368,687	18.2%
Multi-Family Dwelling	209,924	10.7%	200,095	11.4%	200,095	11.2%	207,131	10.9%	219,442	10.9%
Senior Multi-Family	3,766	0.2%	2,767	0.2%	3,295	0.2%	4,608	0.2%	4,494	0.2%
Mobile Home	<u>932</u>	<u>0.0%</u>	<u>1,123</u>	<u>0.1%</u>	<u>1,639</u>	<u>0.1%</u>	<u>1,839</u>	<u>0.1%</u>	<u>1,301</u>	<u>0.1%</u>
Subtotal Residential	1,420,117	72.5%	1,308,849	74.8%	1,322,824	74.0%	1,405,556	74.2%	1,485,428	73.5%
<b>Commercial</b>	184,997	9.4%	154,829	8.8%	163,015	9.1%	167,064	8.8%	188,069	9.3%
<b>Municipal</b>	10,780	0.6%	10,427	0.6%	11,478	0.6%	10,638	0.6%	12,292	0.6%
<b>Industrial</b>	46,435	2.4%	45,508	2.6%	38,964	2.2%	40,922	2.2%	38,848	1.9%
<b>Hydrant Meters</b>	5,551	0.3%	1,375	0.1%	551	0.0%	761	0.0%	341	0.0%
Subtotal, Except Irrigation	1,667,880	85.1%	1,520,988	86.9%	1,536,832	85.9%	1,624,941	85.8%	1,724,978	85.4%
<b>Irrigation</b>										
Irrigation	175,696	9.0%	134,727	7.7%	145,643	8.1%	162,232	8.6%	176,766	8.7%
Municipal Irrigation	<u>115,337</u>	<u>5.9%</u>	<u>94,111</u>	<u>5.4%</u>	<u>106,198</u>	<u>5.9%</u>	<u>105,914</u>	<u>5.6%</u>	<u>118,679</u>	<u>5.9%</u>
Subtotal Irrigation Meters	291,033	14.9%	228,838	13.1%	251,841	14.1%	268,146	14.2%	295,445	14.6%
<b>Total Usage</b>	<b>1,958,913</b>	<b>100.0%</b>	<b>1,749,826</b>	<b>100.0%</b>	<b>1,788,672</b>	<b>100.0%</b>	<b>1,893,087</b>	<b>100.0%</b>	<b>2,020,422</b>	<b>100.0%</b>
<i>Percent Change</i>			-10.7%		2.2%		5.8%		6.7%	

(1) Benicia has 3 mobile home parks that are included in Residential Senior, Multi-Family Senior, and Multi-Family categories.

Source: City of Benicia Consumption Reports

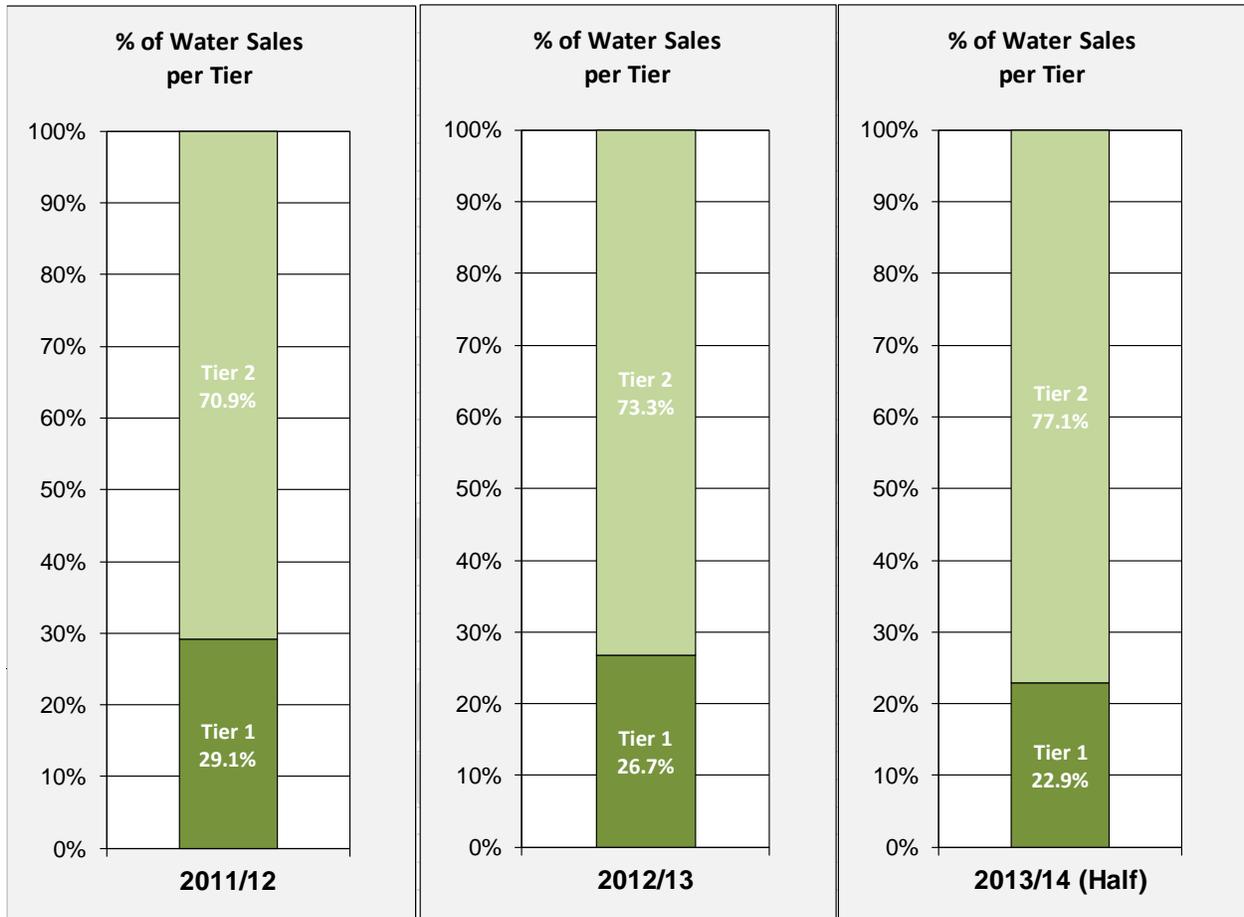
The following charts reflect the amount of water sold in each tier during FY 2011-12 through FY 2013-14 for both residential and non-residential customers. The residential category includes both single family and multi-family residential since both categories incur the same three tier-levels and charges per City ordinance. The non-residential category includes commercial, industrial, municipal, and irrigation customers which incur the same two tier-levels and charges per City ordinance. While tier-usage varies year over year; in FY 2011-12 (baseline year) approximately 95% of residential water sales occurs in the first two tiers, and 29% of non-residential water sales occurs within the first tier.

Residential: Percent of Water Consumption in Each Tier								
2011/12		2012/13		2013/14				
Monthly Use	Water Use in Tier	Monthly Use	Water Use in Tier	Monthly Use	Water Use in Tier			
Tier 1	0 - 8 hcf	57.7%	Tier 1	0 - 8 hcf	55.5%	Tier 1	0 - 8 hcf	47.6%
Tier 2	8 - 30 hcf	37.6%	Tier 2	8 - 30 hcf	38.9%	Tier 2	8 - 30 hcf	45.2%
Tier 3	Over 30 hcf	4.7%	Tier 3	Over 30 hcf	5.6%	Tier 3	Over 30 hcf	7.2%
Total		100.0%	Total		100.0%	Total		100.0%



1 - Water bills & use statistics based on consumption data for 2011/12, 2012/13 and 2013/14.

Non-Residential: Percent of Water Consumption in Each Tier								
2011/12		2012/13		2013/14				
Monthly Use	Water Use in Tier	Monthly Use	Water Use in Tier	Monthly Use	Water Use in Tier			
Tier 1	0 - 30 hcf	29.1%	Tier 1	0 - 30 hcf	26.7%	Tier 1	0 - 30 hcf	22.9%
Tier 2	Over 30 hcf	70.9%	Tier 2	Over 30 hcf	73.3%	Tier 2	Over 30 hcf	77.1%
Total		100.0%	Total		100.0%	Total		100.0%



1 - Water bills & use statistics based on consumption data for 2011/12, 2012/13 and 2013/14.

Water losses are common in all water systems, typically accounting for approximately 10 - 20% of all usage. Comparatively, water losses in Benicia are estimated at approximately 26.5% in 2013. The exact cause of the losses is unknown but can likely be attributed to the aging water system, including leaks in the pipelines and inaccurate meter readings.

Many of the City's water transmission and distribution pipelines are now 40 to 70 years old, or older. The City's water meters are also aging which could result in imprecise meter readings. While these pipelines and meters have been operating for many years, in future years the City

will likely need to make substantial investments in the rehabilitation and replacement of aging infrastructure as they reach the end of their useful lives. Many other water agencies are facing similar challenges.

To determine the cause of the water losses, the City is conducting a leak detection study for the water system. The City is also considering a meter replacement program for the future.

## **VALERO REFINERY**

Benicia supplies Valero with untreated water under a water supply agreement. The agreement was updated in January 2009 and established that the water rates for Valero would be recalculated on a bi-annual basis based on actual operating costs. The last rate adjustment was implemented for 2013/14 and 2014/15. Total annual revenue from Valero is approximately \$1 million.

As part of the proposed drought rate structure, staff is recommending that Valero pay 50 percent of the total surcharge costs based on the following. Valero is the City's largest untreated water consumer. Of the 10,500 acre-feet of raw water used by the City, Valero consumes 45 percent of it in an average year. Unlike most of the community, Valero is very limited in its ability to conserve because of the nature of their operations. This means that if the community is successful in conserving, Valero's share of the City's water supply will increase from 45 percent to 50 percent. Valero will benefit from other customer conservation efforts because it reduces the amount of water the City has to buy which reduces the overall cost of the surcharge.

It should be acknowledged that Valero began water conservation efforts in 2000 when it acquired the Benicia refinery. In 2000 Valero's raw water usage was 5,400 acre-feet and has decreased to 4,750 acre-feet in 2013. The recently completed steam condensate recovery project, Phase 1, saves 23 million gallons of water per year. Early this year, when the Governor declared the drought, Valero stepped up immediately and began taking actions to reduce both its treated and raw water use. In addition, the boiler project for which the City Council authorized partial funding at the June 17, 2014 meeting will save additional water. It is expected that this project will not be fully implemented for the drought surcharge period.

During the surcharge period, the City will monitor the estimated allocation percentage versus actual results with the intent of considering adjustments to the allocation percentage.

VALERO / TREATED WATER CUSTOMERS COST SHARE ALLOCATION				
<b>WATER CONSUMPTION</b> <i>(BASED ON 5-YEAR AVERAGE IN ACRE-FEET)</i>	Total Water Use	Percent	Water Use with	Percent
	<u>(AF)</u>	<u>of Total</u>	<u>20% Reduction (AF)</u>	<u>of Total</u>
Treated Water Customers	5,837	55%	4,670	50%
Valero	<u>4,750</u>	<u>45%</u>	<u>4,750</u>	<u>50%</u>
Total Use	10,587	100%	9,420	100%

## ASSUMPTIONS

The drought surcharges developed in this study are based on the best information currently available and include a number of assumptions including:

- Treated water consumption is projected to decrease by 20 percent; calculated 14-months through June 2015.
- 2011/12 water consumption is considered an average use year and is used as the baseline year to estimate the effect of the 20 percent reduction.
- The drought surcharge will become effective in September 2014.
- The drought surcharge is temporary and will only be in effect until the City recovers the drought-related costs discussed above and water supply conditions have stabilized. The rates presented in this memo assume that the drought surcharge will be in effect for a 12-month period. The City Council will ultimately determine how long the drought surcharge will be in place.
- The City will implement the January 1, 2015 rate increase.
- Valero will pay for 50% of the costs associated with the drought.

## PROPOSED DROUGHT SURCHARGES

The City's water rates include two components:

- a) A **fixed service charge** that varies based on meter size and is levied regardless of water consumption. Any customer connected to the water system must pay the service charge for each billing period, whether or not they use any water. The service charge recognizes the fact that the water utility incurs fixed costs in connection with the ability to serve each connection at any given time. The minimum charge per billing period for all accounts is the service charge.
- b) A **volume charge** billed per each unit of metered water use. Single family and multi-family residential customers are billed according to a three-tiered inclining volumetric rate structure in which the cost of each incremental unit of water increases in each tier. For all other customers, the volume rate structure consists of two tiers.

It is recommended that the drought surcharge be only applied to the volume charge. The City recognizes that the City’s ratepayers are already doing their part to conserve. Applying the drought surcharge to only the volume charge component gives customers the increased ability to control a portion of their water bills.

**Allocation of Drought-Related Costs**

The proposed drought surcharge will recover the additional drought-related expenses while maintaining revenue stability to the water fund. The surcharges assume that the City’s allocation of total costs is 50% and Valero’s allocation is 50% as shown below. Approximately \$2.58 million of drought-related costs need to be recovered from the City’s drought surcharge.

<b>50% TREATED WATER CUSTOMERS / 50% VALERO</b>		
	<u>Allocation</u>	
<b>TREATED WATER CUSTOMER'S SHARE OF DROUGHT EXPENSES</b>	<b>50%</b>	
Water Purchases & Delivery		\$490,450
Additional Conservation Costs		\$67,000
Water Conservation Projects		\$231,500
<u>Operating Expenses to be Recovered via Drought Surcharges (1)</u>		<u>\$499,559</u>
<b>Total</b>		<b>\$1,288,509</b>
<b>VALERO'S SHARE OF DROUGHT EXPENSES</b>	<b>50%</b>	
Water Purchases & Delivery		\$490,450
Additional Conservation Costs		\$67,000
Water Conservation Projects		\$231,500
<u>Operating Expenses to be Recovered via Drought Surcharges (1)</u>		<u>\$499,559</u>
<b>Total</b>		<b>\$1,288,509</b>
<b>TOTAL DROUGHT EXPENSES</b>		<b>\$2,577,017</b>

1 - Operating expenses that need to be recovered due to lost revenue attributed to the reduction in consumption.

To calculate the drought surcharge, the treated water customers’ share of drought-related expenses are allocated between residential (single and multi-family) and non-residential (commercial, industrial, irrigation, and municipal) customer classes based on their share of total treated water consumption. As shown in the next table, residential customers consume approximately 74 percent and non-residential customers use roughly 26 percent of total use. Therefore, approximately \$957,500 (or 74 percent) of drought expenses will be recovered from residential water sales, and \$331,000 (or 26 percent) will be recovered from non-residential water sales.

<b>DROUGHT EXPENSES ALLOCATED BETWEEN RESIDENTIAL &amp; NON-RESIDENTIAL</b>				
		<b>Cost Allocation to Residential &amp; Non-Residential</b>		
		<b>Residential</b>	<b>Non-Residential</b>	<b>Total</b>
Baseline Projected Water Use (hcf)		1,405,556	487,531	1,893,087
Change in Water Sales		-20%	-20%	-20%
Projected Water Use Based on Reduction		1,124,445	390,025	1,514,470
% of Total Water Consumption		74.2%	25.8%	100.0%
<b>EXPENSES</b>	<b>50%</b>			
Water Purchases & Delivery	\$490,450	\$364,143	\$126,307	\$490,450
Additional Conservation Costs	\$67,000	\$49,745	\$17,255	\$67,000
Water Conservation Projects	\$231,500	\$171,881	\$59,619	\$231,500
<u>Operating Expenses to be Recovered via Drought Surcharges</u>	<u>\$499,559</u>	<u>\$370,906</u>	<u>\$128,652</u>	<u>\$499,559</u>
<b>Total Expenses</b>	<b>\$1,288,509</b>	<b>\$956,676</b>	<b>\$331,833</b>	<b>\$1,288,509</b>

After the drought-related expenses are allocated between the two customer classes, the costs are distributed amongst the consumption tiers. The objective is to encourage overall 20 percent reduction in baseline water usage. To minimize the impact on low water users, the higher tiers (Tiers 2 and 3 for Residential and Tier 2 for Commercial) will see a higher increase. The drought-related costs are allocated differently between the residential and non-residential classes because the number of volumetric tiers and distribution of water consumption varies for each class.

#### *Water Purchases and Delivery*

The additional expenses for water purchases and utilities are allocated based on an estimate of the amount of purchased water is needed for each tier. The calculation allocates half or 2,000 AF of the total amount of the additional water purchases to the City and assumes that only 85 percent of the additional water will be billed due to system water losses. The City is assuming an average water loss of 15 percent based upon aggressive implementation of leak detection and meter-replacement plans in order to reduce the current high level of unaccounted water. A higher portion of the purchased water is allocated to Tiers 2 and 3 for residential and to Tier 2 for non-residential. The table below shows the distribution of additional water purchases to the customer classes.

<b>ALLOCATION OF ADDITIONAL WATER PURCHASES &amp; DELIVERY COSTS</b>				
Total Water Purchases (4,000 AF)	1,742,400	hcf		
Total City's Share of Additional Water Purchases (2,000 AF)	871,200	hcf		
Assumed % Actually Billed (1)	85%			
Water actually metered and billed by City	740,520	hcf		
Residential allocation of imported water (assuming 15% water loss) - 74.2%	549,812	hcf		
Commercial allocation of imported water (assuming 15% water loss) - 25.8%	190,708	hcf		
<b>RESIDENTIAL (SINGLE FAMILY &amp; MULTI-FAMILY)</b>				
	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>	<b>Total</b>
Total use with 20% cutback (hcf)	648,976	422,482	52,987	1,124,445
% of water supply from imported water	32.9%	67.0%	100.0%	
Imported water allocation to tiers (hcf)	213,762	283,063	52,987	549,812
% of imported water cost recovery per tier	38.9%	51.5%	9.6%	
Allocation of imported water costs to tiers	\$141,576	\$187,474	\$35,094	\$364,143
<b>NON-RESIDENTIAL (COMMERCIAL/INDUSTRIAL/IRRIGATION/MUNICIPAL)</b>				
	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>	<b>Total</b>
Total use with 20% cutback (hcf)	113,565	276,460	n/a	390,025
% of water supply from imported water	21.9%	60.0%		
Imported water allocation to tiers (hcf)	24,832	165,876	n/a	190,708
% of imported water cost recovery per tier	13.0%	87.0%		
Allocation of imported water costs to tiers	\$16,446	\$109,860	n/a	\$126,307
1 - Assumes not all water is billed due to system loss and metering deficiencies				

### *Additional Conservation Costs and Water Conservation Projects*

For residential, the additional conservation costs and projects are allocated amongst all use with a disproportionate cost recovery on Tiers 2 and 3. Based on 2011/12 water consumption, approximately 9 percent (2 times the amount of water used in Tier 3) of additional conservation costs is allocated to Tier 3. Roughly 56 percent (1.5 times the amount of water used in Tier 2) of additional costs is allocated to Tier 2. The remainder of the costs or 34 percent is allocated to Tier 1.

For non-residential, the additional conservation costs and projects are allocated 29 percent to Tier 1 and 71 percent to Tier 2. Compared to the residential class, the non-residential class is not homogenous which makes it difficult to estimate each customer's capacity to conserve. Therefore, these costs are distributed based on the proportion of actual consumption in each tier.

### *Operating Expenses to be Recovered via Drought Surcharges*

For both residential and non-residential, the lost revenue due to the reduction in water consumption is allocated to each tier based on the percentage of water used in each tier.

The following table summarizes the allocation of the drought-related expenses to each tier for both the residential and non-residential classes.

DROUGHT SURCHARGE CALCULATION														
	RESIDENTIAL ALLOCATION								NON-RESIDENTIAL ALLOCATION					
	Tiered Rate Allocation %				Tiered Rate Allocation \$				Tiered Rate Allocation %			Tiered Rate Allocation \$		
	Tier 1	Tier 2	Tier 3	Subtotal	Tier 1	Tier 2	Tier 3	Subtotal	Tier 1	Tier 2	Subtotal	Tier 1	Tier 2	Subtotal
Baseline Projected Water Use (hcf)	811,220	528,103	66,234	1,405,556					141,956	345,575	487,531			
Change in Water Sales	-20%	-20%	-20%	-20%					-20%	-20%	-20%			
Projected Water Use - 20% Conservation (hcf)	648,976	422,482	52,987	1,124,445					113,565	276,460	390,025			
% of Total Water Consumption	42.9%	27.9%	3.5%	74.2%					7.5%	18.3%	25.8%			
% of Consumption in Each Tier	57.7%	37.6%	4.7%	100.0%					29.1%	70.9%	100.0%			
<b>EXPENSES</b>														
Water Purchases & Delivery	38.9%	51.5%	9.6%	100.0%	\$141,576	\$187,474	\$35,094	\$364,143	13.0%	87.0%	100.0%	\$16,446	\$109,860	\$126,307
Additional Conservation Costs	34.2%	56.4%	9.4%	100.0%	\$17,021	\$28,036	\$4,688	\$49,745	29.1%	70.9%	100.0%	\$5,024	\$12,231	\$17,255
Water Conservation Projects (1)	34.2%	56.4%	9.4%	100.0%	\$58,812	\$96,870	\$16,199	\$171,881	29.1%	70.9%	100.0%	\$17,359	\$42,259	\$59,619
Operating Expenses to be Recovered via Drought Surcharges	57.7%	37.6%	4.7%	100.0%	\$214,069	\$139,359	\$17,478	\$370,906	29.1%	70.9%	100.0%	\$37,460	\$91,192	\$128,652
<b>Total Expenses</b>	45.1%	47.2%	7.7%	100.0%	\$431,478	\$451,739	\$73,459	\$956,676	23.0%	77.0%	100.0%	\$76,290	\$255,543	\$331,833
Projected Water Consumption per Tier					648,976	422,482	52,987					113,565	276,460	
Tiered Rate Allocation Divided by Projected Water Use					\$0.66	\$1.07	\$1.39					\$0.67	\$0.92	

The proposed drought surcharges for the current rates effective January 1, 2014 and for the adopted rates for January 1, 2015 are shown on the table below. Highlighted in blue, the drought surcharges only apply to the volume charge. There are no changes to the service charges which are not shown.

PROPOSED DROUGHT SURCHARGES			
January 1, 2014 Rates			
	Current Volume Charge	Proposed Drought Surcharge	Total Proposed Volume Charge
<b>RESIDENTIAL (SINGLE &amp; MULTI-FAMILY) VOLUME CHARGE</b>			
Tier 1: 0 - 8 hcf	\$1.65	\$0.66	\$2.31
Tier 2: 8 - 30 hcf	\$2.60	\$1.07	\$3.67
Tier 3: Over 30 hcf	\$2.78	\$1.39	\$4.17
<b>NON-RESIDENTIAL (COMMERCIAL/INDUSTRIAL/IRRIGATION/MUNICIPAL) VOLUME CHARGE</b>			
Tier 1: 0 - 30 hcf	\$2.25	\$0.67	\$2.92
Tier 2: Over 30 hcf	\$2.63	\$0.92	\$3.55

January 1, 2015 Rates			
	Current Volume Charge	Proposed Drought Surcharge	Total Proposed Volume Charge
<b>RESIDENTIAL (SINGLE &amp; MULTI-FAMILY) VOLUME CHARGE</b>			
Tier 1: 0 - 8 hcf	\$1.84	\$0.66	\$2.50
Tier 2: 8 - 30 hcf	\$2.90	\$1.07	\$3.97
Tier 3: Over 30 hcf	\$3.10	\$1.39	\$4.49
<b>NON-RESIDENTIAL (COMMERCIAL/INDUSTRIAL/IRRIGATION/MUNICIPAL) VOLUME CHARGE</b>			
Tier 1: 0 - 30 hcf	\$2.51	\$0.67	\$3.18
Tier 2: Over 30 hcf	\$2.93	\$0.92	\$3.85

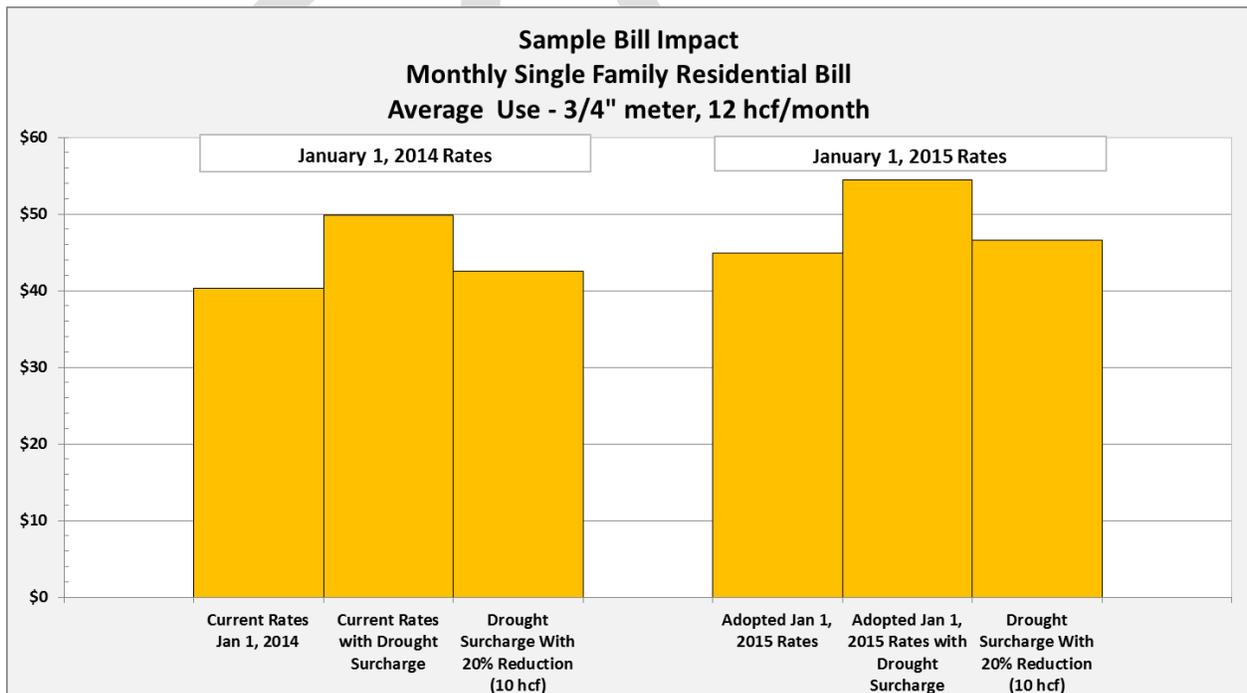
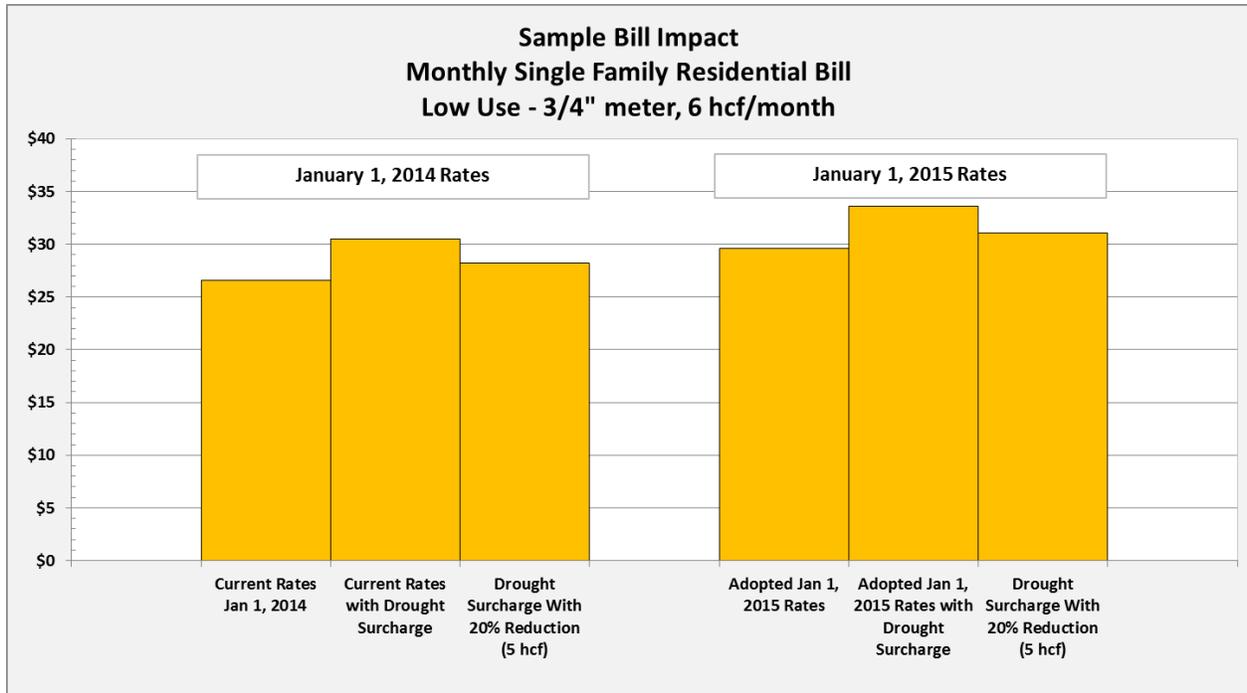
## SAMPLE BILL IMPACTS

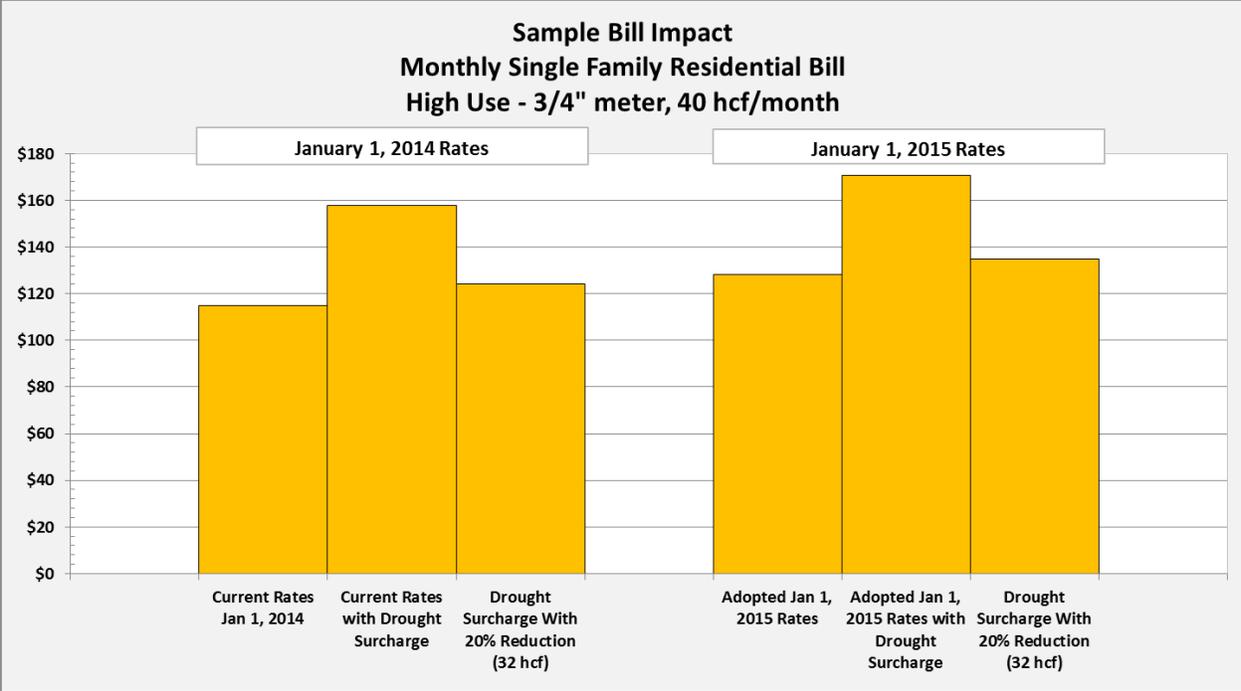
The following tables show sample monthly bill impacts for a selection of customer profiles. The proposed revenue adjustments do not imply that each customer will receive the same percentage increase in their bill. The bill impacts will vary for each customer as a result of each individual customer's actual consumption levels. Note that water consumption, particularly for single family customers, typically varies from bill to bill due to seasonal variations in weather and/or other factors. Hence customers could face a range of impacts throughout the year depending on their level of water use in each billing period.

<b>SAMPLE MONTHLY BILL IMPACTS: SINGLE FAMILY RESIDENTIAL</b>					
	Usage	JANUARY 1, 2014 RATES		JANUARY 1, 2015 RATES	
		Current Rates Effective Jan 1, 14	Drought Surcharge Effective Sept 1, 14	Adopted Rates Effective Jan 1, 15	Drought Surcharge Effective Jan 1, 15
<b>3/4" Meter - Low Use</b>	6				
Service Charge		\$16.68	\$16.68	\$18.60	\$18.60
Consumption Charge					
Tier 1: 0 - 8 hcf	<u>6</u>	<u>\$9.90</u>	<u>\$9.90</u>	<u>\$11.04</u>	<u>\$11.04</u>
Total Consumption	6	\$9.90	\$9.90	\$11.04	\$11.04
Drought Surcharge					
Tier 1: 0 - 8 hcf	<u>6</u>	<u>\$0.00</u>	<u>\$3.96</u>	<u>\$0.00</u>	<u>\$3.96</u>
Total Drought Surcharge	6	\$0.00	\$3.96	\$0.00	\$3.96
Total Monthly Bill		\$26.58	\$30.54	\$29.64	\$33.60
\$ Change			\$3.96		\$3.96
% Change			14.9%		13.4%
<b>3/4" Meter - Average Use</b>	12				
Service Charge		\$16.68	\$16.68	\$18.60	\$18.60
Consumption Charge					
Tier 1: 0 - 8 hcf	8	\$13.20	\$13.20	\$14.72	\$14.72
Tier 2: 9 - 30 hcf	<u>4</u>	<u>\$10.40</u>	<u>\$10.40</u>	<u>\$11.60</u>	<u>\$11.60</u>
Total Consumption	12	\$23.60	\$23.60	\$26.32	\$26.32
Drought Surcharge					
Tier 1: 0 - 8 hcf	8	\$0.00	\$5.28	\$0.00	\$5.28
Tier 2: 9 - 30 hcf	<u>4</u>	<u>\$0.00</u>	<u>\$4.28</u>	<u>\$0.00</u>	<u>\$4.28</u>
Total Drought Surcharge	12	\$0.00	\$9.56	\$0.00	\$9.56
Total Monthly Bill		\$40.28	\$49.84	\$44.92	\$54.48
\$ Change			\$9.56		\$9.56
% Change			23.7%		21.3%
<b>3/4" Meter - High Use</b>	40				
Service Charge		\$16.68	\$16.68	\$18.60	\$18.60
Consumption Charge					
Tier 1: 0 - 8 hcf	8	\$13.20	\$13.20	\$14.72	\$14.72
Tier 2: 9 - 30 hcf	22	\$57.20	\$57.20	\$63.80	\$63.80
Tier 3: Over 30 hcf	<u>10</u>	<u>\$27.80</u>	<u>\$27.80</u>	<u>\$31.00</u>	<u>\$31.00</u>
Total Consumption	40	\$98.20	\$98.20	\$109.52	\$109.52
Drought Surcharge					
Tier 1: 0 - 8 hcf	8	\$0.00	\$5.28	\$0.00	\$5.28
Tier 2: 9 - 30 hcf	22	\$0.00	\$23.54	\$0.00	\$23.54
Tier 3: Over 30 hcf	<u>10</u>	<u>\$0.00</u>	<u>\$13.90</u>	<u>\$0.00</u>	<u>\$13.90</u>
Total Drought Surcharge	40	\$0.00	\$42.72	\$0.00	\$42.72
Total Monthly Bill		\$114.88	\$157.60	\$128.12	\$170.84
\$ Change			\$42.72		\$42.72
% Change			37.2%		33.3%

\* The table above reflects one month of billing activity. The City bills for two months of activity each billing cycle.

The following charts compare sample monthly single family residential bills based on the current rates and proposed drought surcharges. The charts also show the estimated monthly bills based on the drought surcharge with a 20% reduction in consumption.



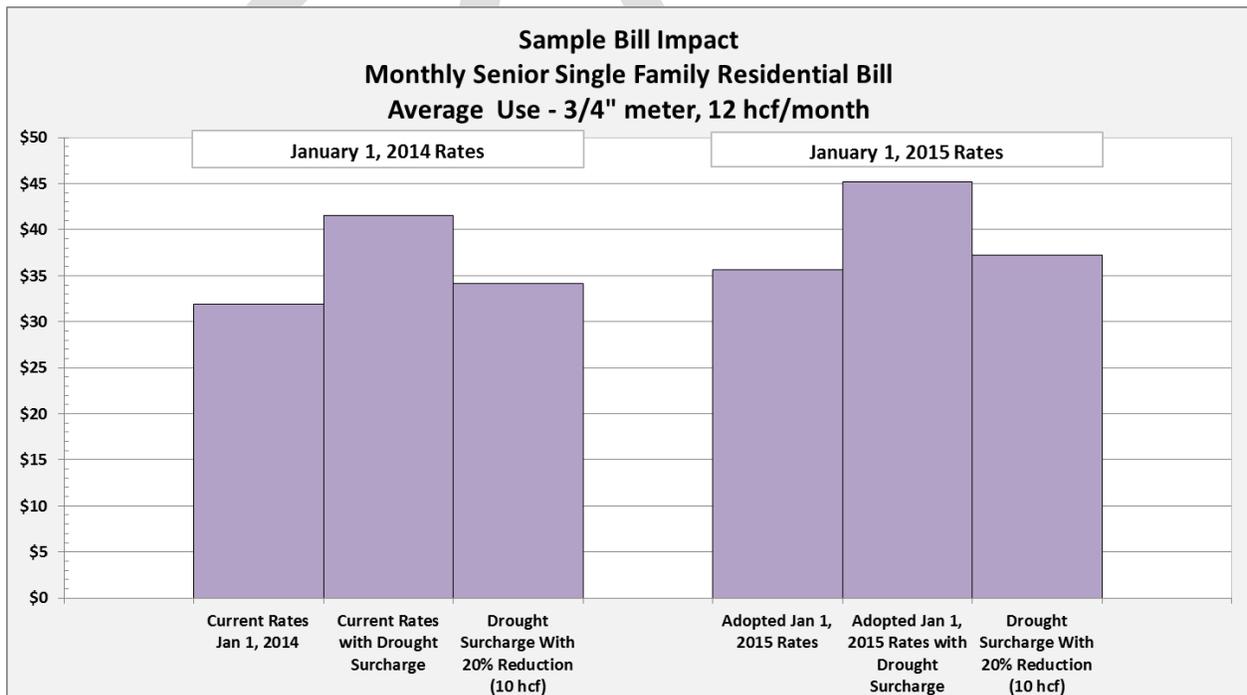
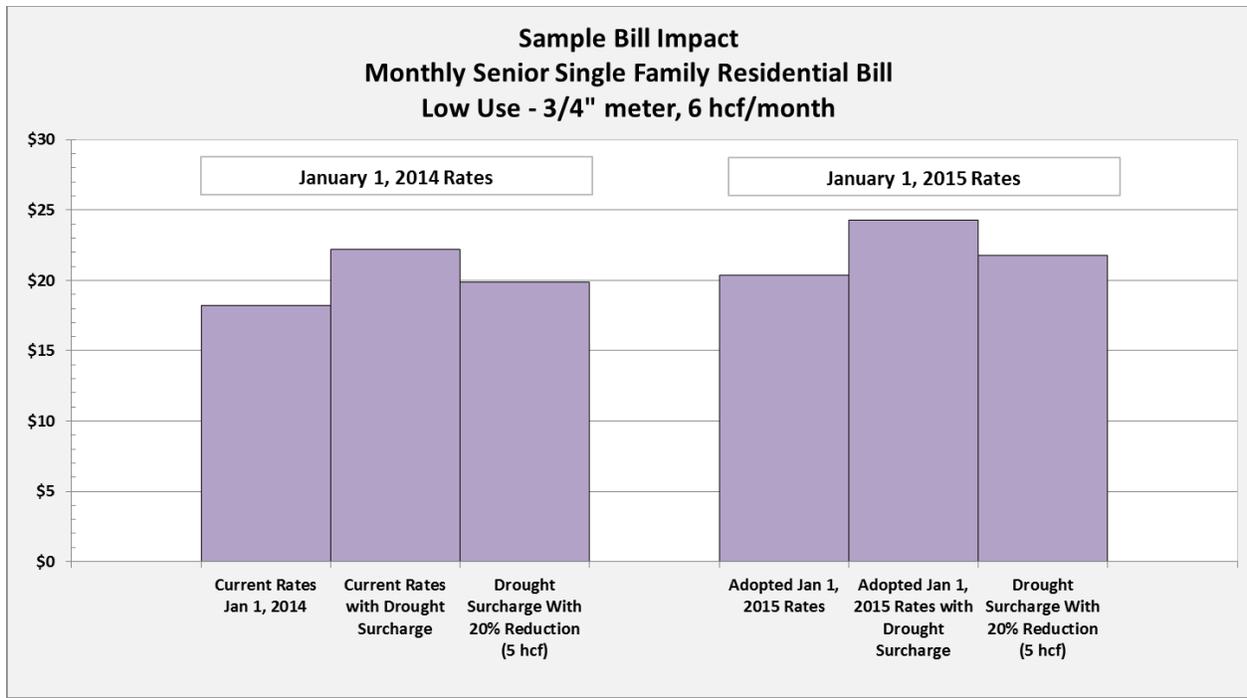


DRAFT

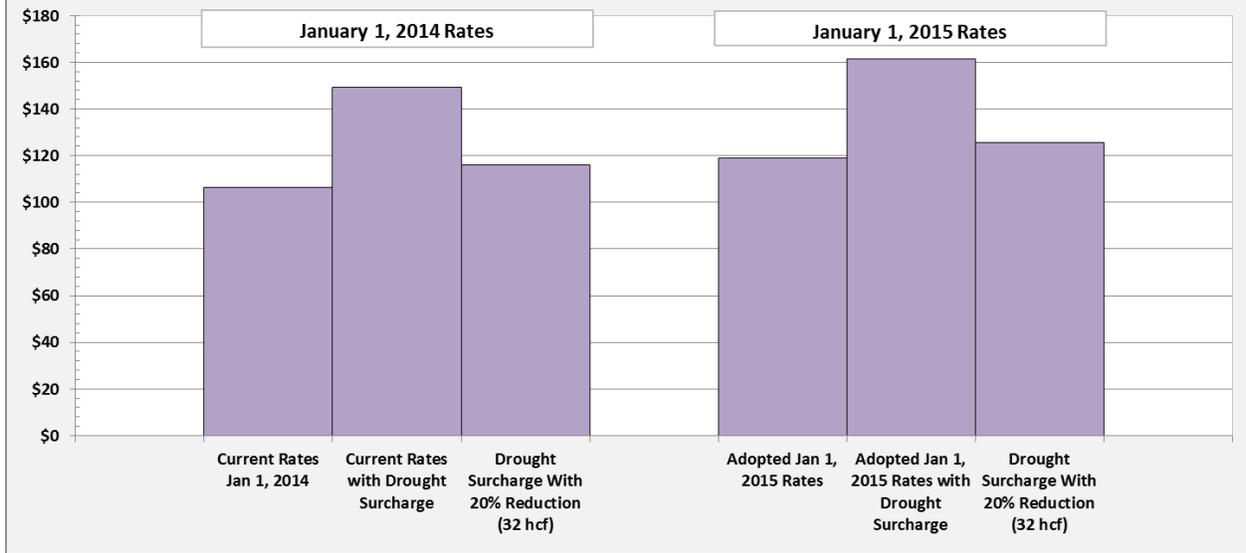
SAMPLE MONTHLY BILL IMPACTS: SENIOR SINGLE FAMILY RESIDENTIAL					
		JANUARY 1, 2014 RATES		JANUARY 1, 2015 RATES	
		Current Rates Effective Jan 1, 14	Drought Surcharge Effective Sept 1, 14	Adopted Rates Effective Jan 1, 15	Drought Surcharge Effective Jan 1, 15
Usage					
<b>3/4" Meter - Low Use</b>	6				
Service Charge		\$8.34	\$8.34	\$9.30	\$9.30
Consumption Charge					
Tier 1: 0 - 8 hcf	<u>6</u>	<u>\$9.90</u>	<u>\$9.90</u>	<u>\$11.04</u>	<u>\$11.04</u>
Total Consumption	6	\$9.90	\$9.90	\$11.04	\$11.04
Drought Surcharge					
Tier 1: 0 - 8 hcf	<u>6</u>	<u>\$0.00</u>	<u>\$3.96</u>	<u>\$0.00</u>	<u>\$3.96</u>
Total Drought Surcharge	6	\$0.00	\$3.96	\$0.00	\$3.96
Total Monthly Bill		\$18.24	\$22.20	\$20.34	\$24.30
\$ Change			\$3.96		\$3.96
% Change			21.7%		19.5%
<b>3/4" Meter - Average Use</b>	12				
Service Charge		\$8.34	\$8.34	\$9.30	\$9.30
Consumption Charge					
Tier 1: 0 - 8 hcf	8	\$13.20	\$13.20	\$14.72	\$14.72
Tier 2: 9 - 30 hcf	<u>4</u>	<u>\$10.40</u>	<u>\$10.40</u>	<u>\$11.60</u>	<u>\$11.60</u>
Total Consumption	12	\$23.60	\$23.60	\$26.32	\$26.32
Drought Surcharge					
Tier 1: 0 - 8 hcf	8	\$0.00	\$5.28	\$0.00	\$5.28
Tier 2: 9 - 30 hcf	<u>4</u>	<u>\$0.00</u>	<u>\$4.28</u>	<u>\$0.00</u>	<u>\$4.28</u>
Total Drought Surcharge	12	\$0.00	\$9.56	\$0.00	\$9.56
Total Monthly Bill		\$31.94	\$41.50	\$35.62	\$45.18
\$ Change			\$9.56		\$9.56
% Change			29.9%		26.8%
<b>3/4" Meter - High Use</b>	40				
Service Charge		\$8.34	\$8.34	\$9.30	\$9.30
Consumption Charge					
Tier 1: 0 - 8 hcf	8	\$13.20	\$13.20	\$14.72	\$14.72
Tier 2: 9 - 30 hcf	22	\$57.20	\$57.20	\$63.80	\$63.80
Tier 3: Over 30 hcf	<u>10</u>	<u>\$27.80</u>	<u>\$27.80</u>	<u>\$31.00</u>	<u>\$31.00</u>
Total Consumption	40	\$98.20	\$98.20	\$109.52	\$109.52
Drought Surcharge					
Tier 1: 0 - 8 hcf	8	\$0.00	\$5.28	\$0.00	\$5.28
Tier 2: 9 - 30 hcf	22	\$0.00	\$23.54	\$0.00	\$23.54
Tier 3: Over 30 hcf	<u>10</u>	<u>\$0.00</u>	<u>\$13.90</u>	<u>\$0.00</u>	<u>\$13.90</u>
Total Drought Surcharge	40	\$0.00	\$42.72	\$0.00	\$42.72
Total Monthly Bill		\$106.54	\$149.26	\$118.82	\$161.54
\$ Change			\$42.72		\$42.72
% Change			40.1%		36.0%

\* The table above reflects one month of billing activity. The City bills for two months of activity each billing cycle.

The following charts compare sample monthly senior single family residential bills based on the current rates and proposed drought surcharges. The charts also show the estimated monthly bills based on the drought surcharge with a 20% reduction in consumption.



**Sample Bill Impact  
Monthly Senior Single Family Residential Bill  
High Use - 3/4" meter, 40 hcf/month**



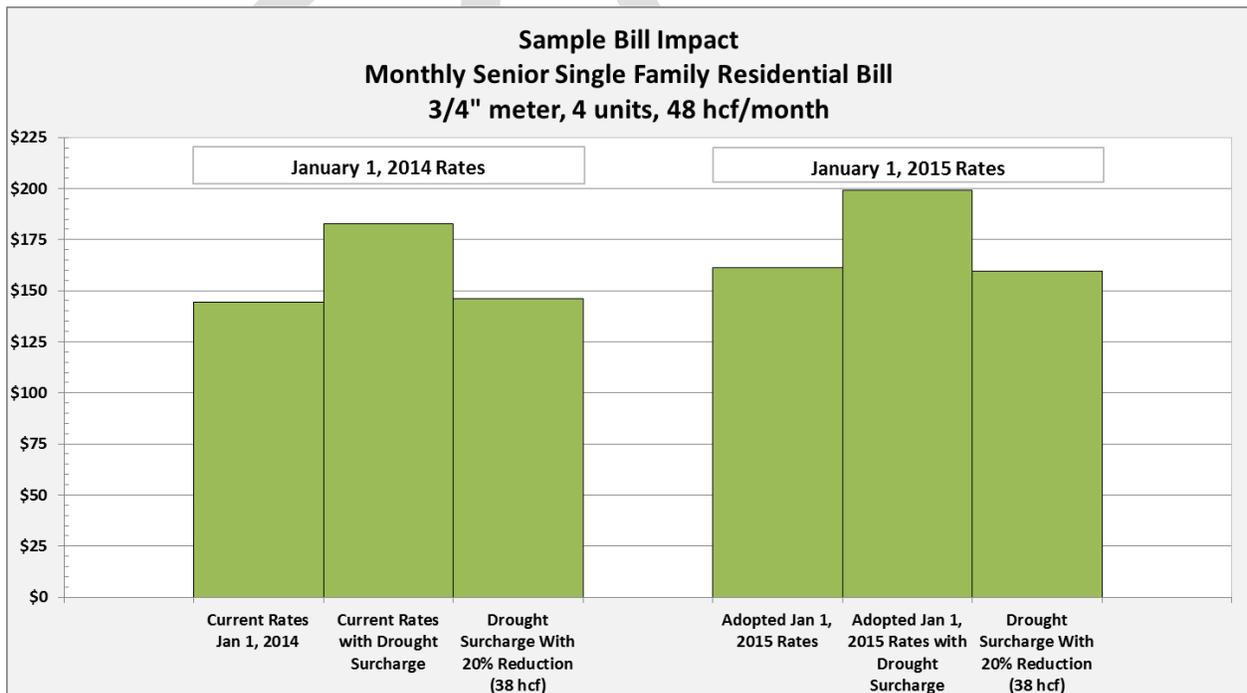
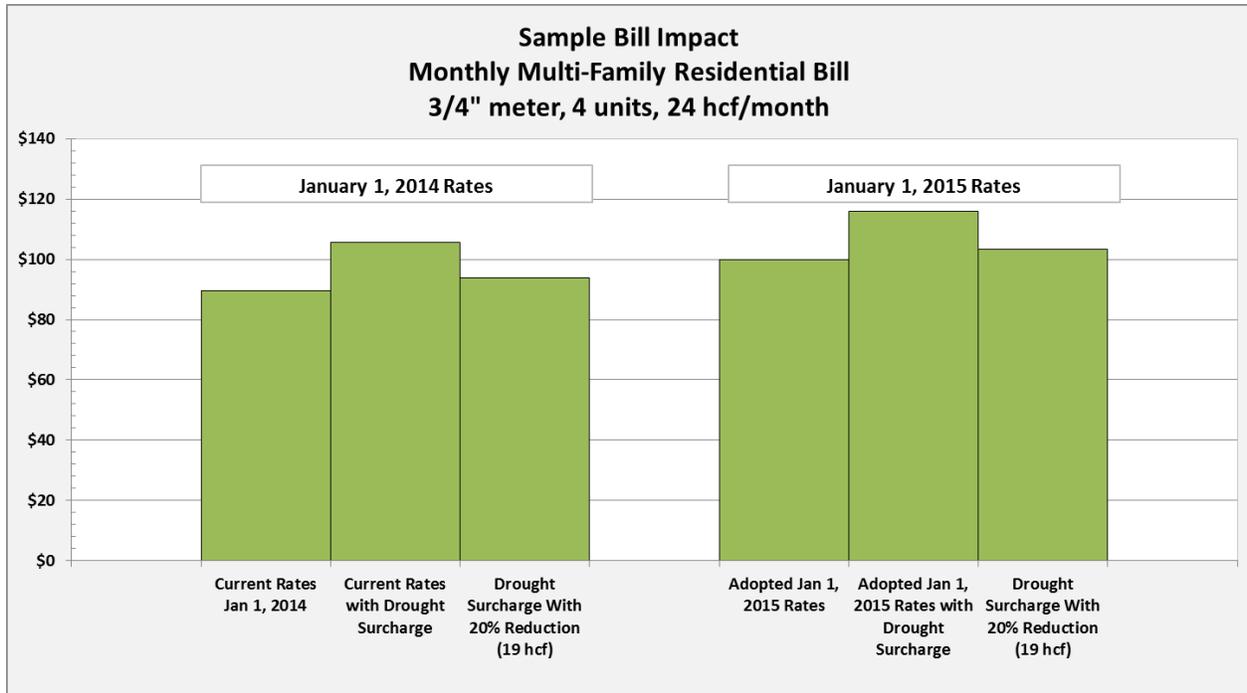
DRAFT

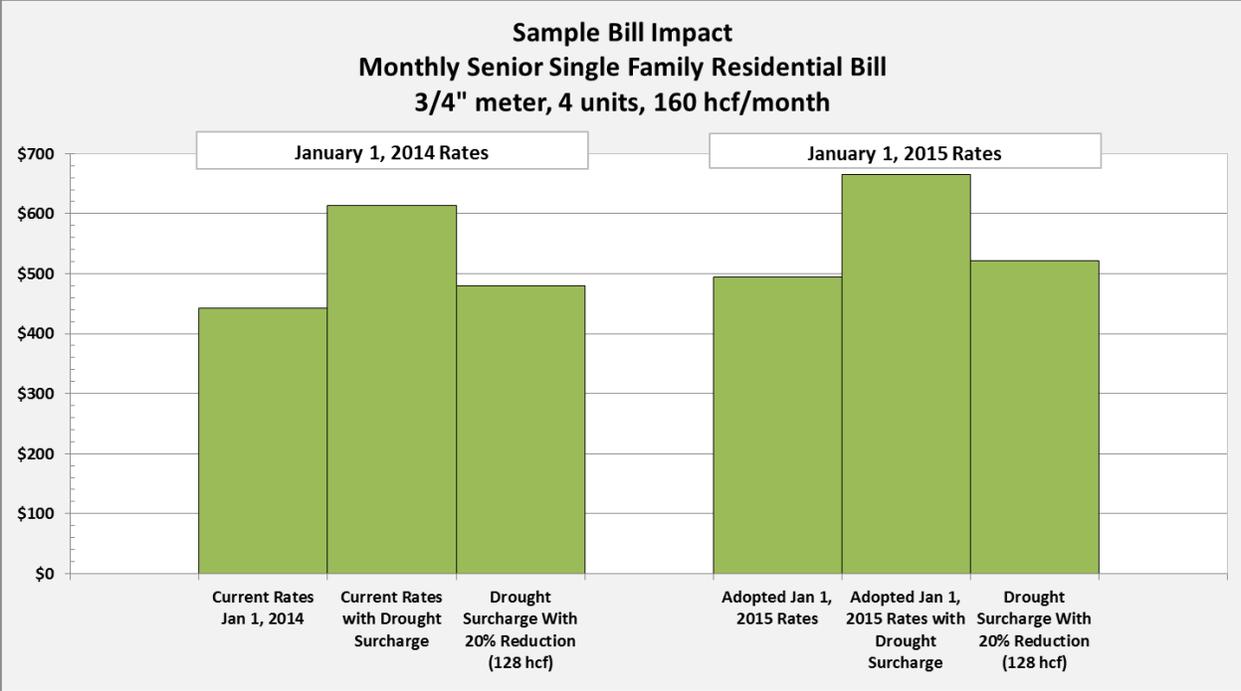
SAMPLE MONTHLY BILL IMPACTS: MULTI-FAMILY RESIDENTIAL					
Usage	JANUARY 1, 2014 RATES		JANUARY 1, 2015 RATES		
	Current Rates Effective Jan 1, 14	Drought Surcharge Effective Sept 1, 14	Adopted Rates Effective Jan 1, 15	Drought Surcharge Effective Jan 1, 15	
<b>3/4" meter, 4 units</b>	24				
Service Charge		\$50.08	\$50.08	\$55.84	\$55.84
Consumption Charge (1)					
Tier 1: 0 - 32 hcf	24	<u>\$39.60</u>	<u>\$39.60</u>	<u>\$44.16</u>	<u>\$44.16</u>
Total Consumption	24	\$39.60	\$39.60	\$44.16	\$44.16
Drought Surcharge (1)					
Tier 1: 0 - 32 hcf	24	<u>\$0.00</u>	<u>\$15.84</u>	<u>\$0.00</u>	<u>\$15.84</u>
Total Drought Surcharge	24	\$0.00	\$15.84	\$0.00	\$15.84
Total Monthly Bill		\$89.68	\$105.52	\$100.00	\$115.84
\$ Change			\$15.84		\$15.84
% Change			17.7%		15.8%
<b>3/4" meter, 4 units</b>	48				
Service Charge		\$50.08	\$50.08	\$55.84	\$55.84
Consumption Charge (1)					
Tier 1: 0 - 32 hcf	32	\$52.80	\$52.80	\$58.88	\$58.88
Tier 2: 33 - 120 hcf	16	<u>\$41.60</u>	<u>\$41.60</u>	<u>\$46.40</u>	<u>\$46.40</u>
Total Consumption	48	\$94.40	\$94.40	\$105.28	\$105.28
Drought Surcharge (1)					
Tier 1: 0 - 32 hcf	32	\$0.00	\$21.12	\$0.00	\$21.12
Tier 2: 33 - 120 hcf	16	<u>\$0.00</u>	<u>\$17.12</u>	<u>\$0.00</u>	<u>\$17.12</u>
Total Drought Surcharge	48	\$0.00	\$38.24	\$0.00	\$38.24
Total Monthly Bill		\$144.48	\$182.72	\$161.12	\$199.36
\$ Change			\$38.24		\$38.24
% Change			26.5%		23.7%
<b>3/4" meter, 4 units</b>	160				
Service Charge		\$50.08	\$50.08	\$55.84	\$55.84
Consumption Charge (1)					
Tier 1: 0 - 32 hcf	32	\$52.80	\$52.80	\$58.88	\$58.88
Tier 2: 33 - 120 hcf	88	\$228.80	\$228.80	\$255.20	\$255.20
Tier 3: Over 120 hcf	40	<u>\$111.20</u>	<u>\$111.20</u>	<u>\$124.00</u>	<u>\$124.00</u>
Total Consumption	160	\$392.80	\$392.80	\$438.08	\$438.08
Drought Surcharge (1)					
Tier 1: 0 - 32 hcf	32	\$0.00	\$21.12	\$0.00	\$21.12
Tier 2: 33 - 120 hcf	88	\$0.00	\$94.16	\$0.00	\$94.16
Tier 3: Over 120 hcf	40	<u>\$0.00</u>	<u>\$55.60</u>	<u>\$0.00</u>	<u>\$55.60</u>
Total Drought Surcharge	160	\$0.00	\$170.88	\$0.00	\$170.88
Total Monthly Bill		\$442.88	\$613.76	\$493.92	\$664.80
\$ Change			\$170.88		\$170.88
% Change			38.6%		34.6%

1 - For multi-family, the service charge and consumption tiers are prorated based on the number of units per account.

\* The table above reflects one month of billing activity. The City bills for two months of activity each billing cycle.

The following charts compare sample monthly multi-family residential bills based on the current rates and proposed drought surcharges. The charts also show the estimated monthly bills based on the drought surcharge with a 20% reduction in consumption.



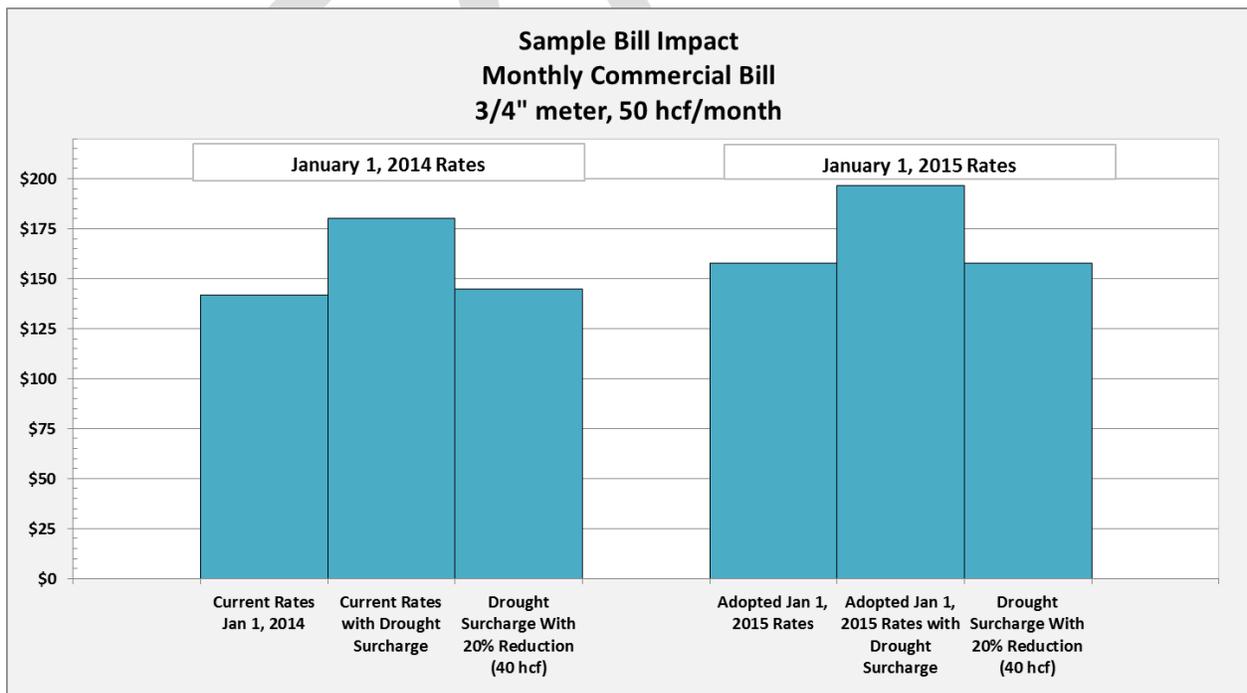
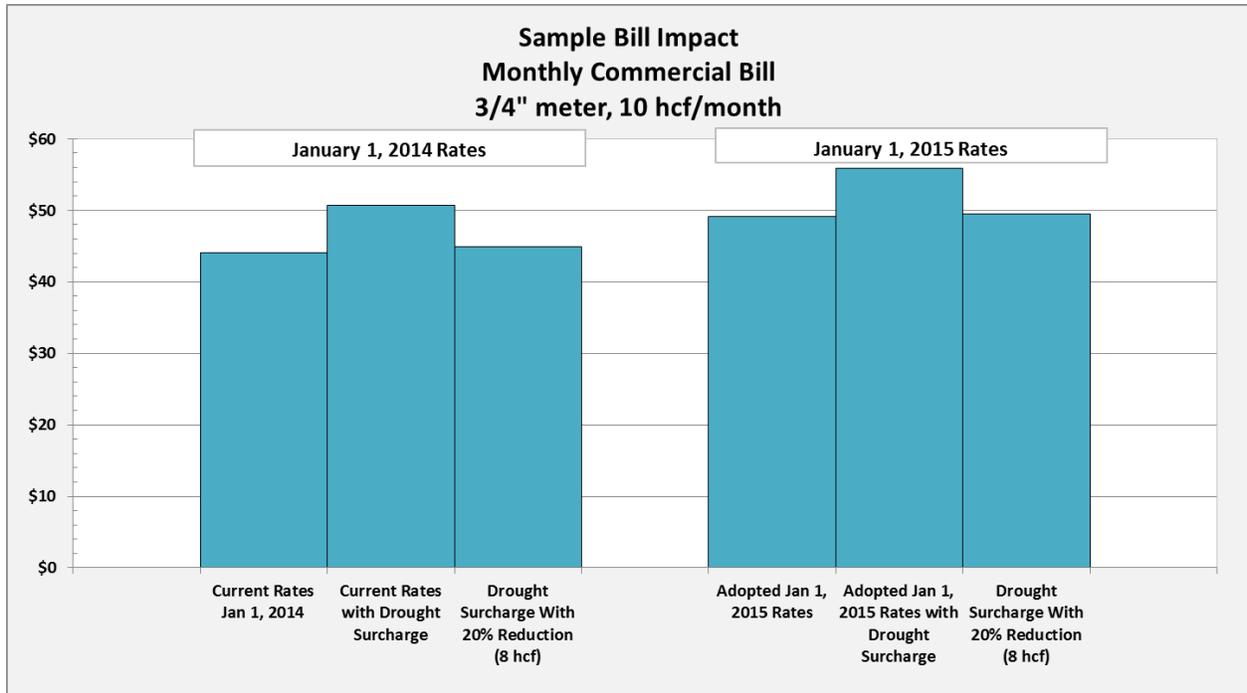


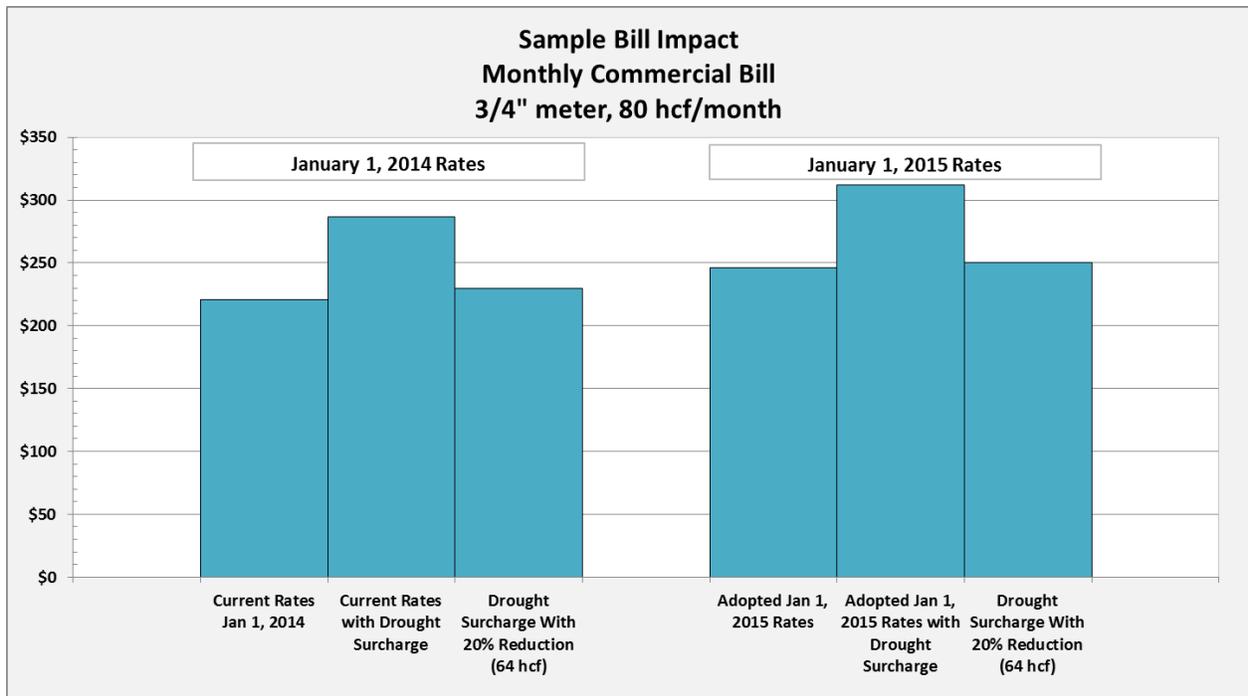
DRAFT

SAMPLE MONTHLY BILL IMPACTS: COMMERCIAL/INDUSTRIAL/IRRIGATION/MUNICIPAL					
Usage	JANUARY 1, 2014 RATES		JANUARY 1, 2015 RATES		
	Current Jan 1, 14	Drought Surcharge Jan 1, 14	Adopted Jan 1, 15	Drought Surcharge Jan 1, 15	
<b>3/4" Meter</b>	10				
Service Charge	\$21.54	\$21.54	\$24.02	\$24.02	
Consumption Charge					
Tier 1: 0 - 30 hcf	<u>10</u>	<u>\$22.50</u>	<u>\$25.10</u>	<u>\$25.10</u>	
Total Consumption	10	\$22.50	\$25.10	\$25.10	
Drought Surcharge					
Tier 1: 0 - 30 hcf	<u>10</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$6.70</u>	
Total Drought Surcharge	10	\$0.00	\$0.00	\$6.70	
Total Monthly Bill		\$44.04	\$49.12	\$55.82	
\$ Change			\$6.70	\$6.70	
% Change			15.2%	13.6%	
<b>3/4" Meter</b>	50				
Service Charge	\$21.54	\$21.54	\$24.02	\$24.02	
Consumption Charge					
Tier 1: 0 - 30 hcf	30	\$67.50	\$75.30	\$75.30	
Tier 2: Over 30 hcf	<u>20</u>	<u>\$52.60</u>	<u>\$58.60</u>	<u>\$58.60</u>	
Total Consumption	50	\$120.10	\$133.90	\$133.90	
Drought Surcharge					
Tier 1: 0 - 30 hcf	30	\$0.00	\$0.00	\$20.10	
Tier 2: Over 30 hcf	<u>20</u>	<u>\$0.00</u>	<u>\$18.40</u>	<u>\$18.40</u>	
Total Drought Surcharge	50	\$0.00	\$38.50	\$38.50	
Total Monthly Bill		\$141.64	\$180.14	\$196.42	
\$ Change			\$38.50	\$38.50	
% Change			27.2%	24.4%	
<b>3/4" Meter</b>	80				
Service Charge	\$21.54	\$21.54	\$24.02	\$24.02	
Consumption Charge					
Tier 1: 0 - 30 hcf	30	\$67.50	\$75.30	\$75.30	
Tier 2: Over 30 hcf	<u>50</u>	<u>\$131.50</u>	<u>\$146.50</u>	<u>\$146.50</u>	
Total Consumption	80	\$199.00	\$221.80	\$221.80	
Drought Surcharge					
Tier 1: 0 - 30 hcf	30	\$0.00	\$0.00	\$20.10	
Tier 2: Over 30 hcf	<u>50</u>	<u>\$0.00</u>	<u>\$46.00</u>	<u>\$46.00</u>	
Total Drought Surcharge	80	\$0.00	\$66.10	\$66.10	
Total Monthly Bill		\$220.54	\$286.64	\$311.92	
\$ Change			\$66.10	\$66.10	
% Change			30.0%	26.9%	

\* The table above reflects one month of billing activity. The City bills for two months of activity each billing cycle.

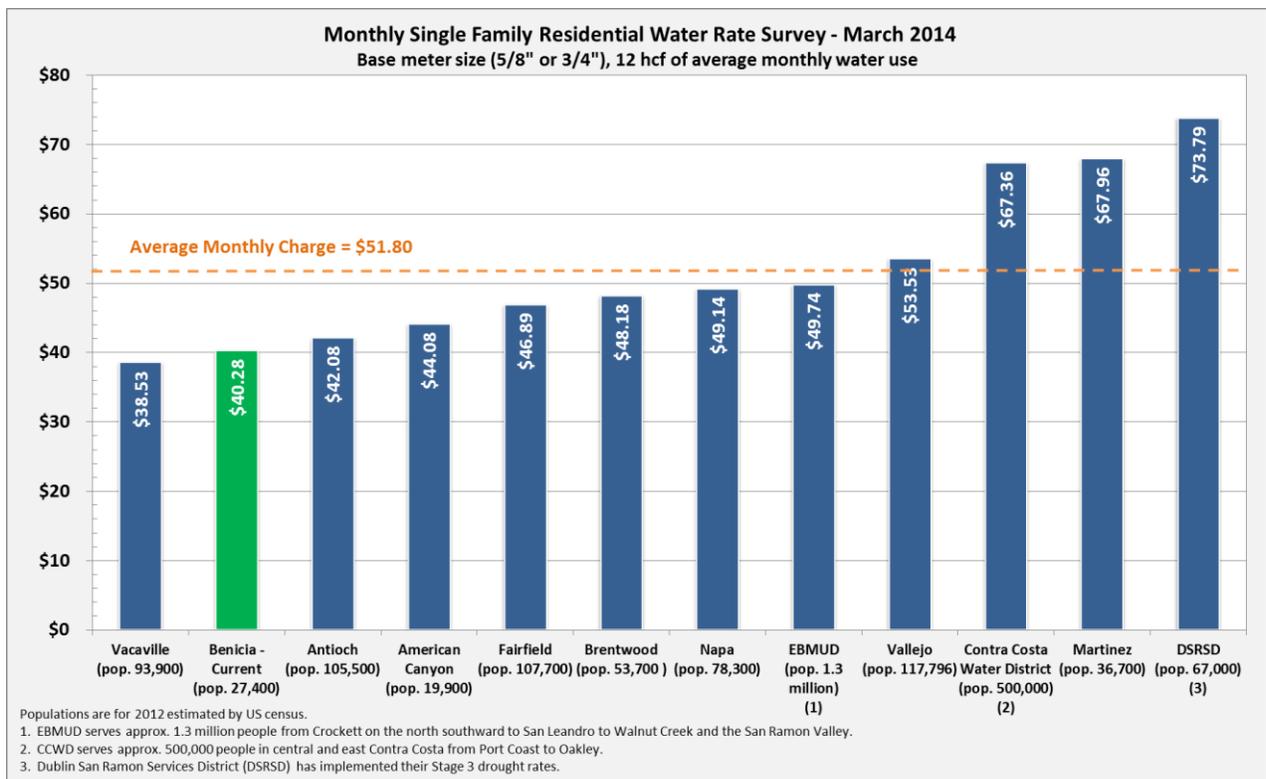
The following charts compare sample monthly commercial bills based on the current rates and proposed drought surcharges. The charts also show the estimated monthly bills based on the drought surcharge with a 20% reduction in consumption.





### REGIONAL WATER RATE SURVEY

The following chart compares the City's current rates to those of other regional agencies for a single family home with either a 5/8" or 3/4" meter consuming 12 hundred cubic feet of water per month, the City's average single family monthly consumption. The City's water rates for most customers are in the lower-middle range compared to other regional agencies. Many of these agencies will most likely increase their water rates in the next few years. It is important to emphasize that each water system is unique and each agency must set their water rates accordingly to cover their cost of providing service.



### What Other Agencies Are Doing in Response to the Drought

Responses by water agencies have been proportional to how much the drought has affected their region. Some local water agencies, such as the Cities of Vacaville and Martinez, have only implemented a water reduction education program. Other agencies, such as the Cities of Napa, American Canyon and Antioch, East Bay Municipal Utilities District (EBMUD), Contra Costa Water District (CCWD), and Solano County have set voluntary reduction goals of approximately 10% to 20%. The most hard-hit agencies, especially in the Tri-Valley Area, Dublin San Ramon Services District (DSRSD) and the Cities of Livermore and Pleasanton, have implemented mandatory restrictions of 25% to 35%.

Some agencies have drought rates that are automatically increased when the water agency deems a water shortage. For example, DSRSD has already adopted rates that take into account various stages of drought. DSRSD's rates include five stages ranging from "Normal Conditions" with no water conservation to "Stage 4" with a targeted reduction goal of 50%. DSRSD recently declared a Stage 3 drought, calling for a 35% decline in consumption. Under the Stage 3 rates, Tiers 1, 2, and 3 of the residential volume rates increase by 76%, 99%, and 179%, respectively, while the tiered rate for commercial customers increase by 76% as compared to the Normal Condition rates.

## **PROPOSITION 218 AND IMPLEMENTATION OF DROUGHT RATES**

Drought rates are subject to the procedural and substantive requirements as set forth in the Proposition 218. Proposition 218 was adopted by California voters in 1996 and added Articles 13C and 13D to the California Constitution. Article 13D, Section 6 governs property-related charges, which the California Supreme Court subsequently ruled includes ongoing utility service charges such as water, sewer, and garbage rates. Article 13D, Section 6 establishes a) procedural requirements for imposing or increasing property-related charges, and b) substantive requirements for those charges. Article 13D also requires voter approval for new or increased property-related charges but exempts from this voting requirement rates for water, sewer, and garbage service.

The substantive requirements of Article 13D, Section 6 require the City's water rates to meet the following conditions:

- 1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
- 2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
- 3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
- 4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.
- 5) No fee or charge may be imposed for general governmental services, such as police or fire services, where the service is available to the public at large in substantially the same manner as it is to property owners.

A subsequent appellate court decision in 2011 further clarified that agencies must demonstrate, satisfactory to a court's independent judgment, that property-related fees and charges meet the proportionality requirement of Subdivision (6) (3) of Section 6. This drought rate study provides that justification. The drought rates derived in this memo are based on a cost-of-service methodology that fairly apportions costs to all customers.

BWA recommends the City follow the procedural requirements of Proposition 218 for all water rate increases, including drought surcharges. These requirements include:

- 1) **Noticing Requirement:** The City must mail a notice of proposed rate increases to all affected property owners. The notice must specify the basis of the fee, the reason for the fee, and the date/time/location of a public rate hearing at which the proposed rates will be considered/adopted.

- 2) **Public Hearing:** The City must hold a public hearing prior to adopting the proposed rate increases. The public hearing must be held not less than 45 days after the required notices are mailed.
- 3) **Rate Increases Subject to Majority Protest:** At the public hearing, the proposed rate increases are subject to majority protest. If more than 50% of affected property owners submit written protests against the proposed rate increases, the increases cannot be adopted.

Prior to implementation, BWA recommends that the City develop a clear process for implementing the drought rates. It is also important to emphasize that drought rates alone will not achieve the desired reduction levels amongst customers. The City will also need to implement a considerable outreach and education campaign to encourage water conservation. If the drought conditions persists or becomes more severe, the City may also have to consider enforcement penalties or fines and other options to considerably decrease water use.

## APPENDIX

DRAFT

DROUGHT SURCHARGE: PROJECTED ANNUAL WATER SALES							
	Base Year Assumptions				Projected Consumption		
	2011/12 Baseline Annual Consumption	May & June 2014 Consumption	July - December 2014 Consumption	January - June 2015 Consumption	May & June 2014 Consumption	July - December 2014 Consumption	January - June 2015 Consumption
<b>Reduction Target</b>					<b>20%</b>	<b>20%</b>	<b>20%</b>
<b>REDUCTION BY TIER</b>							
<b>Single-Family Residential</b>							
Tier 1 0 - 8 hcf					-20.0%	-20.0%	-20.0%
Tier 2 8 - 30 hcf					-20.0%	-20.0%	-20.0%
Tier 3 Over 30 hcf					-20.0%	-20.0%	-20.0%
<b>Multi-Family Residential</b>							
Tier 1 0 - 8 hcf					-20.0%	-20.0%	-20.0%
Tier 2 8 - 30 hcf					-20.0%	-20.0%	-20.0%
Tier 3 Over 30 hcf					-20.0%	-20.0%	-20.0%
<b>Commercial/Municipal/Irrigation</b>							
Tier 1 0 - 30 hcf					-20.0%	-20.0%	-20.0%
Tier 2 Over 30 hcf					-20.0%	-20.0%	-20.0%
<b>WATER SALES WITH REDUCTION (HCF)</b>							
	2011/12	2011/12	Jul-Dec Use	Jan-Jun Use			
<b>Single-Family Residential</b>	<u>Total Annual Use</u>	<u>May &amp; June</u>	<u>(60% of Total Annual Use)</u>	<u>(40% of Total Annual Use)</u>			
Tier 1 0 - 8 hcf	453,136	76,978	271,882	181,254	61,580	217,510	145,000
Tier 2 8 - 30 hcf	349,807	59,425	209,884	139,923	47,540	167,910	111,940
Tier 3 Over 30 hcf	<u>43,451</u>	<u>7,381</u>	<u>26,071</u>	<u>17,380</u>	<u>5,910</u>	<u>20,860</u>	<u>13,900</u>
Subtotal	846,394	143,784	507,836	338,558	115,030	406,280	270,840
% Reduction from Base Year					-20.0%	-20.0%	-20.0%
<b>Senior Single-Family Residential</b>							
Tier 1 0 - 8 hcf	191,853	31,950	115,112	76,741	25,560	92,090	61,390
Tier 2 8 - 30 hcf	138,065	22,993	82,839	55,226	18,390	66,270	44,180
Tier 3 Over 30 hcf	<u>15,666</u>	<u>2,609</u>	<u>9,400</u>	<u>6,266</u>	<u>2,090</u>	<u>7,520</u>	<u>5,010</u>
Subtotal	345,584	57,552	207,350	138,234	46,040	165,880	110,580
% Reduction from Base Year					-20.0%	-20.0%	-20.0%
<b>Multi-Family Residential (includes Senior &amp; Mobile Home)</b>							
Tier 1 0 - 8 hcf	166,231	25,217	99,738	66,492	20,170	79,790	53,190
Tier 2 8 - 30 hcf	40,231	6,103	24,138	16,092	4,880	19,310	12,870
Tier 3 Over 30 hcf	<u>7,117</u>	<u>1,080</u>	<u>4,270</u>	<u>2,847</u>	<u>860</u>	<u>3,420</u>	<u>2,280</u>
Subtotal	213,578	32,399	128,147	85,431	25,910	102,520	68,340
% Reduction from Base Year					-20.0%	-20.0%	-20.0%
<b>Commercial/Municipal/Irrigation</b>							
Tier 1 0 - 30 hcf	141,956	23,064	85,174	56,782	18,450	68,140	45,430
Tier 2 Over 30 hcf	<u>345,575</u>	<u>56,147</u>	<u>207,345</u>	<u>138,230</u>	<u>44,920</u>	<u>165,880</u>	<u>110,580</u>
Subtotal	487,531	79,211	292,519	195,012	63,370	234,020	156,010
% Reduction from Base Year					-20.0%	-20.0%	-20.0%
<b>Total Water Sales</b>	1,893,087	312,946	1,135,852	757,235	250,350	908,700	605,770
% Reduction from Base Year					-20.0%	-20.0%	-20.0%

DROUGHT SURCHARGE: PROJECTED WATER SALES WITH 20% REDUCTION							
	Base Year Assumptions				Projected Consumption		
	2011/12 Baseline Annual Consumption	May & June 2014 Consumption	July - December 2014 Consumption	January - June 2015 Consumption	May & June 2014 Consumption	July - December 2014 Consumption	January - June 2015 Consumption
<b>Reduction Target</b>					<b>20%</b>	<b>20%</b>	<b>20%</b>
<b>WATER SALES (HCF)</b>							
<b>Single-Family Residential</b>							
Tier 1	453,136	76,978	271,882	181,254	61,580	217,510	145,000
Tier 2	349,807	59,425	209,884	139,923	47,540	167,910	111,940
Tier 3	<u>43,451</u>	<u>7,381</u>	<u>26,071</u>	<u>17,380</u>	<u>5,910</u>	<u>20,860</u>	<u>13,900</u>
Subtotal	846,394	143,784	507,836	338,558	115,030	406,280	270,840
<b>Senior Single-Family Residential</b>							
Tier 1	191,853	31,950	115,112	76,741	25,560	92,090	61,390
Tier 2	138,065	22,993	82,839	55,226	18,390	66,270	44,180
Tier 3	<u>15,666</u>	<u>2,609</u>	<u>9,400</u>	<u>6,266</u>	<u>2,090</u>	<u>7,520</u>	<u>5,010</u>
Subtotal	345,584	57,552	207,350	138,234	46,040	165,880	110,580
<b>Multi-Family Residential</b>							
Tier 1	166,231	25,217	99,738	66,492	20,170	79,790	53,190
Tier 2	40,231	6,103	24,138	16,092	4,880	19,310	12,870
Tier 3	<u>7,117</u>	<u>1,080</u>	<u>4,270</u>	<u>2,847</u>	<u>860</u>	<u>3,420</u>	<u>2,280</u>
Subtotal	213,578	32,399	128,147	85,431	25,910	102,520	68,340
<b>Commercial/Municipal/Irrigation</b>							
Tier 1	141,956	23,064	85,174	56,782	18,450	68,140	45,430
Tier 2	<u>345,575</u>	<u>56,147</u>	<u>207,345</u>	<u>138,230</u>	<u>44,920</u>	<u>165,880</u>	<u>110,580</u>
Subtotal	487,531	79,211	292,519	195,012	63,370	234,020	156,010
<b>Total Water Sales</b>	<b>1,893,087</b>	<b>312,946</b>	<b>1,135,852</b>	<b>757,235</b>	<b>250,350</b>	<b>908,700</b>	<b>605,770</b>
<b>VOLUME CHARGES</b>							
<b>Single-Family Residential</b>							
Tier 1		<u>Jan 1, 2014</u>	<u>Jan 1, 2014</u>	<u>Jan 1, 2015</u>	<u>Jan 1, 2014</u>	<u>Jan 1, 2014</u>	<u>Jan 1, 2015</u>
Tier 1		\$1.65	\$1.65	\$1.84	\$1.65	\$1.65	\$1.84
Tier 2		\$2.60	\$2.60	\$2.90	\$2.60	\$2.60	\$2.90
Tier 3		\$2.78	\$2.78	\$3.10	\$2.78	\$2.78	\$3.10
<b>Senior Single-Family Residential</b>							
Tier 1		\$1.65	\$1.65	\$1.84	\$1.65	\$1.65	\$1.84
Tier 2		\$2.60	\$2.60	\$2.90	\$2.60	\$2.60	\$2.90
Tier 3		\$2.78	\$2.78	\$3.10	\$2.78	\$2.78	\$3.10
<b>Multi-Family Residential</b>							
Tier 1		\$1.65	\$1.65	\$1.84	\$1.65	\$1.65	\$1.84
Tier 2		\$2.60	\$2.60	\$2.90	\$2.60	\$2.60	\$2.90
Tier 3		\$2.78	\$2.78	\$3.10	\$2.78	\$2.78	\$3.10
<b>Commercial/Municipal/Irrigation</b>							
Tier 1		\$2.25	\$2.25	\$2.51	\$2.25	\$2.25	\$2.51
Tier 2		\$2.63	\$2.63	\$2.93	\$2.63	\$2.63	\$2.93
<b>REVENUES WITH REDUCTION</b>							
<b>Single-Family Residential</b>							
Tier 1		\$127,014	\$448,605	\$333,508	\$101,607	\$358,892	\$266,800
Tier 2		\$154,504	\$545,699	\$405,776	\$123,604	\$436,566	\$324,626
Tier 3		<u>\$20,520</u>	<u>\$72,476</u>	<u>\$53,879</u>	<u>\$16,430</u>	<u>\$57,991</u>	<u>\$43,090</u>
Subtotal		\$302,038	\$1,066,780	\$793,163	\$241,641	\$853,448	\$634,516
<b>Senior Single-Family Residential</b>							
Tier 1		\$52,718	\$189,934	\$141,204	\$42,174	\$151,949	\$112,958
Tier 2		\$59,781	\$215,381	\$160,155	\$47,814	\$172,302	\$128,122
Tier 3		<u>\$7,253</u>	<u>\$26,131</u>	<u>\$19,426</u>	<u>\$5,810</u>	<u>\$20,906</u>	<u>\$15,531</u>
Subtotal		\$119,752	\$431,447	\$320,785	\$95,798	\$345,156	\$256,611
<b>Multi-Family Residential</b>							
Tier 1		\$41,607	\$164,568	\$122,346	\$33,281	\$131,654	\$97,870
Tier 2		\$15,867	\$62,760	\$46,667	\$12,688	\$50,206	\$37,323
Tier 3		<u>\$3,001</u>	<u>\$11,871</u>	<u>\$8,825</u>	<u>\$2,391</u>	<u>\$9,508</u>	<u>\$7,068</u>
Subtotal		\$60,476	\$239,199	\$177,838	\$48,359	\$191,367	\$142,261
<b>Commercial/Municipal/Irrigation</b>							
Tier 1		\$51,894	\$191,641	\$142,524	\$41,513	\$153,315	\$114,029
Tier 2		<u>\$147,666</u>	<u>\$545,317</u>	<u>\$405,014</u>	<u>\$118,140</u>	<u>\$436,264</u>	<u>\$323,999</u>
Subtotal		\$199,561	\$736,958	\$547,538	\$159,652	\$589,579	\$438,029
<b>Total</b>		<b>\$681,827</b>	<b>\$2,474,383</b>	<b>\$1,839,324</b>	<b>\$545,450</b>	<b>\$1,979,551</b>	<b>\$1,471,416</b>
<b>Revenue Loss with Reduction</b>					<b>\$136,376</b>	<b>\$494,833</b>	<b>\$367,908</b>
							<b>Total</b>
							<b>\$999,117</b>