

**October 4, 2005**

The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office at the end of the business day on the Wednesday before the Council meeting.

**Benicia City Council Agenda**

**BENICIA CITY COUNCIL  
CITY COUNCIL CHAMBERS**

**REGULAR MEETING AGENDA**

**October 4, 2005**

**7:30 P.M.**

- I. CALL TO ORDER:**
- II. CONVENE OPEN SESSION:**
- III. ROLL CALL**
- A. PLEDGE OF ALLEGIANCE**
- B. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC**
- IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**
  - A. ANNOUNCEMENTS:**
    1. Announcement of action taken at Closed Session, if any.
    2. Openings on:
      - Open Government Commission: 5 terms
  - B. APPOINTMENTS:**
  - C. PRESENTATIONS:**
    1. Benicia Historical Museum's New Exhibit
      - Anne Toxey and Patrick McMillan
  - D. PROCLAMATIONS:**
  - V. ADOPTION OF AGENDA:**
  - VI. COMMUNICATIONS:**
    1. WRITTEN
    2. PUBLIC COMMENT
  - VII. CONSENT CALENDAR:**
    - A. Approval of Minutes of September 20, 2005. (City Clerk)**
    - B. Approval of amendments and additions to the Benicia Transit Short Range Transit Plan - continued from September 20, 2005 City Council Meeting. (Finance Director)**

Nelson/Nygaard Consulting Associates prepared the Short Range Transit Plan (SRTP) through a grant sponsored by the Metropolitan Transportation Commission. The SRTP is a planning document for improving and enhancing transit services within the City. The City Council adopted the SRTP on September 20, 2005 and recommended that certain supplemental changes be considered for approval on October 4, 2005. The amendments relate to planning studies of the Intermodal Transportation Center and references in the document to sections of the City's General Plan. There is no impact to the City's General Fund or the Benicia Transportation Fund.

**Recommendation: Adopt, by motion, the amendments and additions to the Benicia Transit SRTP for Fiscal Years 2005/2006 to 2014/2015. The amendments include changes to the Executive Summary, Chapter 3, Goals and Objectives, Appendix I and the addition of Appendix J.**

**C. Adoption of the Solano Transportation Authority Countywide Bicycle Plan and Countywide Pedestrian Plan. (Public Works Director)**

To qualify for future grant programs of the Solano Transportation Authority (STA) and of Caltrans, the City Council must adopt a local transportation plan. Adoption of the STA Countywide Bicycle Plan and STA Countywide Pedestrian Plan will qualify as the local plan and is consistent with the Benicia General Plan. These plans have been reviewed and approved by the Benicia Traffic Pedestrian and Bicycle Safety Committee and the Benicia Planning Commission. There are no direct budget impacts associated with this action.

**Recommendation: Adopt the Solano Transportation Authority Countywide Bicycle Plan and Solano Transportation Authority Countywide Pedestrian Plan as Benicia's local transportation plans, consistent with the Benicia General Plan.**

**D. Approval of lease agreement with Cingular Wireless for installation of communication facilities on City-owned property north of Lake Herman Road. (Public Works Director)**

This lease agreement with Cingular Wireless will allow installation of communication facilities on City-owned property located north of Lake Herman Road. The communication facilities will consist of up to 13 wireless antennas that will be co-located atop an existing PG&E tower and the construction of a communications shelter at the base of the tower. The City's Water Enterprise Fund would initially earn \$14,400 per year with future year payments increasing by at least 3% each year (a financial arrangement similar to other agreements between City and wireless communications companies). Additionally, at the end of each five year term, the amount of rent will be adjusted to reflect the average rental rates for telecommunications sites in Solano, Napa and Contra Costa County. However, in no event will the adjustment be less than the 3% increase built into the lease agreement.

**Recommendation: Adopt the attached resolution authorizing the City Manager to execute lease agreement documents allowing Cingular Wireless to install communication facilities on City-owned property (Assessor's Parcel No: 0181-230-02-0) located north of Lake Herman Road, subject to approval by the City Attorney, and directing the City Clerk to record the Memorandum of Lease.**

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

**VIII. PUBLIC HEARINGS:**

**IX. UNFINISHED BUSINESS:**

**A. [Poet Laureate - continued from September 20, 2005 City Council Meeting.](#) [Benicia Creation of the office of](#) (Library Director)**

A request was made from the Library Board of Trustees for additional time to review the information submitted by a citizen at the September 20, 2005 City Council meeting.

**Recommendation: Continue this item to the October 18, 2005 City Council meeting.**

**B. Discussion of Arsenal Planning:**

**1. [Discussion of proposed Arsenal Master Plan Committee - continued from September 20, 2005 City Council Meeting.](#) (Council Member Campbell)**

Council Member Campbell has requested the creation of an Arsenal Master Plan Committee to develop a master plan for the arsenal area. The committee is proposed to be comprised of 15 citizens and five alternates (i.e., four citizens nominated by each council member).

Recommendation: Discuss the proposed committee and provide direction to staff, as needed.

2. [Use and Design Task Force. Comprehensive Arsenal Land Discussion of resolution creating a](#) (Vice Mayor Patterson)

Vice Mayor Patterson has submitted a proposed resolution directing the formation and initiation of a Comprehensive Arsenal Land Use and Design Task Force.

Recommendation: Discuss the proposed resolution and provide direction to staff, as needed.

C. [Review of Arsenal Planning and Government Code section 65858 - Moratorium.](#) (Vice Mayor Patterson)

Vice Mayor Patterson has requested that consideration of a moratorium be discussed as part of the discussion of the Arsenal Master Plan Committee.

Recommendation: Discuss and provide direction to staff, as needed.

X. NEW BUSINESS:

A. [Benicia Approval of the dedication of one mile of the Bay Area Ridge Trail in](#) (City Manager)

The Bay Area Ridge Trail Council is working to further complete the Bay Area Ridge Trail and hopes to partner with the City of Benicia to dedicate an additional one mile of the trail in Benicia that extends from the existing dedicated Ridge Trail at West F, near Semple Court, through the Marina to H Street and East 5th Street.

Recommendation: Adopt the resolution approving the dedication of one mile of the Bay Area Ridge Trail in Benicia on October 29, 2005.

B. [Approval of amendments to the Casa De Vilarrasa documents and increase the loan amount.](#) (City Attorney)

As part of the settlement of the Vilarrasa Associates litigation, the City agreed to buy out the interest of Vilarrasa Associates and to lease Casa De Vilarrasa to the Housing Authority. In order to do this, the City issued a bond to raise funds for the purchase. The City also agreed to loan the Housing Authority \$200,000 to make improvements to the building. There are additional funds available to make improvements.

Recommendation: Adopt the resolution approving amendments to the Casa De Vilarrasa documents and to the settlement agreement increasing the amount of the loan from \$200,000 to \$275,000 plus interest earnings.

C. [Consideration of Council Member Campbell's recommendations regarding the FY 2005-06 and FY 2006-07 Budgets.](#) (Council Member Campbell)

Council Member Campbell will make recommendations for amending the current two-year budget.

Recommendation: Discuss Council Member Campbell's recommendations and provide direction to staff.

D. [Discussion of Vice Mayor Patterson's proposed Grading Ordinance amendments.](#) (Public Works Director/Community Development Director)

The Vice Mayor submitted proposed changes to the Grading Ordinance that would establish limits on grading, including building construction for hillsides with slopes greater than 25%.

City staff requests direction from Council before proceeding with further analysis on these changes.

Recommendation: Discuss and provide direction to staff on proposed changes to the City of Benicia Grading Ordinance.

**XI. REPORTS FROM CITY MANAGER:**

**A. [\(BUSD\) continued from September 20, 2005 City Council Meeting. Benicia Unified School District Review of proposed joint use agreements with](#) (City Manager)**

The Superintendent and the City Manager are currently working on proposed recommendations for addressing differences in the proposed agreements for City maintenance of BUSD fields.

Recommendation: Status report, for information only.

**B. [Discussion of policy for City assistance to disaster victims.](#)(City Manager)**

Current policy authorizes assistance to disaster victims through official requests from the Federal Emergency Management Agency (FEMA) and the Office of Emergency Services (OES). This report will discuss pertinent issues related to allowing City employees to volunteer to be relief workers outside of a request by FEMA or OES to the City.

Recommendation: Discuss and provide direction to staff, as needed.

**C. [Policy for Noticing Planning and Building Applications.](#) (City Manager)**

Consider various avenues for making the public more aware of current planning and building projects.

Recommendation: Discuss and provide direction to staff, as needed.

**XII. REPORTS FROM CITY COUNCIL COMMITTEES:**

**XIII. ADJOURNMENT:**

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**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 agenda and non

agenda matters under public comment. Comments are limited to no more than 5 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.

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**Disabled Access**

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Diane O'Connell, 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 this meeting.

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## 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.

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## Downloading of reports from this agenda

Some agenda items have attached reports available for downloading from this web page. To view these reports, you must have the latest Adobe Acrobat reader installed in your web browser.

Click [here](#) to download the free Acrobat reader

-  [IX-A Poet Laureate Continuation.pdf](#)
-  [IX-B-1 Staff Report Arsenal Master Plan.pdf](#)
-  [IX-B-2 Staff Report Arsenal Master Plan Committee.pdf](#)
-  [IX-C moratorium staff report.pdf](#)
-  [X-A dedication staff report and reso.pdf](#)
-  [X-B Casa DV 2.pdf](#)
-  [X-C budget staff report.pdf](#)
-  [X-D Staff Report Grading Ordinance Revision.pdf](#)
-  [XI-A Staff Report Joint Use Agreement.pdf](#)
-  [XI-B disaster staff report.pdf](#)
-  [XI-C NOTICING FLYSHEET.pdf](#)

**This item to be continued  
to the  
November 15, 2005 City Council Meeting**

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 4, 2005  
UNFINISHED BUSINESS**

**DATE** : September 12, 2005  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **DISCUSSION OF PROPOSED ARSENAL MASTER PLAN COMMITTEE**

**RECOMMENDATION:**

Discuss the proposed committee and provide direction to staff, as needed.

**EXECUTIVE SUMMARY:**

Council Member Campbell has requested the creation of an Arsenal Master Plan Committee to develop a master plan for the arsenal area. It is proposed that the committee be comprised of 15 citizens and five alternates (i.e., four citizens nominated by each council member).

**BACKGROUND:**

Council Member Campbell has provided the following points regarding his request for an Arsenal Master Plan Committee:

- The Arsenal has historical significance at both the state and federal level.
- Piece meal development could easily lead to erosion of the Arsenal's chance to be on the national and state historical registry.
- Piece meal Arsenal development has little chance of community acceptance.
- The recent success of several initiative/petition drives have proven that with controversial land use issues, it is important to seek and gain wide spread public input. So, community-wide consensus building is the best approach when dealing with controversial land use issues.

**AGENDA ITEM**  
**CITY COUNCIL MEETING: OCTOBER 4, 2005**  
**UNFINISHED BUSINESS**

**DATE** : September 27, 2005

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **DISCUSSION OF RESOLUTION CREATING A  
COMPREHENSIVE ARSENAL LAND USE AND DESIGN TASK  
FORCE**

**RECOMMENDATION:**

Discuss the proposed resolution and provide direction to staff, as needed.

**EXECUTIVE SUMMARY:**

Vice Mayor Patterson has submitted a proposed resolution directing the formation and initiation of a Comprehensive Land Use and Design Task Force.

**BACKGROUND:**

In response to Council Member Campbell's request to discuss a proposed Arsenal Master Plan Committee, Vice Mayor Patterson requested that the attached resolution be considered.

Attachment:

- [Proposed Resolution](#)

# **RESOLUTION**

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DIRECTING THE FORMATION AND INITIATION OF THE COMPREHENSIVE ARSENAL LAND USE AND DESIGN TASK FORCE**

**WHEREAS**, the Benicia City Council finds that there is a compelling need for a **Arsenal Planning Program**; and

WHEREAS, the Benicia City Council is committed to the overarching General Plan goal of **sustainable development**; and

WHEREAS, there is much public and private concern and angst regarding land use decisions in the Arsenal;

**WHEREAS**, public interest in the Arsenal is **so great** that at its own expense and effort, a community group conducted two community charettes and successfully challenged a proposed development through a referendum and litigation; and

**WHEREAS**, the City Council is **mindful of this public concern** as well as seeking appropriate development consistent with its economic policies of the General Plan and has included the Arsenal planning in its **priorities list** for the 2004, 2005 budgets; and

**WHEREAS**, the Benicia General Plan goals, policies and programs ensure that new development is **compatible with adjacent existing development that will not detract from Benicia's small town qualities and historic heritage**; and

**WHEREAS**, the City Council recognizes the need to adopt **development guidelines** that retain the scale and character of the city, preserve public view corridors, and reflect the subdivision and development patterns within existing neighborhoods. *Program 2.1.A*; and

**WHEREAS**, the General Plan provides city policies to encourage and **create opportunities and methods for cooperative planning** of the Port, Arsenal, and Pine Lake; and

**WHEREAS**, the General Plan states that **rather than just reacting to specific development proposals**, the Arsenal planning should be "pro-active" and "master-planning" in nature; and

**WHEREAS**, the General Plan further states that the primary planning criteria are that the process is conducted in public and that all stakeholders are represented. At a minimum, "stakeholders" should include City officials, representatives of Benicia Industries, and the general public. Depending on the particular planning project, stakeholders might also include representatives of Caltrans, the Art Community, and the Chamber of Commerce. "Master Planning" for these areas would evaluate, among other things, the historic preservation of

buildings, public access, circulation, affordable housing, live-work space, infrastructure needs (train station, new bridge ramps and interchanges, and ferry service), potential for economic development and revenue enhancement for the City, reconsideration of uses in the lower Arsenal, restrictions on hazardous materials and waste, and improving the public process for project approval.

**WHEREAS**, the Benicia City Council also desires a plan for the Arsenal that envisions a specific and special place through its streetscape and public spaces, and to preserve and recover, where appropriate, its historic landscape; and

**WHEREAS, the Council also seeks a level of community trust in order to proceed with more certainty for future development; and**

**WHEREAS**, the clarity of the **form-based code (FBC)** makes it easy for citizens to understand development proposals and to accept the intensity of growth needed to achieve financial stability which may not be achieved with conventional zoning; and

**WHEREAS**, the state’s *General Plan Guidelines* acknowledges form based zoning as a “useful implementation measure for achieving certain general plan goals, such as walkable neighborhoods and mixed-use and transit – oriented development”, and **AB 1268 [statues] enables FBC because “[form-base zoning codes] provide for a mixture of land uses and housing types within each, and provide specific measures for regulating relationships between buildings and outdoor public areas, including streets.”**

**WHEREAS**, FBCs purpose is the shaping of a high-quality public realm that promotes healthy civic interaction so that the codes can be enforced not on the basis of aesthetics but because noncompliance would diminish the good that is sought; and

**WHEREAS, FBCs are prescriptive stating what the community wants, and can achieve a more predictable physical result through controlling elements that are the most important to shaping a high-quality built environment;**

**WHEREAS**, the built results development using FBCs often reflect a diversity of architecture, materials, uses, and ownership that can only come from the actions of many independent players operating within a communally agreed-upon vision and legal framework; and

**WHEREAS, a FBC ordinance is shorter, more concise, and organized for visual access and readability making it easier for nonplanners to determine whether the codes have been complied with; and**

**WHEREAS, FBCs obviate the need for design guidelines, which are difficult to apply consistently, offer too much room for subjective interpretation, and can be difficult to enforce; and**

**WHEREAS**, FBCs also require less oversight by discretionary review bodies, leading to a less politicized planning process that can deliver huge savings in time and money and reduce the risk of takings challenges; and

**WHEREAS**, conventional zoning is based on the segregation of land uses and does not deal with physical land form and design guidelines have shown to be inadequate in fulfilling the community's expectations; and

**WHEREAS**, form-based coding seeks to regulate the form of the built environment and is more than the traditional zoning of land use and density, basic height, floor-area and setback limits; and

**WHEREAS**, the physical form is a community's most intrinsic and enduring characteristic and through form-based zoning citizens, developers, planners and other stakeholders can share a physical vision with the built reality; and

**WHEREAS**, the building type provides the freedom to create one set of rules for one building type and another set for a different type; and

**WHEREAS**, the creation of a form-based code is interwoven with a community visioning process.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA HEREBY RESOLVES AS FOLLOWS:**

1. The City Council finds and declares that it is in the best interest of the City and its residents to promptly undertake a new process to conduct X public design workshops, or charette to:

a. **Develop a consensus vision** conveyed through a range of visuals, including perspective drawings, site analysis diagrams, and an illustrative plan that includes: a "bird's eye view, proposed buildings (shown as rooftops) key natural features, and existing and planned public spaces.

b. **Translate the illustrative plan into a more diagrammatic regulating plan**, which indicates what goes where without direct labeling of uses and assigns a building type or types to each available parcel of land and where appropriate a range of building or frontage types that may be constructed in a certain area;

c. **Summarize the physical characteristics of each building type in the building standards** – a set of annotated building cross-sections and plan diagrams assembled on a single, compact and concise document.

d. **Establish key standards, including:**

i. Building height to ensue that a building does not overwhelm its neighbors as well as a minimum height in order to maintain a proportional streetscape;

ii. Siting standards to; control the placement of structures in relation to fronting streets and adjacent building lots; provide dimensions to front, side, and rear building lines, as well as the location and configuration of entrances, parking, yards, and courtyards; establish building elements for windows, doors, and porches

iii. Establish permissible uses, stated in general terms (e.g. retail, residential) for *each* building type and labeled on the cross-section diagram.

iv. Assign different uses to each floor of a mixed-use development.

v. Develop standards for street types by section diagrams with dimensions for travel and parking lanes, traffic calming measures that include sidewalks, medians, planting strips, tree alignment and property lines landscape standards for appropriate plants and trees.

vi. Develop architectural guidelines for retail and historic structures to address exterior colors, materials and construction techniques avoiding specific standards for building style to avoid an overly homogeneous, “themed” look.

2. The City Council further finds and declares that the **Community Image Survey** is one of the most effective tools that the Local **Government Commission** has utilized for actively engaging people in the planning process: relying upon contrasting visuals to help participants understand various land use alternative in which participants can evaluate which images they like and which are more appropriate for their community; and the survey provides a foundation for planning and implementation efforts to develop a common vision that can be incorporated into the city zoning ordinances, design guidelines, and other planning documents; and

3. The City Council further finds and declares broad-based, stakeholder public participation is critical to the success of the Committee process. This finding comports with the public’s expressed opinions in the last ten years and recent elections that **public participation should be considered the most important aspect of the process**. Only through broad-based public participation can the Council ensure that the development proposals have public support essential to a successful vote on a future general obligation bond; and

3. In keeping with the City Council’s findings that **broad-based public participation** is essential to the overall success of the Committee, the City Council shall **establish the Arsenal Form-base Code Task Force** consisting of X members **chosen** by each Councilmember, two members each chosen by the Historic Preservation Review Commission, and the Planning Commission and five public members representing the Arsenal residential

neighborhood, and members from the community representing the community planning, historic and commercial and industrial interests. The Committee shall elect a chair and vice-chair, and shall perform various functions related to the purpose of the Committee, including but not limited to:

(a) Adopting a consensus, stakeholder process **facilitated by trained and experienced consultant(s)** that may include subcommittees to ensure a true stakeholder representation;

(b) **Reviewing and confirming background information** including [list public and private efforts and documents] ;

(c) As appropriate, leading or assisting in leading neighborhood and **community workshops** or forums for public outreach and participation;

(d) Performing other functions as needed.

4. The City Council includes two ex officio council members: XX

5. It is the Council's intent that the Committee shall have its first meeting no later than \_\_\_\_\_2005 and shall complete its purpose no later than \_\_\_\_\_ 2006, meeting two or more times per month;

6. The ex officio members shall report to the City Council at the second meeting of each month.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4th day of October 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Attest:

\_\_\_\_\_  
Steve Messina, Mayor

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

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 4, 2005  
UNFINISHED BUSINESS**

**DATE** : September 27, 2005  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **REVIEW OF ARSENAL PLANNING AND GOVERNMENT CODE SECTION 65858 - MORATORIUM**

**RECOMMENDATION:**

Discuss and provide direction to staff, as needed.

**EXECUTIVE SUMMARY:**

Vice Mayor Patterson has requested that consideration of a moratorium be discussed as part of the discussion of the Arsenal Master Plan Committee.

**SUMMARY:**

Government Code section 65858 allows a city to adopt a moratorium to prohibit certain uses that may be in conflict with proposed changes to the General Plan, specific plans or zoning ordinance. A moratorium is adopted via an urgency ordinance. An urgency ordinance requires four-fifths of the Council to approve it. Initially, the ordinance will only be effective for 45 days. It may be extended for a total period of two years. An urgency ordinance requires findings that it is necessary to protect the public health, safety or welfare.

A copy of section 65858 is attached for your reference.

Attachment

- [Government Code section 65858](#)

**GOVERNMENT CODE SECTION 65858**

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 4, 2005  
NEW BUSINESS**

**DATE** : September 19, 2005  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **APPROVAL OF THE DEDICATION OF ONE MILE OF THE BAY AREA RIDGE TRAIL IN BENICIA**

**RECOMMENDATION:**

Adopt the resolution approving the dedication of one mile of the Bay Area Ridge Trail in Benicia on October 29, 2005.

**EXECUTIVE SUMMARY:**

The Bay Area Ridge Trail Council is working to further complete the Bay Area Ridge Trail and hopes to partner with the City of Benicia to dedicate an additional one mile of the trail in Benicia that extends from the existing dedicated Ridge Trail at West F, near Semple Court, through the Marina to H Street and East 5<sup>th</sup> Street.

**BACKGROUND:**

The Bay Area Ridge Trail is a trail route that weaves among the ridgelines of the hills and mountains that surround the San Francisco Bay. The trail will eventually connect existing public open spaces and park lands in the nine Bay Area counties and will provide over 500 miles of ridgeline vistas.

The first Bay Area Ridge Trail segment in Benicia, which is along the Carquinez Strait Waterfront, was dedicated in October 1989. The second portion of the trail, the Benicia/Vallejo Buffer Trail was dedicated in May 1993. This third segment extends the current 8 miles of the trail in the Benicia vicinity by one mile, and runs along the Benicia waterfront.

This addition to the trail brings the Bay Area Ridge Trail Council one mile closer to completing the 500-plus mile multi-use trail connecting the region's parks, open spaces and communities along the ridgeline above the San Francisco Bay.

Attachments:

- ❑ [Resolution](#)
- ❑ [Map of trail route](#)

# **RESOLUTION**

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE DEDICATION OF ONE MILE OF THE BAY AREA RIDGE TRAIL IN BENICIA ON OCTOBER 29, 2005**

**WHEREAS**, the City of Benicia and the Bay Area Ridge Trail Council have been partners in providing public recreational trails for the residents and visitors of Benicia for over 15 years; and

**WHEREAS**, the first Bay Area Ridge Trail segment in Benicia, along the Carquinez Strait Waterfront, was dedicated in October, 1989, and the second, the Benicia/Vallejo Buffer Trail, was dedicated in May, 1993; and

**WHEREAS**, as planned, the Bay Area Ridge Trail Council is working to further complete the Bay Area Ridge Trail, a spectacular trail route weaving among the ridgelines of the hills and mountains surrounding the San Francisco Bay that will connect existing public open spaces and park lands in the nine Bay Area counties and will provide over 500 miles of ridgeline vistas; and

**WHEREAS**, through the expertise and diversity of the Bay Area Ridge Trail Council's board of directors, partners, and broad base of support from the public, the 300<sup>th</sup> mile will be dedicated in 2006.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the dedication of an additional one mile of Bay Area Ridge Trail in Benicia from the existing dedicated Ridge Trail at West F, near Semple Court, through the Marina to H Street and East 5<sup>th</sup> Street.

**BE IT FURTHER RESOLVED** that the City's Public Works Department will install Bay Area Ridge Trail signs supplied by the Bay Area Ridge Trail Council.

**BE IT FURTHER RESOLVED** that the City will partner with the Bay Area Ridge Trail Council in the dedication ceremonies to be held on Saturday, October 29, 2005.

\*\*\*\*\*

On a motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4<sup>th</sup> day of October, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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

**MAP**

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 4, 2005  
NEW BUSINESS**

**DATE:** September 23, 2005

**TO:** City Council

**FROM:** City Attorney

**RE:** **APPROVE AMENDMENTS TO THE CASA DE VILARRASA  
DOCUMENTS AND INCREASE THE LOAN AMOUNT**

**RECOMMENDED ACTION:**

Adopt the resolution approving amendments to the Casa De Vilarrasa documents and to the settlement agreement increasing the amount of the loan from \$200,000 to \$275,000 plus interest earnings.

**EXECUTIVE SUMMARY:**

As part of the settlement of the Vilarrasa Associates litigation, the City agreed to buy out the interest of Vilarrasa Associates and to lease Casa De Vilarrasa to the Housing Authority. In order to do this, the City issued a bond to raise funds for the purchase. The City also agreed to loan the Housing Authority \$200,000 to make improvements to the building. There are additional funds available to make improvements.

**BUDGET IMPACT:**

The additional \$75,000 plus loan will be funded with proceeds from the issuance of the bonds. The \$200,000 initial loan amount was based on early estimates for the bond proceeds. Because capitalized interest, costs of issuance, and \$200,000 for the improvements to the buildings were eventually included in the bond amount, the amount of the bond was raised from \$1.1 million dollars to \$1.4 million. Since interest rates came in better than expected, there is an additional \$75,000 plus interest earnings available to loan to the Housing Authority for improvements to the buildings.

**BACKGROUND:**

At the beginning of this year, the City settled the litigation involving the Casa de Vilarrasa project. The agreement with the Housing Authority provided that the City would (1) issue a bond to cover the purchase of Vilarrasa Associates interest in the project and (2) that the Housing Authority would eventually pay back the bond. The agreement provided that the City would borrow up to \$1.1 million dollars. In order to secure funds to do some needed work to the roof and HVAC system, the parties agreed that up to \$200,000 would be included in the bond amount. When the bonds were actually authorized, it became apparent that it would be more

cost effective to fund the entire \$200,000. That, plus capitalized interest and the cost of issuance, increased the bond amount to \$1.4 million dollars. When the bond was issued there was “extra” money available. This money would be useful for the improvements proposed for Casa de Vilarrasa. To transfer the money to the Housing Authority, an amendment needs to be made to the agreement with the Housing Authority.

The agreement with the Housing Authority also provided that the parties would execute lease agreements for Phase 1 and Phase 2. In March of this year, the parties entered into lease amendments to satisfy this provision of the agreement. The documents before you incorporate all of the changes proposed by the agreement as well as the updating of the base lease agreements for provisions such as insurance, review of capital improvement plans, and agreeing to allow the land to be used by the Housing Authority to secure bonds to refinance the project.

Attachment:

- ❑ [Resolution](#)
- ❑ [First Amendment to the Settlement Agreement](#)
- ❑ [Second Amendment to the Phase 1 Lease](#)
- ❑ [Second Amendment to the Phase 2 Lease](#)

# **RESOLUTION**

**RESOLUTION NO. 05-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN AMENDMENT TO THE SETTLEMENT AGREEMENT AND TO THE LEASE AGREEMENTS WITH THE BENICIA HOUSING AUTHORITY FOR THE CASA DE VILARRASA PROJECT AND AUTHORIZING THE RECORDATION OF RELATED DOCUMENTS**

**WHEREAS**, the City of Benicia and Vilarrasa Associates, a California General Partnership (Vilarrasa) on April 4, 1984 entered into that certain Ground Lease Agreement (the “Initial Lease”) for the lease of certain real property commonly referred as Casa de Vilarrasa Phase I housing project; and

**WHEREAS**, the City of Benicia and Vilarrasa on April 4, 1986 entered into that certain Ground Lease Agreement (the “Initial Lease”) for the lease of certain real property commonly referred as the Casa de Vilarrasa Phase II housing project; and

**WHEREAS**, the City of Benicia, Vilarrasa, Harold Boex, and the Benicia Housing Authority became involved in litigation arising out of the ownership and operation of Phase II of the Casa de Vilarrasa housing project; and

**WHEREAS**, in 2005 the parties to the Phase II Litigation have entered into that certain Settlement and Release Agreement (the “Settlement Agreement”) setting forth each parties rights, obligations and applicable releases in connection with the settlement of Phase II Litigation; and

**WHEREAS**, in 2005 the City of Benicia and the Benicia Housing Authority have entered into that certain Agreement (the “Ancillary Agreement”) in order to further clarify and resolve certain issues related to the settlement of Phase II Property and have amended the leases for Phase I and Phase II; and

**WHEREAS**, the City of Benicia and the Benicia Housing Authority desire to amend further the leases for Phase I and Phase II to set forth the current understanding and intent of the parties.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council hereby approves amendment to the settlement agreement with the Benicia Housing Authority, Casa De Vilarrasa Phase I Ground Lease Agreement Amendment #2, and Casa De Vilarrasa Phase II Ground Lease Agreement Amendment #2 and authorizes the City Manager to execute said documents on behalf of the City, with such changes as may be approved by the City Manager, and subject to approval as to form by the City Attorney.

**BE IT FURTHER RESOLVED THAT** the comprehensive lease agreements shall be brought back to Council for approval within six months.

**BE IT FURTHER RESOLVED THAT** the City Council authorizes the City Clerk to record such deeds and the lease memoranda and the staff to take all necessary steps to accomplish the goals of the settlement agreement and leases.

\*\*\*\*\*

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 \_\_\_\_\_ day of October, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

\_\_\_\_\_  
Steve Messina, Mayor

ATTEST:

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

**1<sup>ST</sup> AMENDMENT TO SETTLEMENT  
AGREEMENT**

**FIRST AMENDMENT TO AGREEMENT  
REGARDING THE VILARRASA LITIGATION**

This Amendment of the Agreement, entered into this \_\_\_\_ day of October, 2005, by and between the City of Benicia, a municipal corporation (“City”) and the Benicia Housing Authority, is made with reference to the following:

RECITALS:

A. On January 6, 2005, an agreement was entered into by and between City and the Benicia Housing Authority regarding the settlement of *Vilarrasa Associates et al. v. City of Benicia et al.*, Solano County Court Case No. FCS015590, (“Agreement”).

**B. City and the Benicia Housing Authority 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. Paragraph 8.d.ii of the Agreement is modified to read as follows:**

“For the purpose of addressing housing needs in the City of Benicia and for the further purpose of assisting the Housing Authority with this goal, City will borrow up to \$1,400,000 to cover the cost of buying Plaintiffs’ interest in Phase I, contributing to the replacement of the heating system and roof in Phase I, and covering any bond issuance fees. The amount borrowed by City will not include the amount of the loan forgiveness specified in Section 7 of this Agreement. From the sum borrowed, City will contribute at least \$275,000 towards the cost of the roof replacement and heating system projects in Phase I. Said sum shall be paid to the Authority when requested by the Authority. Under the terms of the lease described in Section 8.d.iii below, Authority will be responsible for contracting for and overseeing said projects.

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.

Benicia Housing Authority

City of Benicia, A Municipal Corporation

By \_\_\_\_\_  
Acting Executive Director

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
City Attorney



## **2<sup>ND</sup> LEASE AMENDMENT PHASE I**

**CASA DE VILARRASA PHASE 1  
GROUND LEASE AGREEMENT  
AMENDMENT #2**

This Ground Lease Amendment #2 (“*Amendment*”) is made and entered into this \_\_\_\_ day of October, 2005 (the “*Effective Date*”), by and between the City of Benicia, a municipal corporation (“*Lessor*”), and the Benicia Housing Authority (“*Lessee*”).

**Recitals**

A. On or about May 4, 1983, Lessor and Vilarrasa Associates, a California General Partnership (as lessee) (“*Vilarrasa*”) entered into that certain Ground Lease Agreement (the “*Lease*”) for the lease of certain real property commonly referred to as the Casa de Vilarrasa Phase 1 housing project, located in the City of Benicia, County of Solano, State of California, with assessors parcel number 0089-061-140, as more particularly described on Exhibit “A” attached hereto (the “*Property*”). Vilarrasa retained ownership of the improvements on the Property (the “*Improvements*”). Hereinafter, the Property and Improvements shall be collectively referred to as the (“*Premises*”).

B. Immediately after the execution of the Lease, Vilarrasa assigned the Lease to Lessee and leased the Improvements to Lessee by entering into that certain Improvements Lease and Assignment of Ground Lease, dated May 4, 1983 (the “*Improvements Lease*”).

C. Effective January 6, 2005, Lessor and Lessee entered into a certain agreement (the “*Ancillary Agreement*”) and effective March 21, 2005 Lessor and Lessee entered into Amendment #1 to the Lease pursuant to the Ancillary Agreement.

D. Lessor and Lessee now wish to enter into this Amendment to amend certain provisions of the Lease pursuant to the terms and conditions hereof.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Paragraph 11 of the Lease is modified to read as follows:

11. Insurance and Indemnity:

11.01 Liability Insurance. Lessee shall procure and maintain during the Term, at its sole cost and expense, a policy or policies of either commercial general liability insurance at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 relating to the use and occupancy of the Premises and the business operated by Lessee or any other occupant on the Premises. Such insurance shall include broad form contractual liability insurance coverage insuring all of Lessee's indemnity obligations under this Lease. Such

coverage shall have a minimum combined single limit of liability of at least \$2 million per occurrence and an annual aggregate limit of at least \$2 million. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss however occasioned occurring during the policy term and shall be endorsed to add Lessor as an additional insured, to provide that such coverage shall be primary and that any insurance maintained by Lessor shall be excess insurance only. Such coverage shall also contain endorsements: (a) deleting any employee exclusion on personal injury coverage; (b) including employees as additional insureds; and (c) providing for coverage of employer's automobile non-ownership liability.

Lessee shall also maintain worker's compensation insurance in accordance with California law, and employer's liability insurance with a limit of no less than \$1 million per employee and \$1 million per occurrence.

#### 11.02 Lessee's Building Insurance.

A. Amount and Type. At all times during the Term or any extension thereof, Lessee shall cause to be effected upon the Premises (including any additions or improvements made by Lessor or Lessee and any fixtures or equipment installed by Lessee, and plate glass window insurance) property insurance at least as broad as ISO Special Form Causes of Loss, CP 1030, in the amount of 100% of the full replacement value of the Improvements. Such policy shall contain a replacement cost endorsement and a stipulated amount endorsement. With respect to any insurance effective for a term extending beyond the Term, Lessee shall be obligated to pay only such proportion of the premium upon such insurance as that portion of the term of the policy lapsing prior to the expiration of the Term of this Lease bears to the entire term of the policy.

B. Additional Insureds. Lessee shall cause Lessor (and any mortgagee and other person reasonably designated by Lessor) to be named as an additional insured in any policy above provided for.

C. Proceeds of Property Insurance. Lessor shall, at Lessee's cost and expense, cooperate fully with Lessee to obtain the largest possible recovery, and all policies of fire and extended coverage insurance required by this Subparagraph 11.02 shall provide that the proceeds shall be paid to Lessee. The proceeds shall be deemed to be held in trust by Lessee for the uses and purposes prescribed by this Lease. Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair and reconstruction of the Improvements shall be Lessee's sole property.

11.03 Amount of Coverage. If at any time during the Term the amount or coverage of insurance which Lessee is required to carry under this Article is, in Lessor's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners or Lessees of properties located in the Walnut Creek metropolitan area, which are similar to and operated for similar purposes as the Premises, Lessor shall have the right to require Lessee to increase the amount or change the types of insurance coverage required under this section.

11.04 Forms of Policies; Deductibles. All insurance policies required by this Paragraph shall provide for severability of interests; shall provide that an act or omission of one of the named or additional insureds shall not reduce or avoid coverage to the other named or additional insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. All insurance policies required to be carried under this Paragraph shall be (a) written by companies rated A-XII or better in *Best's Insurance Guide* and authorized to do business in California, and (b) name Lessor (and mortgagees and any other persons reasonably designated by Lessor) as additional insureds. Any deductible amounts in excess of \$5,000 under any insurance policies required by this section shall be subject to Lessor's prior written approval. Lessee shall be responsible for any deductible amount, so that so far as Lessor is concerned, it will be as if the insurance had no deductible. So long as Lessee is a member of the Housing Authorities Risk Retention Pool, a HUD approved risk-sharing pool, the A.M. Best rating is not required.

11.05 Blanket Coverage. Any policy required to be maintained by Lessor or Lessee under this Lease may be maintained under a so-called "blanket policy" insuring other parties and/or other locations, so long as the amount of insurance and type of coverage required to be provided hereunder is not thereby diminished, changed or adversely affected.

11.06 Insurance Certificates; Failure to Deliver. Lessee shall furnish Lessor prior to the Commencement Date, and thereafter within 30 days prior to the expiration of each such policy, a certificate of insurance issued by the insurance carrier of each policy of insurance carried hereunder. The certificates shall expressly provide that the policies shall not be cancelable or subject to reduction of coverage or otherwise be subject to modification except after 30 days' prior written notice to Lessor. If Lessee shall fail to procure such insurance or to deliver such certificates, Lessor may, at its option, and in addition to Lessor's other remedies in the event of a default by Lessee under this Lease, procure the same for the account of Lessee, and the cost thereof shall be paid to Lessor as additional rent.

11.07 Waiver of Subrogation. The parties hereby release each other, and their respective successors and assigns, from any claims for damage to any person, the Premises, or to the Improvements and any personal property in or on the Premises, that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damages, provided that such release shall only be effective to the extent of the actual coverage of the insurance policies. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy carried with respect to the Premises or the Improvements.

11.08 Indemnification. Lessee, during the Term, will indemnify, defend and save Lessor harmless from and against any and all claims, demands, actions, damages, liability and expense (including reasonable attorneys' fees and costs of investigation with respect to any claim, demand or action) in connection with loss of life, personal injury and/or damage to property arising from or connected with the conduct or management of the business conducted by Lessee on the Premises, or the occupancy or use by Lessee of the Premises, the Improvements or any part thereof, or from any breach or default on the part of Lessee in the performance of any

covenant or agreement on the part of Lessee to be performed pursuant to this Lease, or from violations of or noncompliance with any governmental requirements or insurance requirements, or from any acts or omissions of Lessee or any person on the Premises or the Improvements by license or invitation of Lessee or occupying the Premises, the Improvements or any part thereof under Lessee whether such injury occurs in, on or about the Premises or the Improvements. In case Lessor shall be made a party to any litigation commenced by or against Lessee, Lessee shall accept any tender of defense by Lessor and shall, notwithstanding any allegations of negligence or misconduct on the part of Lessor, its agents or employees, defend Lessor and protect and hold Lessor harmless and pay all costs, expenses and reasonable attorneys' fees incurred or paid by Lessor in connection with such litigation; provided, however, Lessee shall not be liable for any such injury, damage or costs, expenses and reasonable attorneys' fees to the extent and in the proportion such injury or damage is ultimately determined to be attributable to the negligence or misconduct of Lessor, its agents or employees, unless covered by insurance required to be carried by Lessee. Lessor, at its option, may require Lessee to assume Lessor's defense in any action covered by this section through counsel reasonably satisfactory to Lessor. Defense of Lessor shall not apply to claim deemed to be the negligence or misconduct of the Lessor.

Lessor, during the Term hereof, will indemnify Lessee and save it harmless from and against any and all claims, demands, actions, damages, liability and expense arising out of the negligence or misconduct of the Lessor.

11.09 Waiver of Loss Damage. Lessor shall not be liable for any damage to property of Lessee, or of others, located in, on or about the Premises or Improvements, nor for the loss of or damage to any property of Lessee or of others by theft or otherwise. Lessor shall not be liable to Lessee, Lessee's employees or representatives for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow or leaks from any part of the Premises or Improvements or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause whatsoever of nature. Lessor shall not be liable to Lessee, Lessee's employees or representatives for any such damage caused by other persons in the Premises or Improvements or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Lessee kept or stored on or in the Premises or Improvements shall be so kept or stored at the sole risk of Lessee and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance carriers, unless such damage shall be caused by the willful act or gross neglect of Lessor.

11.10 Builder's Risk Coverage. Before commencement of any substantial demolition or construction, Lessee shall cause to be procured and shall cause to be maintained in force until completion and acceptance of the work, "all risks" builder's risk insurance including vandalism and malicious mischief, in a form and with a company reasonably acceptable to Lessor, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits of at least the full insurable value, for all work at the job site.

2. A new Paragraph 24 is added to read as follows:

24. Review of Capital Improvements to the Premises: In order to allow Lessor to insure that major improvements to the Premises are properly made, Lessee agrees to provide a copy of the plans and specifications for any capital improvements that will be formally bid under the California Public Contract Code. The plans and specifications shall be provided to Lessor at the same time they are provided to potential bidders. Lessor shall have the right, but not the obligation, to comment on the plans and specifications. Lessee shall use its best efforts to incorporate Lessor’s comments in the plans and specifications when the comments relate to public safety.

3. A new Paragraph 25 is added to read as follows:

25. Refinancing: Lessor and Lessee acknowledge that Lessee will be seeking financing to pay off the bonds issued by Lessor pursuant to the Ancillary Agreement. In addition to Lessor cooperating with Authority to refinance the RHCP loan and consenting to modifications to the Lease required by any lender, Lessor agrees to allow the Lease to be subordinated to allow the refinancing so long as the subordination is reasonable and Lessor’s rights are not unduly materially and adversely affected by such subordination.

4. Except as expressly modified herein, all other terms and covenants set forth in the Lease as amended by Amendment #1 shall remain the same and shall be in full force and effect.

5. Memorandum of Lease. Concurrently with the execution and delivery of this Amendment, the parties will execute, acknowledge and deliver, a short form Memorandum of the Lease in the form attached here to as Exhibit “B”. Lessor shall record the Memorandum of Lease in the Solano County Recorder’s Office.

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

Benicia Housing Authority

City of Benicia,  
A Municipal Corporation

By \_\_\_\_\_  
Acting Executive Director

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
City Attorney

**Exhibit A**

**Legal Description of Property**

Lot 1, as shown on the Map entitled "Casa De Vilarrasa, Unit 1" on July 29, 1983, in Book 42 of Maps at Page 89, Official Records of Solano County California

**Exhibit B**

**OFFICIAL BUSINESS**

Document entitled to free recording  
Per Government Code § 6103

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**Lisa Wolfe, City Clerk  
City of Benicia  
250 East L Street  
Benicia, CA 94510**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF LEASE  
(Vilarrasa Phase I)**

This Memorandum of Lease ("*Memorandum*") dated as of October \_\_, 2005, is entered into by and between the City of Benicia, a municipal corporation (as "*Lessor*") and Benicia Housing Authority, a public agency (as "*Lessee*").

**Recitals**

A. On or about May 4, 1983, Lessor and Vilarrasa Associates, a California General Partnership ((as lessee) ("*Vilarrasa*") entered into that certain Ground Lease Agreement (the "*Lease*"), pursuant to which Lessor leased to Vilarrasa and Vilarrasa leased from Lessor the real property as more particularly described in Exhibit "A" attached hereto and incorporated by the reference and the improvements thereon (the "*Property*"). Vilarrasa retained ownership of the improvements on the Property (the "*Improvements*"). Hereinafter, the Property and the Improvements shall be collectively referred to as the "*Premises*".

B. Immediately after the execution of the Lease, Vilarrasa assigned the Lease to Lessee and leased the Improvements to Lessee by entering into that certain Improvements Lease and Assignment of Ground Lease, dated May 4, 1983 (the "*Improvements Lease*").

C. On March 21, 2005, Lessor and Lessee entered into that certain Ground Lease Agreement Amendment #1 (the "*Amendment #1*") to amend the Lease, including an extension of the term of the Lease and to incorporate a grant of a right of first refusal to purchase the Premises.

D. As of the date first set forth above, Lessor and Lessee entered into that certain Ground Lease Agreement – Amendment #2.

E. Lessor and Lessee desire to execute this Memorandum to provide constructive notice to all third parties of the Lessee's rights under the Lease.

**Agreement**

For good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Insurance. The insurance provisions are modified as set forth in Amendment #2.
2. Review of Capital Improvements. Lessor has the right to review certain Capital Improvements.
3. Refinancing. Lessee has the right to refinance the project and to require Lessor to subordinate its interest.

Executed as of the date first written above.

**LESSEE:**  
Benicia Housing Authority

**LESSOR:**  
City of Benicia,  
A municipal corporation

By: \_\_\_\_\_  
Julie Peterson, Acting Executive Director

By: \_\_\_\_\_  
James R. Erickson, City Manager

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

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

APPROVED AS TO FORM

APPROVED AS TO FORM

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
City Attorney

**Exhibit A**

**Legal Description of Property**

Lot 1, as shown on the Map entitled "Casa De Vilarrasa, Unit 1" on July 29, 1983, in Book 42 of Maps at Page 89, Official Records of Solano County California

## **2<sup>ND</sup> LEASE AMENDMENT PHASE II**

**CASA DE VILARRASA PHASE II  
GROUND LEASE AGREEMENT  
AMENDMENT #2**

This Ground Lease Amendment #2 (“*Amendment*”) is made and entered into this \_\_\_\_ day of October, 2005 (the “*Effective Date*”), by and between the City of Benicia, a municipal corporation (“*Lessor*”), and the Benicia Housing Authority (“*Lessee*”).

**Recitals**

A. On or about May 27, 1999, Lessor and Lessee entered into that certain Ground Lease Agreement (the “*Lease*”) for the lease of certain real property commonly referred to as the Casa de Vilarrasa Phase II housing project, (“*Phase II*”) located in the City of Benicia, County of Solano, State of California, with assessors parcel number 0089-061-150, as more particularly described on Exhibit A attached here to (the “*Property*”). The Property is improved with forty (40) residential housing units (the “*Improvements*”). Hereinafter, the Property and Improvements shall be collectively referred to as the (“*Premises*”).

B. Effective January 6, 2005, Lessor and Lessee entered into a certain agreement (the “*Ancillary Agreement*”) and effective March 21, 2005 Lessor and Lessee entered into Amendment #1 to the Lease pursuant to the Ancillary Agreement.

C Lessor and Lessee now wish to enter into this Amendment to amend certain provisions of the Lease pursuant to the terms and conditions hereof.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

2. Paragraph 10 of the Lease is modified to read as follows:

10. Insurance and Indemnity:

10.01 Liability Insurance. Lessee shall procure and maintain during the Term, at its sole cost and expense, a policy or policies of either commercial general liability insurance at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 relating to the use and occupancy of the Premises and the business operated by Lessee or any other occupant on the Premises. Such insurance shall include broad form contractual liability insurance coverage insuring all of Lessee's indemnity obligations under this Lease. Such coverage shall have a minimum combined single limit of liability of at least \$2 million per occurrence and an annual aggregate limit of at least \$2 million. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss however occasioned occurring during the policy term and shall be endorsed to add Lessor as an additional insured, to provide that such coverage shall be primary and that any insurance maintained by

Lessor shall be excess insurance only. Such coverage shall also contain endorsements: (a) deleting any employee exclusion on personal injury coverage; (b) including employees as additional insureds; and (c) providing for coverage of employer's automobile non-ownership liability.

Lessee shall also maintain worker's compensation insurance in accordance with California law, and employer's liability insurance with a limit of no less than \$1 million per employee and \$1 million per occurrence.

#### 10.02 Lessee's Building Insurance.

D. Amount and Type. At all times during the Term or any extension thereof, Lessee shall cause to be effected upon the Premises (including any additions or improvements made by Lessor or Lessee and any fixtures or equipment installed by Lessee, and plate glass window insurance) property insurance at least as broad as ISO Special Form Causes of Loss, CP 1030, in the amount of 100% of the full replacement value of the Improvements. Such policy shall contain a replacement cost endorsement and a stipulated amount endorsement. With respect to any insurance effective for a term extending beyond the Term, Lessee shall be obligated to pay only such proportion of the premium upon such insurance as that portion of the term of the policy lapsing prior to the expiration of the Term of this Lease bears to the entire term of the policy.

E. Additional Insureds. Lessee shall cause Lessor (and any mortgagee and other person reasonably designated by Lessor) to be named as an additional insured in any policy above provided for.

F. Proceeds of Property Insurance. Lessor shall, at Lessee's cost and expense, cooperate fully with Lessee to obtain the largest possible recovery, and all policies of fire and extended coverage insurance required by this Subparagraph 10.02 shall provide that the proceeds shall be paid to Lessee. The proceeds shall be deemed to be held in trust by Lessee for the uses and purposes prescribed by this Lease. Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair and reconstruction of the Improvements shall be Lessee's sole property.

10.03 Amount of Coverage. If at any time during the Term the amount or coverage of insurance which Lessee is required to carry under this Article is, in Lessor's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners or Lessees of properties located in the Walnut Creek metropolitan area, which are similar to and operated for similar purposes as the Premises, Lessor shall have the right to require Lessee to increase the amount or change the types of insurance coverage required under this section.

10.04 Forms of Policies; Deductibles. All insurance policies required by this Paragraph shall provide for severability of interests; shall provide that an act or omission of one of the named or additional insureds shall not reduce or avoid coverage to the other named or additional insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. All insurance policies required to be carried under this Paragraph shall

be (a) written by companies rated A-XII or better in *Best's Insurance Guide* and authorized to do business in California, and (b) name Lessor (and mortgagees and any other persons reasonably designated by Lessor) as additional insureds. Any deductible amounts in excess of \$5,000 under any insurance policies required by this section shall be subject to Lessor's prior written approval. Lessee shall be responsible for any deductible amount, so that so far as Lessor is concerned, it will be as if the insurance had no deductible. So long as Lessee is a member of the Housing Authorities Risk Retention Pool, a HUD approved risk sharing pool, the A.M. Best rating is not required.

10.05 Blanket Coverage. Any policy required to be maintained by Lessor or Lessee under this Lease may be maintained under a so-called "blanket policy" insuring other parties and/or other locations, so long as the amount of insurance and type of coverage required to be provided hereunder is not thereby diminished, changed or adversely affected.

10.06 Insurance Certificates; Failure to Deliver. Lessee shall furnish Lessor prior to the Commencement Date, and thereafter within 30 days prior to the expiration of each such policy, a certificate of insurance issued by the insurance carrier of each policy of insurance carried hereunder. The certificates shall expressly provide that the policies shall not be cancelable or subject to reduction of coverage or otherwise be subject to modification except after 30 days' prior written notice to Lessor. If Lessee shall fail to procure such insurance or to deliver such certificates, Lessor may, at its option, and in addition to Lessor's other remedies in the event of a default by Lessee under this Lease, procure the same for the account of Lessee, and the cost thereof shall be paid to Lessor as additional rent.

10.07 Waiver of Subrogation. The parties hereby release each other, and their respective successors and assigns, from any claims for damage to any person, the Premises, or to the Improvements and any personal property in or on the Premises, that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damages, provided that such release shall only be effective to the extent of the actual coverage of the insurance policies. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy carried with respect to the Premises or the Improvements.

10.08 Indemnification. Lessee, during the Term, will indemnify, defend and save Lessor harmless from and against any and all claims, demands, actions, damages, liability and expense (including reasonable attorneys' fees and costs of investigation with respect to any claim, demand or action) in connection with loss of life, personal injury and/or damage to property arising from or connected with the conduct or management of the business conducted by Lessee on the Premises, or the occupancy or use by Lessee of the Premises, the Improvements or any part thereof, or from any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of Lessee to be performed pursuant to this Lease, or from violations of or noncompliance with any governmental requirements or insurance requirements, or from any acts or omissions of Lessee or any person on the Premises or the Improvements by license or invitation of Lessee or occupying the Premises, the Improvements or any part thereof under Lessee whether such injury occurs in, on or about the Premises or the Improvements. In case Lessor shall be made a party to any litigation commenced by or against Lessee, Lessee shall

accept any tender of defense by Lessor and shall, notwithstanding any allegations of negligence or misconduct on the part of Lessor, its agents or employees, defend Lessor and protect and hold Lessor harmless and pay all costs, expenses and reasonable attorneys' fees incurred or paid by Lessor in connection with such litigation; provided, however, Lessee shall not be liable for any such injury, damage or costs, expenses and reasonable attorneys' fees to the extent and in the proportion such injury or damage is ultimately determined to be attributable to the negligence or misconduct of Lessor, its agents or employees, unless covered by insurance required to be carried by Lessee. Lessor, at its option, may require Lessee to assume Lessor's defense in any action covered by this section through counsel reasonably satisfactory to Lessor. Defense of Lessor shall not apply to claim deemed to be the negligence or misconduct of the Lessor.

Lessor, during the Term hereof, will indemnify Lessee and save it harmless from and against any and all claims, demands, actions, damages, liability and expense arising out of the negligence or misconduct of the Lessor.

10.09 Waiver of Loss Damage. Lessor shall not be liable for any damage to property of Lessee, or of others, located in, on or about the Premises or Improvements, nor for the loss of or damage to any property of Lessee or of others by theft or otherwise. Lessor shall not be liable to Lessee, Lessee's employees or representatives for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow or leaks from any part of the Premises or Improvements or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause whatsoever of nature. Lessor shall not be liable to Lessee, Lessee's employees or representatives for any such damage caused by other persons in the Premises or Improvements or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Lessee kept or stored on or in the Premises or Improvements shall be so kept or stored at the sole risk of Lessee and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance carriers, unless such damage shall be caused by the willful act or gross neglect of Lessor.

10.10 Builder's Risk Coverage. Before commencement of any substantial demolition or construction, Lessee shall cause to be procured and shall cause to be maintained in force until completion and acceptance of the work, "all risks" builder's risk insurance including vandalism and malicious mischief, in a form and with a company reasonably acceptable to Lessor, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits of at least the full insurable value, for all work at the job site.

2. A new Paragraph 25 is added to read as follows:

25. Review of Capital Improvements to the Premises: In order to allow Lessor to insure that major improvements to the Premises are properly made, Lessee agrees to provide a copy of the plans and specifications for any capital improvements that will be formally bid under the California Public Contract Code. The plans and specifications shall be provided to Lessor at the same time they are provided to potential bidders. Lessor shall have the right, but not the obligation, to comment on the plans and specifications. Lessee shall use its best efforts to

incorporate Lessor's comments in the plans and specifications when the comments relate to public safety.

3. A new Paragraph 26 is added to read as follows:

26. Refinancing: Lessor and Lessee acknowledge that Lessee will be seeking financing to pay off the bonds issued by Lessor pursuant to the Ancillary Agreement. In addition to Lessor cooperating with Authority to refinance the RHCP loan and consenting to modifications to the Lease required by any lender, Lessor agrees to allow the Lease to be subordinated to allow the refinancing so long as the subordination is reasonable and Lessor's rights are not unduly materially and adversely affected by such subordination.

4. Except as expressly modified herein, all other terms and covenants set forth in the Lease 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.

Benicia Housing Authority

City of Benicia,  
A Municipal Corporation

By \_\_\_\_\_  
Acting Executive Director

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
City Attorney

**Exhibit A**

Assessors Parcel Number 089-061-150

**Exhibit B**

**OFFICIAL BUSINESS**

Document entitled to free recording  
Per Government Code § 6103

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**Lisa Wolfe, City Clerk  
City of Benicia  
250 East L Street  
Benicia, CA 94510**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF LEASE  
(Vilarrasa Phase II)**

This Memorandum of Lease ("*Memorandum*") dated as of October \_\_, 2005, is entered into by and between the City of Benicia, a municipal corporation (as "*Lessor*") and Benicia Housing Authority, a public agency (as "*Lessee*").

**Recitals**

A. On or about May 27, 1999, Lessor and Lessee entered into that certain Ground Lease Agreement (the "Lease") for the lease of certain real property commonly referred to as the Casa de Vilarrasa Phase II housing project, ("Phase II") located in the City of Benicia, County of Solano, State of California, with assessors parcel number 0089-061-150, as more particularly described on Exhibit A attached here to (the "Property"). The Property is improved with forty (40) residential housing units (the "Improvements"). Hereinafter, the Property and Improvements shall be collectively referred to as the "Premises".

B. Effective January 6, 2005, Lessor and Lessee entered into a certain agreement (the "Ancillary Agreement") and effective March 21, 2005 Lessor and Lessee entered into Amendment #1 to the Lease pursuant to the Ancillary Agreement.

C. As of the date first set forth above, Lessor and Lessee entered into that certain Ground Lease Agreement – Amendment #2.

D. Lessor and Lessee desire to execute this Memorandum to provide constructive notice to all third parties of the Lessee's rights under the Lease.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

**Agreement**

For good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Insurance. The insurance provisions are modified as set forth in Amendment #2.
2. Review of Capital Improvements. Lessor has the right to review certain Capital Improvements.
3. Refinancing. Lessee has the right to refinance the project and to require Lessor to subordinate its interest.

Executed as of the date first written above.

**LESSEE:**  
Benicia Housing Authority

**LESSOR:**  
City of Benicia,  
A municipal corporation

By: \_\_\_\_\_  
Julie Peterson, Acting Executive Director

By: \_\_\_\_\_  
James R. Erickson, City Manager

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

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

APPROVED AS TO FORM

APPROVED AS TO FORM

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
City Attorney

**Exhibit A**

Assessors Parcel Number 089-061-150

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 4, 2005  
NEW BUSINESS**

**DATE** : September 27, 2005  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **CONSIDERATION OF COUNCIL MEMBER CAMPBELL'S  
RECOMMENDATIONS REGARDING THE FY 2005-06 AND FY  
2006-07 BUDGETS**

**RECOMMENDATION:**

Discuss Council Member Campbell's recommendations and provide direction to staff, as needed.

**EXECUTIVE SUMMARY:**

Council Member Campbell will make recommendations for amending the current two-year budget.

**BACKGROUND:**

Council member Campbell has suggested consideration on certain measures to substitute for the use of an interfund loan to balance the 2005-06 Budget. We understand these measures to include reduction of expenditure appropriations for maintenance of fields at Benicia Unified School District due to:

1. Actual expenditure savings from the delayed start of field maintenance.
2. Proposed expenditure savings from reducing the number of schools to be maintained to three schools instead of four.

Staff estimates of FY 2005-06 savings from these measures, if approved, are as follows:

1. Delayed start at four schools = \$80,000 savings approximately
2. If maintenance at one school is eliminated, then delayed start at three schools = \$146,000 savings approximately

On an annualized basis, savings from reducing the number of schools to be maintained from four to three would be approximately \$97,000.

Savings would be about \$50,000 greater for FY 2005-06 except that the assumption for the overall cost of maintenance has increased due to the District's position that two District pick-up trucks for the fields crew will not be available to the City.

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 4, 2005  
NEW BUSINESS**

**DATE** : September 22, 2005

**TO** : City Manager

**FROM** : Director of Public Works  
Interim Community Development Director

**SUBJECT** : **PROPOSED REVISIONS TO THE CITY GRADING ORDINANCE**

**RECOMMENDATION:**

Discuss and provide direction to staff on proposed changes to the Benicia Grading Ordinance.

**EXECUTIVE SUMMARY:**

The Vice Mayor submitted proposed changes to the Grading Ordinance that would establish limits on grading, including building construction for hillsides with slopes greater than 25%. City staff requests direction from Council before proceeding with further analysis on these changes.

**BUDGET INFORMATION:**

Research and preparation of proposed changes to the City Grading Ordinance will require a additional staff time from Public Works - Engineering, Community Development – Planning and from the City Attorney’s Office. This will need to be considered when reviewing other Council priority projects assigned to these affected departments.

**BACKGROUND:**

The Vice Mayor submitted to City staff proposed changes to the Grading Ordinance to address concerns about grading, development or building construction on steep slopes or hillsides. A suggestion was made to restrict grading on existing slopes greater than 25% which would regulate all grading, development or building construction within these areas. Of particular concern are the grading standards as they would apply to the Benicia Business Park development.

The current Grading Ordinance allows grading on any slope with the stipulation that the final slopes created will be no steeper than two horizontal to one vertical (2:1 ratio). All grading work in excess of 5,000 cubic yards or with cuts/fills greater than four (4) feet also require that the

work be designed by a registered engineer. Exceptions to the 2:1 maximum slope can be made if recommended by a registered engineer and approved by the City Engineer. These basic regulations were established with the intent of providing for a safe final engineered product.

Some agencies include restrictions for grading on steep slopes within their ordinances that can be used to regulate where future land use, construction and/or development is allowed to occur. Research would need to be conducted to provide more specific information to Council.

It should be noted that any modifications to the current Grading Ordinance would not apply to the Benicia Business Park Project. The application for the tentative map for the project was previously determined to be complete. Government Code Section 66474.2 prohibits the City from applying new ordinances, policies or standards to the project. However, various findings include consistency with the General Plan, suitability of the site for the type of development and an evaluation of any environmental impacts are required to approve the tentative map (see Government Code Sections 66473.5 and 66474). Thus, grading impacts of the Benicia Business Park project can be addressed as mitigation measures or conditions of approval. This could include restrictions for grading on steep slopes, within riparian corridors and in other sensitive areas.

To help with Council's discussion on this issue, staff has prepared a chart of the three (3) different methods used by engineers to define a slope: percentage, degree or ratio. The chart provides a visual comparison of each method to better understand the differences when applied to grading plans and projects.

cc: Heather McLaughlin, City Attorney  
Michael Throne, City Engineer

Attachment:

- [Comparison chart of graded slopes](#)

**AGENDA ITEM**  
**CITY COUNCIL MEETING: OCTOBER 4, 2005**  
**REPORTS FROM CITY MANAGER**

**DATE** : August 31, 2005

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **PROGRESS TOWARD RESOLVING DIFFERENCES WITH BENICIA UNIFIED SCHOOL DISTRICT REGARDING THE PROPOSED JOINT USE AGREEMENT**

**RECOMMENDATION:**

Status report, for information only.

**EXECUTIVE SUMMARY:**

The Superintendent and the City Manager are currently working on proposed recommendations for addressing differences in the proposed agreements for City maintenance of BUSD fields.

**BACKGROUND:**

On July 19, 2005, the Council authorized the City Manager to initiate discussions with the School District Superintendent to resolve differences for the proposed joint use agreement (JUA). The JUA would permit the City to provide up to \$1 million of turf upgrades, and ongoing field maintenance at four school sites. In return, the District would permit City use of all District fields, gyms, multi-purpose rooms and at least one classroom at each school.

The City Manager, Parks and Community Services Director and BUSD Superintendent have met on several occasions since July 19<sup>th</sup>. All major issues, and all but a few known lesser issues, have been reviewed. Of the major issues, City and BUSD staff appear to be in agreement on nearly all of them.

Of the lesser issues (identified in memo from City Attorney dated July 12, 2005) all appear resolvable with 31 of 40 issues reviewed. City staff will submit recommendations to the Superintendent this week for addressing the last nine lesser issues.

All tentative agreements have been committed to writing in common language. District and City staff plan to review a complete package of tentative agreement in the next few days. Following confirmation of the tentative agreements, the City Attorney will incorporate the proposed amendments into the draft JUA for Council and Board action.

Staff has avoided in the memo, elaborating on tentative agreements to protect the integrity of negotiations between staff. To publicly discuss differences, of which there are few, may harden positions and make compromise more difficult.

The School/City Liaison Committee requested at their meeting on August 25<sup>th</sup> that a joint meeting of the Council and School Board be set prior to the end of September in anticipation that the draft JUA will be ready for adoption. Contract negotiations between the District and its maintenance personnel may preclude setting a date for a joint City Council/BUSD Board meeting at this time.

**AGENDA ITEM**  
**CITY COUNCIL MEETING: OCTOBER 4, 2005**  
**REPORTS FROM CITY MANAGER**

**DATE** : September 26, 2005  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **DISCUSSION OF POLICY FOR CITY ASSISTANCE TO  
DISASTER VICTIMS**

**RECOMMENDATION:**

Discuss and provide direction to staff, as needed.

**EXECUTIVE SUMMARY:**

Current policy authorizes assistance to disaster victims through official requests from the Federal Emergency Management Agency (FEMA) and the Office of Emergency Services (OES). This report will discuss pertinent issues related to allowing City employees to volunteer to be relief workers outside of a request by FEMA or OES to the City.

**BACKGROUND:**

There are some local agencies that have adopted policies per permitting employees to serve as volunteers in disaster areas such as the Gulf States currently suffering the impacts of two disastrous hurricanes. For example, we have learned that the City of Los Angeles has adopted such a policy.

In considering possible adoption of such policies, several issues should be taken into account:

1. The impact on the “giving” agency from loss of staff resources for both day-to-day operations and for dealing with emergencies “at home.”
2. The potential liability exposures to the giving agency from employee injuries and errors and omissions, as well as the need to develop policies to minimize such exposures.
3. The added personnel costs to the giving agency from:

- a. Backfilling of positions temporarily vacated (overtime expenditures and/or added regular pay).
  - b. Overtime pay obligations for volunteering personnel (if they perform work substantially similar to their regular work).
4. The need to “meet and confer” with employee organizations on a “volunteer” policy.

The City of Benicia is part of a statewide disaster response network coordinated through the State Office of Emergency Services (OES). This network will provide emergency response and aid to Benicia when a local emergency exceeds Benicia’s capacity to handle it. The network, also, requires Benicia to loan resources (personnel, equipment and materials) when OES asks for help on behalf of other communities experiencing emergencies.

The California OES network is connected to a nationwide network. California can be called upon to provide disaster aid to emergencies in other states. The normal, pre-planned method of one state helping another is through the coordinated disaster response systems of the states and federal government. The “volunteer” concept envisioned in this report is to some extent at odds with the organized emergency response system of the United States and the State of California. If personnel are needed in another state, the “network” will request them. No such request has been issued in California.

The City of Benicia is standing by, as are all of the cities in California, for requests for assistance. If such requests are received, Benicia will provide assistance with available resources.

The City of Benicia municipal organization is relatively small. There are no positions that could easily be spared without disruption to the donating department. This disruption could be mitigated by overtime or having replacement workers. When employees volunteer, there is no guaranteed reimbursement. When employees are assigned pursuant to OES requests, the City is reimbursed.

**ITEM XI-C WILL BE A VERBAL REPORT**