

December 18, 2007 - Regular Meeting

**BENICIA CITY COUNCIL**

**REGULAR MEETING AGENDA**

City Council Chambers

December 18, 2007

7:00 P.M.

**I. CALL TO ORDER:**

**II. CLOSED SESSION:**

To be held at 6:30 p.m., prior to the regular meeting.

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL**

**B. PLEDGE OF ALLEGIANCE**

**C. 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 Boards and Commissions:

Sky Valley Open Space Committee:

-Three unexpired terms to September 30, 2010

Open Government Commission:

-One full term to November 30, 2011

**B. APPOINTMENTS:**

[Sky Valley Open Space Committee – one unexpired term to September 30, 2010](#)

[-Craig Snyder](#)

**C. PRESENTATIONS:**

**D. PROCLAMATIONS:**

[Recognition of Virginia Souza as Treasurer Emeritus](#)

**V. ADOPTION OF AGENDA:**

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN**

**B. PUBLIC COMMENT**

**VII. CONSENT CALENDAR:**

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 Minutes of December 4, 2007. \(City Clerk\)](#)

[B. Approval of the 2008 City Council regular meeting schedule. \(City Manager\)](#)

The proposed calendar lists the City Council's regular meeting dates for 2008.

Recommendation: Adopt, by motion, the 2008 City Council Regular Meeting Calendar.

[C. Approval of a consultant contract for the BHS Traffic Signal and Entrance Circulation Improvement Project. \(Public Works Director\)](#)

The City Council approved as part of the FY 2007–2009 budget process a project to address problems of vehicle and pedestrian congestion and the need for traffic calming on Military

West at Benicia High School. The Public Works Department recommends awarding a consultant agreement in the amount of \$86,000 to Fehr and Peers for preparation of the conceptual and final design. The project is planned to be substantially constructed during the 2009 summer school break. The adopted FY 2007–2009 municipal budget includes \$400,000 in funding for design and construction of the project. There are adequate funds in the Traffic Mitigation Fund for the consultant agreement.

**Recommendation:** Adopt the resolution approving a consultant agreement in the amount of \$86,000 with Fehr and Peers for professional engineering services for the Benicia High School Traffic Signal and Entrance Circulation Improvement Project and authorizing the City Manager to execute an agreement on behalf of the City.

**[D. Acceptance of completed work, release of contract and award of new contract for the West 2<sup>nd</sup> Street Sewer Improvement Project. \(Public Works Director\)](#)**

Shortly after beginning work on the West 2<sup>nd</sup> Street Sewer Improvement Project, Bay Pacific Pipelines caused flooding from water main breaks and sewer back-ups damaging homes and displacing residents. Public Works staff subsequently issued a Stop Work notice and recommends releasing Bay Pacific Pipelines from their remaining contractual obligations. Staff recommends awarding a construction contract to complete the project to Hess Concrete Construction Company, the second lowest bidder on the project. The revised total project budget of \$406,420 is \$14,420 greater than the original project budget of \$392,000 calculated at the time when the Bay Pacific Pipelines was awarded the construction contract.

**Recommendation:** Accepting work completed by Bay Pacific Pipelines for a portion of the West 2<sup>nd</sup> Street Sewer Improvement Project for a final cost of \$31,284.29, releasing Bay Pacific Pipelines from the remaining obligations of the contract, authorizing the City Manager to sign the Settlement Agreement and Notice of Partial Completion, and authorizing the City Clerk to file said Notice with the Solano County Recorder; and awarding a construction contract in the amount of \$342,200 to Hess Concrete Construction Company for the remaining work on the West 2<sup>nd</sup> Street Sewer Improvement Project and authorizing the City Manager to sign the Construction Contract on behalf of the City.

**[E. Approval of Task Order #2 of the 2007-2008 Sanitary Sewer Flow Monitoring Project. \(Public Works Director\)](#)**

SFE Global is performing sewer system flow monitoring around the city to assess the impact of recent improvements and the magnitude of infiltration and inflow into the collection system. This important assessment is recommended to continue. There is sufficient funding available in Account Number 044-8044-9896 for the costs.

**Recommendation:** Adopt a resolution approving Task Order #2 with SFE Global, in an amount not-to-exceed \$89,000 for the 2007-2008 Sanitary Sewer Flow Monitoring Project.

**[F. Acceptance of public improvements and offers of dedication for Southampton Unit D-6. \(Public Works Director\)](#)**

The public improvements for the Southampton Unit D-6 subdivision have been completed to the satisfaction of the City Engineer. The next step is for the City to accept the improvements and offers of dedication so that the City can provide maintenance and the public has full access to the streets within the subdivision. Once the public improvements are accepted, the Developer's construction bonds will be released and the guarantee bond will become effective for one year. This item has no impact on the City's budget. Funding to maintain the

new public improvements (streets, water, sewer, and storm drain lines) is included in the current budget.

**Recommendation:** Adopt the resolution accepting the public improvements and offers of dedication of rights-of-way and easements for the Southampton Unit D-6 subdivision.

**G. Approval of the job description and salary range for Human Resources Assistant. (City Manager)**

This action approves the job description and establishes a salary range for the position of Human Resources Assistant. The Civil Service Commission approved this job description at their November 20, 2007 meeting. The Human Resources Assistant position will replace the current Senior Administrative Clerk position in Human Resources. The addition of this position is expected to be cost neutral for the division, due to the salary savings resulting from replacing the Human Resources Director position with a Human Resources Manager.

**Recommendation:** Adopt the resolution approving the job description and salary range for the position of Human Resources Assistant.

**H. Approval of California Air Resources Board Transit Fleet Rule Settlement Agreement and release of payment. (Finance Director)**

The Benicia Breeze is required to reduce emissions on its urban buses by 85% and other transit fleet vehicles (cutaways) by 40% no later than December 31, 2007, per the Transit Fleet Rule adopted in February 2000. In order for the Benicia Breeze to be compliant with the rule, the City Council in April 2007 authorized a loan of \$250,000 from the General Fund in order to facilitate the purchase and installation of diesel particulate devices on the Benicia Breeze fleet of urban buses and cutaways. At the April 3, 2007 Council meeting, staff explained that it was not understood until May 2006 that the Transit Fleet Rule and reporting requirements pertained to Benicia Breeze due to the small size of the fleet. However, because, in fact, the Rule did apply to Benicia Breeze, CARB is requiring that a Settlement Agreement and Release be approved, along with the payment of \$18,000. Since being notified of the applicability of the Rule in May 2006, staff has developed and implemented an aggressive compliance plan and will be fully compliant with the Transit Fleet Rule requirements by December 31, 2007, as required by CARB.

**Recommendation:** Adopt the resolution authorizing the City Manager to sign the Settlement Agreement and Release with the California Air Resources Board ("CARB") and authorize payment of \$18,000 from Benicia Breeze Operating Reserves.

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

**VIII. PUBLIC HEARINGS:**

**NONE**

**IX. ACTION ITEMS:**

**A. Update Mills Act Program and Approve Mills Act contracts for properties at 224 West I Street, 1025 West Second Street, 120 West D Street, 171 West H Street, 270 West H Street, 441 West J Street, 242 West I Street, 392-396 East H Street, 141 West H Street, and 140 East G Street. (Community Development Director)**

The Mills Act program is a State of California authorized mechanism by which owners of "Qualified Historical Properties" may use an alternative method of determining property value for property tax purposes. The Historic Preservation Review Commission (HPRC) has

reviewed and found that entering into a Mills Act contract (including a specific work plan) for each of the properties at 224 West I Street, 1025 West Second Street, 120 West D Street, 171 West H Street, 270 West H Street, 441 West J Street, 242 West I Street, 392-396 East H Street, 141 West H Street, and 140 East G Street would encourage the preservation and rehabilitation of qualified historic properties in the City of Benicia.

Recommendation: Adopt a resolution to update the Mills Act Program; adopt resolutions authorizing the City Manager to enter into Mills Act Contracts with the property owners of 224 West I Street, 1025 West Second Street, 120 West D Street, 171 West H Street, 270 West H Street, 441 West J Street, 242 West I Street, 392-396 East H Street, 141 West H Street, and 140 East G Street; and provide direction to Staff regarding continued annual funding for the program.

**X. INFORMATIONAL ITEMS:**

**A. Reports from City Manager.**

**B. Council Member Committee Reports.**

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

**1. Mayors' Committee Meeting (Mayor Patterson) Next Meeting Date: December 19, 2007**

**2. Association of Bay Area Governments (ABAG) (Mayor Patterson and Vice Mayor Campbell) Next Meeting Date: April 24, 2008 – Spring General Assembly**

**3. Audit & Finance Committee (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: February 8, 2008**

**4. League of California Cities (Mayor Patterson and Council Member Schwartzman) Next Meeting Date: January 16-18, 2008 - New Mayors & Council Members Academy**

**5. School District Liaison (Council Members Ioakimedes and Hughes) Next Meeting Date: March 13, 2008**

**6. Sky Valley Area Open Space (Vice Mayor Campbell and Council Member Ioakimedes) Next Meeting Date: January 2, 2008**

**7. Solano EDC Board of Directors (Mayor Patterson and Council Member Ioakimedes) Next Meeting Date: January 17, 2008**

**8. Solano Transportation Authority (STA) (Mayor Patterson and Council Member Schwartzman) Next Meeting Date: January 9, 2008**

**9. Solano Water Authority/Solano County Water Agency (Mayor Patterson and Vice Mayor Campbell) Next Meeting Date: January 10, 2008**

**10. Traffic, Pedestrian and Bicycle Safety Committee (Vice Mayor Campbell and Council Member Hughes) Next Meeting Date: January 17, 2008**

**11. Tri-City and County Regional Parks and Open Space (Vice Mayor Campbell and Council Member Hughes) Next Meeting Date: February 20, 2008 – Citizen's Advisory Committee**

**12. Valero Community Advisory Panel (CAP) (Council Member Hughes) Next Meeting Date: January 24, 2008**

**13. Youth Action Task Force (Council Members Ioakimedes and Schwartzman) Next Meeting Date: January 22, 2008**

14. ABAG/CAL FED Task Force/Bay Area Water Forum (Mayor Patterson)Next Meeting Date: January 14, 2008

**XI. COMMENTS FROM COUNCIL MEMBERS:**

**[A. Request to pay off the Valero Property Tax Settlement at an accelerated rate. \(Vice Mayor Campbell\)](#)**

Council Member Campbell has requested that the City Council agendize a request to consider an accelerated pay off of the Valero Property Tax Settlement.

Recommendation: Consider agendizing this item for a future City Council meeting.

**XII. ADJOURNMENT:**

**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 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.

**Disabled Access**

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

**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.

 [IV-B Sky Valley Open Space Committee Appt.pdf](#)

 [IV-D Proclamation.pdf](#)

 [IX-A Mills Act Contracts.pdf](#)

 [VII-A Minutes.pdf](#)

 [VII-B Council Meeting Calendar.pdf](#)

 [VII-C BHS Traffic Signal Contract.pdf](#)

 [VII-D West 2nd St Sewer Improv.pdf](#)

 [VII-E Sanitary Sewer Flow Monitoring.pdf](#)

 [VII-F Southampton Unit D-6 Acceptance.pdf](#)

 [VII-G Human Resource Assistant.pdf](#)

 [XI-A Request for Item on Council Agenda.pdf](#)

 [VII-H CARB.PDF](#)

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF CRAIG SNYDER TO THE SKY  
VALLEY OPEN SPACE COMMITTEE TO AN UNEXPIRED TERM ENDING  
SEPTEMBER 30, 2010**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Craig Snyder to the Sky Valley Open Space Committee 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 18<sup>th</sup> day of December, 2007 and adopted by the following vote:

Ayes:

Noes:

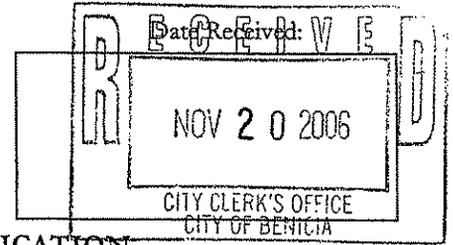
Absent:

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

Attest:

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

# **APPLICATION**



**BOARD, COMMITTEE AND COMMISSION 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. (Resolution No. 04-9, Exhibit A, Section IV.A)*

Board, Committee or Commission: Sky Valley Open Space Committee

Name: Craig B. Snider

Address: [REDACTED]

Home Ph: (707) 748-7213 Work Ph: (661) 296-9710 ext. 225

E-mail: cbsniderefs.fed.us FAX: (661) 296-5847

Job Title: Regional Environmental Coordinator Employer: USDA Forest Service

Employer Address USDA Forest Service, 1323 Club Dr, Vallejo, CA 94592

Do you reside in Benicia?  Yes  No If so, how long? three years

Please indicate any particular times/days that you are unavailable for meetings:  
\_\_\_\_\_  
\_\_\_\_\_

Please submit a statement on a separate sheet that includes the following:

- Your education (please include name of institution(s) and discipline(s) studied) and prior governmental and nongovernmental experience.
- Include any city/county/state committees or commissions you have served on. Please describe its function, where, when and for how long did you serve.
- Include any community groups or organizations you are or were affiliated with, as well as any office you hold or previously held.
- Why you desire to serve— your own goals and objectives for your term of office.

Applicant Signature: [Signature] for Craig Snider Date: 11/20/06

Please return completed applications to the City Clerk's Office at 250 East L Street, Benicia  
- Applications may also be faxed to 707-747-8120 -

Please note that your completed application is a public document that may be included in a  
City Council Meeting Agenda Packet.

It will also be available to members of the public upon request.

## Craig B. Snider

**WORK:**  
USDA Forest Service  
1323 Club Drive  
Vallejo, CA 94592  
cbsnider@fs.fed.us

**HOME:**  
793 Carsten Circle  
Benicia, CA 94510  
707-319-1484(cell)  
craigandlee@sbcglobal.net

**OBJECTIVE:** Position on Sky Valley Open Space Committee. Starting January 2007.

**EDUCATION:** **B.S., Forestry, UC Berkeley, CA, 1977**  
**M.A., Culture and Spirituality, Holy Names College, Oakland, CA, 1993**

Course of study included:  
Ecology, Economics, Biology, Resource Policy, Sociology of Natural Resource Use,  
Forestry, Forest Engineering, Soil Science, Silviculture and Geology.

**SUMMARY:**

- Regional Environmental Coordinator – All National Forests in California
- 25 years experience in federal land management and planning
- Strong skills in public involvement and environmental analysis

**EXPERIENCE:** **Angeles National Forest District Ranger**  
(Currently serving 120 day assignment ending December 20, 2006)

- Responsible for overall management of 300,000 acres including plant and wildlife management, fire prevention/suppression, utility corridors, recreation, trails, road management, invasive plant management and fuel treatment. Supervise approximately 90 employees.

**Regional Environmental Coordinator for 18 National Forests in California**  
(May 2003 – present, except for temporary assignment described above)

- Advise US National Forest managers concerning environmental laws, regulations and policies pertaining to natural resource management and land management planning.

### **Partial List of Other US Forest Service Positions:**

**Forest Planner, Regional and Forest Monitoring Team Member, Forest Environmental Coordinator.**

- Developed/wrote watershed and environmental analyses for various resource management projects
- Organized and led public field trips including various state, local and tribal organizations, industry groups and environmental groups.

**COMMITTEES:**

- Coquille Forestry Committee, Coquille, Oregon, 2yrs
- Southwest Oregon Community College Forestry Advisory Committee, 2yrs

**ACTIVITIES:**

- Benicia Bicycle Club, 2005-present
- Mardi Gras Benicia Committee, 2004-present
- Member, Solano County Land Trust, 2004-present
- Society of American Foresters, 1982-93, Chapter Chairman 1988-89
- Corvallis Community Theater, 1994 - 2003
- Assistant Scout Master, BSA, Troop 186, Corvallis, OR 1998-2002
- Leadership Corvallis, Corvallis, OR, 1998-99

Craig B. Snider  
Applicant for Sky Valley Open Space Committee

11/16/06

Statement of Desire to Serve and Goals/Objectives for Term of Office:

I am applying for a position on the Sky Valley Open Space Committee because I highly value open space, especially in the Bay Area. I see a direct correlation between the amount and proximity of open space and the quality of life.

Like most cities and towns these days, the pressure to grow and develop must be tempered by quality of life considerations. Currently, Benicia enjoys a quality of life much higher than many of our neighboring communities. This is due, in part, to the responsible growth planning embodied in Benicia's land use plan that sets sensible urban growth boundaries that protect most of Sky Valley.

As a member of the Sky Valley Open Space committee it would be my goal to seek ways to insure Sky Valley stays open for future generations by engaging in future land management planning decision-making, and working with other city, county and non-governmental organizations to secure open space, continue grazing, and seek ways to minimize or mitigate impacts from utilities, roads, and invasive plants that could detract from Sky Valley's natural, open character.



**P R O C L A M A T I O N**  
**HONORING**  
**VIRGINIA SOUZA AS TREASURER EMERITUS**

**WHEREAS**, Virginia Souza has served as the Treasurer of the City of Benicia from 1991 - 2007; and

**WHEREAS**, as Treasurer, Virginia considered herself the watchdog of the public treasury and was proud to represent the citizens of Benicia; and

**WHEREAS**, in addition to being the Treasurer for sixteen years, Virginia has been very active in the local community, including chairing the 4<sup>th</sup> of July planning committee and serving as president of the Benicia Seniors group and Treasurer for the Community Action Council; and

**WHEREAS**, the citizens of Benicia are very fortunate to have dedicated representatives, such as Virginia, working for the betterment of our city.

**WHEREAS**, after completing four successful terms as Treasurer, Virginia has earned the title of Treasure Emeritus.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia do hereby honor Virginia Souza with the title of Treasurer Emeritus and thank her for her dedicated service to the City of Benicia.

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Elizabeth Patterson, Mayor  
December 18, 2007

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 18, 2007  
ACTION ITEMS**

**DATE** : November 20, 2007

**TO** : City Manager

**FROM** : Community Development Director

**SUBJECT** : **UPDATE MILLS ACT PROGRAM AND APPROVE MILLS ACT CONTRACTS FOR PROPERTIES AT 224 WEST I STREET, 1025 WEST SECOND STREET, 120 WEST D STREET, 171 WEST H STREET, 270 WEST H STREET, 441 WEST J STREET, 242 WEST I STREET, 392-396 EAST H STREET, 141 WEST H STREET, AND 140 EAST G STREET**

**RECOMMENDATION:**

Adopt a resolution to update the Mills Act Program; adopt resolutions authorizing the City Manager to enter into Mills Act Contracts with the property owners of 224 West I Street, 1025 West Second Street, 120 West D Street, 171 West H Street, 270 West H Street, 441 West J Street, 242 West I Street, 392-396 East H Street, 141 West H Street, and 140 East G Street; and provide direction to Staff regarding continued annual funding for the program.

**EXECUTIVE SUMMARY:**

The Mills Act program is a State of California authorized mechanism by which owners of "Qualified Historical Properties" may use an alternative method of determining property value for property tax purposes. The Historic Preservation Review Commission (HPRC) has reviewed and found that entering into a Mills Act contract (including a specific work plan) for each of the properties at 224 West I Street, 1025 West Second Street, 120 West D Street, 171 West H Street, 270 West H Street, 441 West J Street, 242 West I Street, 392-396 East H Street, 141 West H Street, and 140 East G Street would encourage the preservation and rehabilitation of qualified historic properties in the City of Benicia.

**BUDGET INFORMATION:**

The Mills Act contracts will reduce the property tax paid for these properties. The City of Benicia receives approximately 26% of the property taxes collected on parcels in the City. The estimated reduction in City revenue is \$12,580 total for all pending contracts. The City Council authorized up to \$30,000 annually in staff costs and City property tax rebates for Mills Act contracts for Fiscal Years 2003-05 with future contracts to be approved on a case-by-case basis.

The staff cost to process each Mills Act application is approximately \$1900, which is partially offset by the Mills Act application fee of \$550. Annual inspection and reporting incurs another \$150 in staff time per contract per year. Total program costs to date are summarized in Attachment 2 (Mills Act Program Costs).

The fifteen existing contracts have resulted in an annual loss of tax revenue to the City in the amount of \$17,671, with additional annual inspection costs of \$2,250.

If approved, the ten recommended contracts will result in an additional annual loss of tax revenue to the City in the amount of \$12,580, with additional annual inspection costs of \$1,500, for a total program annual cost of \$34,001.

The primary budgetary issue for Council consideration is whether the original program annual limit of \$30,000 should apply to new and ongoing staff costs plus 1) all tax rebates, or 2) only those tax rebates approved during each calendar year.

#### **BACKGROUND:**

In October 2002, the City Council approved the establishment of the City of Benicia Mills Act Program and adopted criteria and procedures for implementation of the program (though two contracts had been approved prior to 2002). Council set the maximum annual program cost at \$30,000 for Fiscal Years 2003-05, apparently intending that up to \$30,000 in new contracts (including staff costs) could be approved each year; however, it was not expected that the total amount would be reached by 2005 based on citizen demand for the program at that time.

Eligibility Criteria for the program currently are:

- A. Historic Landmark Buildings, as identified by the Downtown or Arsenal Historic Conservation Plans
- B. Potential Historic Landmark Buildings, as identified by the Downtown or Arsenal Historic Conservation Plans
- C. Contributing Buildings, as identified by the Downtown or Arsenal Historic Conservation Plans
- D. Residential buildings 50 years or older situated within the Downtown Historic or Arsenal Historic District
- E. Buildings listed in the National Register of Historic Places; and Buildings listed in any State, City, or County official register of historical or architecturally significant sites, places, or landmarks.

At its August 23, 2007 regular meeting, HPRC recommended amending the program criteria and procedures to remove criterion B and D. Removing B would simply clarify that all "Contributing Buildings" are eligible (the State does not recognize "potential" categories), and D would no longer allow properties that do not have any historic integrity to be eligible.

Staff further recommends adding an application deadline of June 30 of each calendar year as is common in jurisdictions, with many being more restrictive with the deadline date. A June 30

deadline would allow appropriate time for processing and consideration of applications by HPRC and Council. (All contracts must be executed and recorded by the end of the calendar year for the property owner to receive the tax reduction in the subsequent calendar year).

#### **ENVIRONMENTAL REVIEW:**

These projects are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states work on historic resources that is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties is categorically exempt from further CEQA review. The Mills Act contracts require that all work performed subsequent to entering into a contract be consistent with those standards.

#### **Attachments:**

- Draft Resolution (including Exhibit A – City of Benicia Mills Act Program)
- Mills Act Program Costs Spreadsheet
- Draft Resolution for 224 West I Street
- Draft Mills Act Contract 224 West I Street (included as example for other contracts), including Exhibit B (Secretary of the Interior Standards for Rehabilitation) and Exhibit C (Work Plan)
- Resolution 07-21 (HPRC) recommending City Council approval of Mills Act contract for 224 West I Street
- Draft Resolution for 1025 West Second Street
- Work Plan (Exhibit C of Mills Act Contract) for 1025 West Second Street
- Resolution 07-16 (HPRC) recommending City Council approval of Mills Act contract for 1025 West Second Street
- Draft Resolution for 120 West D Street
- Work Plan (Exhibit C of Mills Act Contract) for 120 West D Street
- Resolution 07-15 (HPRC) recommending City Council approval of Mills Act contract for 120 West D Street
- Draft Resolution for 171 West H Street
- Work Plan (Exhibit C of Mills Act Contract) for 171 West H Street
- Resolution 07-24 (HPRC) recommending City Council approval of Mills Act contract for 171 West H Street
- Draft Resolution for 270 West H Street
- Work Plan (Exhibit C of Mills Act Contract) for 270 West H Street
- Resolution 07-25 (HPRC) recommending City Council approval of Mills Act contract for 270 West H Street
- Draft Resolution for 441 West J Street
- Work Plan (Exhibit C of Mills Act Contract) for 441 West J Street
- Resolution 07-26 (HPRC) recommending City Council approval of Mills Act contract for 441 West J Street
- Draft Resolution for 242 West I Street
- Work Plan (Exhibit C of Mills Act Contract) for 242 West I Street
- Resolution 07-28 (HPRC) recommending City Council approval of Mills Act contract for 242 West I Street

- Draft Resolution for 392-396 East H Street
- Work Plan (Exhibit C of Mills Act Contract) for 392-396 East H Street
- Resolution 07-13 (HPRC) recommending City Council approval of Mills Act contract for 392-396 East H Street
- Draft Resolution for 141 West H Street
- Work Plan (Exhibit C of Mills Act Contract) for 141 West H Street
- Resolution 07-14 (HPRC) recommending City Council approval of Mills Act contract for 141 West H Street
- Draft Resolution for 140 East G Street
- Work Plan (Exhibit C of Mills Act Contract) for 140 East G Street
- Resolution 07-17 (HPRC) recommending City Council approval of Mills Act contract for 140 East G Street

# **DRAFT RESOLUTION**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AMENDMENTS TO THE MILLS ACT PROGRAM**

**WHEREAS**, the City Council under Ordinance No. 01-3 established the Historic Preservation Commission for the purpose of providing advice and assistance to the City Council in implementing the goals, policies, and programs set forth in the City's General Plan relating to preservation and enhancement of the City's historic character and protection of the City's archaeological sites and resources; and

**WHEREAS**, the City Council gave the Historic Preservation Commission the responsibility to develop and oversee a program using property tax incentives in accordance with the California Mills Act; and

**WHEREAS**, the Historic Preservation Commission created a Mills Act subcommittee and held several workshops with the public and City staff to develop criteria and procedures for implementation of the Mills Act program; and

**WHEREAS**, at a special meeting on July 1, 2002, the Historic Preservation Commission held a public hearing on the proposed Benicia Mills Act Program and received and provided comments on staff's recommended criteria and procedures for implementation of the Mills Act program; and

**WHEREAS**, the Historic Preservation Commission on July 1, 2002 recommended to the City Council criteria and procedures for the Mills Act program; and

**WHEREAS**, the Historic Preservation Commission voted to recommend to the City Council that the Council direct the City Manager to commit up to \$30,000 annually in tax rebates and staff costs for implementation of this program over the 2003-05 two-year budget cycle; and

**WHEREAS**, at regularly scheduled meetings on October 15, 2002, and January 7, 2003, the City Council held a public hearing on the proposed Mills Act program, received public testimony, and adopted Resolution No. 03-12 approving the implementation of the Mills Act Program; and

**WHEREAS**, since Fiscal Years 2003-05, the City Council has approved Mills Act contracts on a case by case basis; and

**WHEREAS**, at a regularly scheduled meeting on December 18, 2007, the City Council held a public hearing on proposed amendments to the Mills Act program, received public testimony and approved amendments to the Mills Act Program; and

**WHEREAS**, the City Council finds that the proposed Mills Act program is exempt from the California Environmental Quality Act under CEQA Section 15061 (b)(3) that identifies the activity as being covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and

**WHEREAS**, the City Council finds that the proposed amendments to the Mills Act program are consistent with the goals, objectives, and policies of the General Plan.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the amendments to the Mills Act program as set out in Exhibit "A" entitled "City of Benicia Mills Act Program. "

\*\*\*\*\*

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 18<sup>th</sup> day of December, 2007 and adopted by the following vote:

Ayes:

Noes:

Absent:

Attest:

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

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

**EXHIBIT A**  
**City of Benicia Mills Act Program**  
**DRAFT**

Approved by the City Council on October 15, 2002  
Amended by the City Council on December 18, 2007

**Purpose and Goal:**

The purpose of the program is to encourage the preservation, restoration and rehabilitation of historic property in the City of Benicia.

The Mills Act is a state law that enables a community to enter into 10-year contracts with owners of historically significant properties who agree to maintain and, if necessary, rehabilitate their historic structure in exchange for a reduction in property tax. The contract renews itself annually; hence, the owner is always between 9 and 10 years from termination unless there is a notice of nonrenewal. Either the property owner or the City may elect not to renew for any reason. The effect of nonrenewal is to terminate the contract at the end of the current nine to ten-year term.

A Mills Act contract provides a method of reducing property taxes in exchange for the continued preservation of a historic property. Property taxes are recalculated using the special Mills Act assessment method and can be reduced by 50 percent or more. Property valuation is determined by the "income" method set out in Revenue and Tax Code Section 439.2. Generally, the income, or projected income, less certain expenses, is divided by a capitalization rate to determine the assessed value of the property. When a property is owner occupied, the determination of "income" is based on what a property could reasonably be expected to yield, or an amount stipulated in the contract as the minimum income to be used. The income projected for owner occupied property is based on comparable rents for similar property in the area or, if insufficient rental information is available, the income that it could reasonably be expected to produce under prudent management.

**Definitions:**

**Preservation:** The maintenance of the structure in its present condition or as originally constructed. Preservation aims at halting further deterioration and providing structural safety, but does not contemplate significant rebuilding. Preservation includes techniques of arresting or slowing the deterioration of a structure; improvement of structural conditions to make a structure safe, habitable, or otherwise useful; normal maintenance and minor repairs that do not change or adversely affect the fabric or appearance of a structure.

**Rehabilitation:** Involves equipping the building or facility for an extended useful life with a minimum alteration of original construction or the process of returning a structure to a state of usefulness by repairs or alterations.

**Restoration:** The process of accurately recovering, by the removal of later work and the replacement of missing earlier work, the form and details of a structure, together with its setting, as it appeared at a particular period of time.

**Eligibility Criteria:**

**Qualified historical property:** for purposes of this Mills Act Program, means privately owned property which is not exempt from property taxation and which meets either of the following:

- A. Listed in the National Register of Historic Places or located in a registered historic district.
- B. Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

Participation in the program is open to the following types of structures:

- A. Historic Landmark Buildings,
- ~~B. Potential Historic Landmark Buildings,~~
- ~~C. B. Contributing Buildings to the Downtown Historic or Arsenal District, and~~
- ~~D. C. Residential buildings that are 50 years or older situated within the Downtown Historic or Arsenal Historic District Boundary.~~

**Type and Extent of Proposed Work:**

The applicant will propose a schedule of proposed preservation, maintenance and/or improvements to the building to protect or enhance its historical value. The type and extent of the proposed work to be committed to in the Mills Act contract will also be used to evaluate the proposal.

- A. Extend the life of the structure, such as a new roof, a stable foundation; seismic retrofits (bolting to the foundation, shear walls, etc.) weatherproof exterior walls.
- B. Improve or restore the building's historic exterior appearance.
- C. Provides extensive improvement.
- D. New additions, exterior alterations, or related new construction shall follow the Secretary of Interior guidelines such as: the project shall not destroy historic materials that characterize the property; the new work shall be differentiated from the old and shall be compatible with the massing, size, scale; and architectural features to protect the historic integrity of the property and its environment.
- E. A Maintenance program for properties that are already in good condition.

## **Mills Act Program Procedures:**

- A. The Mills Act process starts with a meeting between the Community Development Department staff and the potential applicant to discuss the program. The property owner and staff will consult with the County Assessor's Office to get detailed information on how their property taxes would be affected.
  
- B. The applicant submits an application packet requesting that the City enter into a Historic Property Preservation Agreement. Applications will be accepted from January – June of each calendar year. An application packet will include the following:
  1. A completed application form.
  2. The Historic Resources Inventory entry, updated to comply with the most current procedures of the State Office of Historic Preservation (form DPR 523B 1/95).
  3. An itemized description of the annual preservation and restoration goals to be undertaken by the owner through the initial ten-year term of the agreement.
  4. A maintenance plan for building(s), yards and other improvements.
  5. A copy of the last tax bill and the projected adjustments of the property taxes as determined by the Solano County Assessors Office.
  6. The application fee.

### **Other Supplemental Information:**

7. Depending on the condition of the property and the nature of the proposed work, staff may request that a Structural Pest Report be made part of the application submittal.
8. Depending on the condition of the property and the nature of the proposed work, staff may request that a Roof Inspection Report be made part of the application submittal.
9. Depending upon the nature of the proposed work and the significance of the property, the City may retain an architectural historian, or restoration architect, at the applicant's expense, to evaluate the applicant's proposal for consistency with the architectural, historic, or aesthetic integrity of the resource. The architectural historian shall review and make recommendations to the City to help ensure that the proposed work will not adversely affect the significant architectural features of the property nor adversely affect the character or historic architectural or aesthetic interest or value of the cultural resource and its site. Every reasonable effort should be made to restore the architectural character of the structure back to its original material or architectural features. Restoration would not necessarily be

required unless the structure has been modified to change its historic character, or in a manner which is contrary to the Downtown Historic Conservation Plan or Secretary of the Interiors Standards. The architectural historian would review the application and proposed improvements and formulate a recommendation to staff on what, if anything is needed to restore and/or preserve the property.

Once a complete application is submitted and deemed complete, it is forwarded to the Historic Preservation Review Commission along with staff's recommendation.

The Historic Preservation Review Commission evaluates the application based upon the Mill Act Criteria and votes to recommend to the City Council approval or denial of the project.

Staff forwards the application and the Historic Preservation Review Commission's recommendation to the City Council for their consideration.

The City Council considers the application request and decides to approve, modify or deny the request.

If approved, a draft Agreement is prepared by staff and reviewed by the City Attorney's Office for form and content.

The City Manager or Community Development Director executes the agreement with the property owner. The property owner is responsible for having the agreement recorded with the Solano County Recorder's Office by the end of the calendar year in which it is executed.

Once the Agreement is signed and recorded, the Solano County Assessor's Office is notified and the assessor determines the value of the property and annual property tax using the capitalization of income method.

Staff annually inspects the property to ensure that the terms of the Agreement are being met and that the property is being properly maintained and preserved and reports to the Historic Preservation Review Commission.

The Historic Preservation Review Commission recommends action to be taken by the City if the terms of the Agreement are not being met. If appropriate, the Commission may recommend that the Council cancel or not renew the Agreement.

### **Annual Inspection**

Each year the properties under Mills Act contract are to be inspected and their compliance with their contracts reported to the Historic Preservation Review Commission. Following consideration at a public meeting, the Commission shall accept each property as being in compliance or find that the project may not be in compliance, citing the particular areas of concern. The areas of concern shall be reviewed by City staff with the property owner. Where they are resolved, a supplemental report is to be submitted for the Historic Preservation Review Commission's further consideration of finding the property in compliance. Where the concerns

are not resolved, then the matter shall be referred to the City Council for action, which may include termination of the contract for noncompliance.

## **MILLS ACT PROGRAM COSTS**

# City of Benicia Mills Act Program Costs

The Mills Act contracts will reduce the property tax paid by these properties. The City of Benicia receives approximately 26% of the property taxes collected on parcels in the City.

ADDRESS	DATE ENTERED INTO	PROPERTY VALUE	TAX WITHOUT CONTRACT	TAX WITH CONTRACT*	TAX SAVINGS*	LOSS OF CITY REVENUE*
<b>Existing Contracts</b>						
230 West K Street**	11/7/90	\$1,255,877	\$14,442	\$1,601	\$12,841	\$3,337
235 East L Street**	6/11/90	\$1,201,877	\$13,821	\$1,412	\$12,409	\$3,226
230 West K Street	10/22/04	\$446,888	\$5,139	\$1,075	\$4,064	\$1,057
121 West J Street	12/3/04	\$344,401	\$3,960	\$1,724	\$2,236	\$581
185 East D Street	11/9/04	\$299,025	\$3,438	\$1,090	\$2,348	\$610
251 West J Street	12/17/04	\$246,998	\$2,840	\$818	\$2,022	\$526
401 First Street	10/15/04	\$946,442	\$10,884	\$10,226	\$658	\$171
166 West H Street	12/17/04	\$760,000	\$8,740	\$1,676	\$7,064	\$1,837
123 West D Street	12/27/05	\$675,378	\$7,553	\$1,105	\$6,448	\$1,676
1063 Jefferson Street	5/24/05	\$343,664	\$3,952	\$2,532	\$1,420	\$370
125 East I Street	12/20/06	\$438,178	\$4,883	\$1,422	\$3,461	\$900
159 West G Street	10/30/06	\$383,217	\$4,407	\$1,919	\$2,488	\$636
163 West J Street	10/30/06	\$291,875	\$3,265	\$886	\$2,379	\$618
149 West G Street	10/30/06	\$548,760	\$6,140	\$1,423	\$4,717	\$1,226
145 East I Street	10/30/06	\$401,000	\$4,486	\$1,025	\$3,461	\$900
<b>EXISTING CONTRACTS TOTAL:</b>					\$68,016	\$17,671
<b>EXISTING CONTRACTS ANNUAL COSTS:</b>			(\$150 per contract for annual inspections)			\$2,250
<b>2007 CONTRACTS:</b>						
141 West H Street	Pending	\$405,756	\$4,521	\$921	\$3,600	\$936
120 West D Street	Pending	\$338,130	\$3,768	\$1,342	\$2,426	\$630
1025 West Second Street	Pending	\$312,120	\$3,478	\$984	\$2,494	\$648
140 East G Street	Pending	\$326,835	\$3,535	\$1,288	\$2,307	\$600
392-396 West H Street	Pending	\$376,478	\$4,195	\$2,300	\$1,895	\$492
224 West I Street	Pending	\$610,000	\$6,970	\$1,597	\$5,373	\$1,397
242 West I Street	Pending	\$550,000	\$6,183	\$1,064	\$5,118	\$1,331
171 West H Street	Pending	\$632,540	\$7,111	\$1,449	\$5,662	\$1,472
170 West H Street	Pending	\$1,300,000	\$14,615	\$1,508	\$13,107	\$3,408
1441 West J Street	Pending	\$649,000	\$7,296	\$887	\$6,409	\$1,666
<b>2007 CONTRACTS TOTAL:</b>					\$48,392	\$12,580
<b>2007 CONTRACTS STAFF COSTS:</b>			(\$1350 per application)			\$13,500
<b>2007 CONTRACTS ANNUAL COSTS:</b>			(\$150 per contract for annual inspections)			\$1,500

\* Tax savings are estimates and subject to change annually  
 \*\* Prior to 2003 City Council program authorization



**DRAFT RESOLUTION  
224 WEST I STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 224 WEST I STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on October 25, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserved the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 224 West I Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**DRAFT CONTRACT**  
**224 WEST I STREET**

(Includes Exhibit B – Secretary of the Interior Standards for Rehabilitation)  
(Includes Exhibit C – Work Plan)

WHEN RECORDED, RETURN TO:

CITY OF BENICIA  
250 East L Street  
Benicia, CA 94510  
Attention: City Clerk

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### HISTORICAL PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of DATE, by and between the CITY OF BENICIA, a municipal corporation (hereinafter referred to as the "City"), and Michael and Ebba Navas (hereinafter referred to as the "Owners").

#### WITNESSETH

##### A. Recitals

1. California Government Code Sections 50280, et seq. allow cities the discretion to enter into contracts with the owners of qualified historical properties, as the term is defined by Government Code Section 50280.1, for the purpose of restricting development of its cultural and historic significance and continuing maintenance of the historical property;
2. Owners possess fee title in and to that certain real property, together with associate structures and improvements thereon, located at the street address 224 West I Street, Benicia, CA 94510 (hereinafter, shall be referred to as the "the Historical Property"). A legal description of the Property is attached hereto and incorporated herein by this reference as Exhibit A;

3. On DATE the City Council of the City of Benicia adopted Resolution No. 07- thereby declaring its intention to enter into this Historic Property Preservation Agreement.

4. City and Owners, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of cultural and historical significance of the Property and to qualify the Property for an assessment of valuation pursuant to the provisions of Article 1.9, Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code

#### B. Agreement

NOW, THEREFORE, City and Owners, in consideration of the mutual promises, covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on DATE and shall remain in effect for a term of (10) years thereafter. Each year, upon the anniversary of the effective date of this Agreement (hereinafter "renewal date"), one (1) year shall automatically be added to the term of the Agreement, unless timely notice of nonrenewal, as provided in paragraph 2, is given. If either City or Owners serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.
2. Notice of Nonrenewal. If City or Owners desires in any year not to renew the Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of the contract as follows: (1) Owners must serve written notice of nonrenewal at least ninety (90) days prior to the renewal date or (2) City must serve written notice within sixty (60) days prior to the renewal date. Owners may make a written protest of the notice. City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of nonrenewal to Owners.
3. Valuation of Historical Property. During the term of this Agreement, Owners are entitled to seek assessment of valuation of the Historical Property pursuant to the provisions of Article 1.9, Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
4. Standards for Historical Property. During the term of this Agreement, the Property shall be subject to the following conditions, requirements and restrictions:
  - c) Owners shall preserve and maintain the characteristics of cultural and historical significance of the Property in accordance to the Secretary of the Interiors Standards for Rehabilitation and the minimum maintenance standards, identified

in Exhibit "B", attached hereto, which shall apply to the property throughout the term of this Agreement. New additions, exterior alterations, or related new construction shall comply with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings.

- d) Owners shall make improvements to bring the Property into good condition. Attached hereto, marked as Exhibit "C", and incorporated herein by this reference, is a list of work that both City and Owner agree is necessary to bring the Property into good condition.

Owner shall undertake all improvements in accordance with Exhibit "C". If the schedule set out in Exhibit "C" is not complied with, then City will use the following process to determine whether the owner is making good faith progress on the schedule of work. Upon City's request, the Owner shall submit documentation of expenditures, made to accomplish the next highest priority improvement project for the property, within the last 24 months. The owner shall be determined to be in substantial compliance when the expenditures are equal to or greater than the property tax savings provided by the Property being in the Mills Act Program. This schedule set out in Exhibit "C" shall be revised to reflect the schedule change. The Community Development Director shall have the ability to administratively adjust the schedule timeline, in concurrence with the property owner, only by written recorded instrument executed by the parties hereto.

5. Inspections and Annual Reporting. Owners agrees to permit the periodic examination, by prior appointment, of the interior and exterior of the Historic Property by the County Assessor, the State Department of Parks and Recreation, the State Board of Equalization and the City as may be necessary to determine Owners' compliance with the terms and provisions of this Agreement. Owners agree to provide the City with a report as to the status of the Historic Property annually and when any improvements or changes have been made.
6. Provision of Information. Owners hereby agree to furnish City with any and all information requested by City which City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
7. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Section 50285 may cancel this Agreement if it determines that Owners have breached any of the conditions of the Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines that Owners have failed to restore or rehabilitate the Historical Property in the manner specified in paragraph 4 of this Agreement.

In the event of cancellation, Owners shall be subject to payment of those cancellation fees set forth in California Government Code Sections 50280 et seq.,

described herein. Upon cancellation, Owners shall pay a cancellation fee of twelve and one-half percent (12 1/2%) of the current fair market value of the Historic Property at the time of cancellation, as determined by the county assessor as though the Historic Property were free of any restrictions pursuant to this Agreement.

8. Enforcement of Agreement. In lieu of any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owners, City shall give written notice to Owners by registered or certified mail addressed to the address stated in the Agreement, and if such a violation is not corrected to the reasonable satisfaction of City within thirty (30) days thereafter, or if not corrected within such a reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days provided that acts to cure the breach or default may be commenced within (30) days and must thereafter be diligently pursued to completion by Owners, then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owners growing out of the terms of this Agreement, apply to any violation by Owners or apply for such other relief as may be appropriate.
9. Waiver. City does not waive any claim of default by Owners if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.
10. Binding Effect of Agreement. Owners hereby subject the Historical Property described in Exhibit A hereto to the covenants, reservations and restrictions as set forth in this Agreement. City and Owners hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owners' successors and assigns in title or interest to the Historical Property.

Each and every contract, deed or other instrument hereinafter executed, governing or conveying the Historical Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owners hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern

the land in that it restricts development of the Historic Property. City and Owners hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historic characteristics and significance of the Historic Property for the benefit of the public and Owners.

11. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below, or at any other address as may be later specified by the parties hereto.

City: City of Benicia  
250 East L Street  
Benicia, California 94510

Owners: Michael and Ebba Navas  
719 West I Street  
Benicia, CA 94510

## 12. General Provisions

- a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.
- b. Owners agree to and shall hold City and its elected officials, officers, agents and employees harmless from liability for damage or claims which may arise from the direct or indirect use or operations of Owners or those of their contractor, subcontractor, agenda, employee or other person acting on his/her behalf which relates to the use, operation and maintenance of the Historic Property and from any injury to property caused by the restrictions on development of the Historical Property from application or enforcement of the City's Historical Preservation Ordinance or from the enforcement of this Agreement. Owners hereby agree to and shall defend the City and its elected officials, officers, agents and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owners' activities in connections with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historical Property.
- c. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and

all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

d. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

e. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

f. This Agreement shall be constructed and governed in accordance with the laws of the State of California.

13. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause the Agreement to be recorded in the office of the County Recorder of the County of Solano.

14. Notice to State Office of Historic Preservation. The Owners or Agent of the Owners shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.

15. Amendments. This Agreement may be amended, in whole or in part, only by written recorded instrument executed by the parties hereto

IN WITNESS WHEREOF, City and Owners have executed this Agreement on the day and year first written above.

Michael Navas  
Ebba Navas

CITY OF BENICIA

\_\_\_\_\_  
BY:  
DATED:

\_\_\_\_\_  
BY: Jim Erickson, City Manager  
DATED:

\_\_\_\_\_  
BY:  
DATED:

APPROVED AS TO FORM

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

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

(See attached sheet)

## EXHIBIT B

### THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

The following Standards are to be applied to rehabilitation projects for the Property in a reasonable manner, taking into consideration economic and technical feasibility:

- (1) The Property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of the Property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize the Property shall be avoided.
- (3) The Property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize the historic property shall be preserved.
- (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of the structure(s), if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by this project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- (10) New additions and adjacent or related new construction shall be undertaken in

such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Please refer to the complete text for additional information.

Copied from The Secretary of the Interior's Standards for the Treatment of Historic Properties U. S. Department of the Interior, National Park Service, Weeks and Grimmer, 1995, pg. 62.

### **Minimum Property Maintenance:**

As part of this agreement the Owners shall maintain all buildings, structures, yards and other improvements in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions (includes but does not limit to the following) are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as: fences, roofs, doors, walls, and windows, broken windows, peeling exterior paint, broken structures;
2. Scrap lumber, junk, trash or debris;
3. Abandoned discarded or unused objects, equipment such as automobiles, automobile parts, furniture, appliances, containers, cans or similar items;
4. Stagnant water, including pools or spas, or open excavations;
5. Any device, decoration, design, structure, vegetation or landscape which is unsightly by reason of its height, condition or its inappropriate location;
6. Graffiti;
7. Incomplete exterior construction where no building inspections have been requested for 6 or more months, or for work which does not require a building permit, where there has been no significant progress for 90 days.

## EXHIBIT C

### Architectural Rehabilitation and/or Restoration

The City and the Owners agree to the following Rehabilitation projects to be undertaken by the Owners in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

Projects	Schedule
1. <u>Paint white street lamp located in front setback</u>	2008
2. <u>Paint the front door and replace the door's window with historically appropriate glass</u>	2008
3. <u>Repair sunburst feature above the East-facing bay window</u>	2008
4. <u>Replacement/repair of deteriorated siding, including second-story shingles</u>	2008
5. <u>Rehabilitate the rear, South-facing window on the Southeast corner of the residence; replace boarded-up opening with a wood sash window</u>	2009
6. <u>Rehabilitate brick chimney</u>	2009
7. <u>Landscape front yard and West-facing side yard in accordance with design review conditions.</u> <u>Note: If landscaping involves removal of brick on front grade, brick around the porch shall be removed and constructed of wood.</u>	2010

**HPRC RESOLUTION NO. 07-21**  
**224 WEST I STREET**

**RESOLUTION NO. 07-21 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 224 WEST I STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 224 West I Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to "Maintain and enhance Benicia's historic character" and preservation and rehabilitation of the contributing building at 224 West I Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior's Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on October 25, 2007 considered the Mills Act contract application of Michael and Ebba Navas.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 224 West I Street.

**BE IT FURTHER RESOLVED THAT** the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Michael and Ebba Navas.

\*\*\*\*\*

On motion of Commissioner Wilson, seconded by Commissioner Conlow, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on October 25, 2007 by the following vote:

Ayes: Commissioners Conlow, Donaghue, Mang, Wilson and Chair Delgado  
Noes: None  
Absent: Commissioner White  
Abstain: Commissioner Haughey

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
1025 WEST SECOND STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 1025 WEST SECOND STREET IN THE CITY  
OF BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserved the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 1025 West Second Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN**  
**1025 WEST SECOND STREET**

## EXHIBIT C

Architectural Rehabilitation and/or Restoration

The City and the Owner agree to the following Rehabilitation projects to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

	Project (s)	Schedule
1.	<u>Scrape, prime and paint exterior of house</u>	<u>2008</u>
2.	<u>Replace damaged wood from dry rot around perimeter of the house</u>	<u>2008</u>
3.	<u>Repair and paint wood picket fence in front yard</u>	<u>2009</u>
4.	<u>Remove or repair and paint the ramp that provides access to the side entrance on the north side</u>	<u>2009</u>
5.	<u>Replace the existing exterior aluminum window screens with wood window screens to match the existing wood screens. Repair existing exterior wood window screens as necessary</u>	<u>2010</u>
6.	<u>Replace existing aluminum windows which are visible from the street with historically appropriate wood windows.</u>	<u>2010</u>
7.	<u>Repair and/or replace the wood floor boards on porch the front entry porch</u>	<u>2011</u>
8.	<u>Develop and install low maintenance landscape plan for front yard</u>	<u>2012</u>
9.	<u>Remove existing rear yard cyclone fence. Any replacement wood shall be constructed of wood and submitted for review and approval by the Community Development Director prior to installation.</u>	<u>2014</u>
9.	<u>Replace front door with a more historically appropriate door consistent with the classic revival style architecture.</u>	<u>2015</u>
10.	<u>General maintenance and repair as needed</u>	<u>Life of Contract</u>

**HPRC RESOLUTION NO. 07-16**  
**1025 WEST SECOND STREET**

**RESOLUTION NO. 07-16 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 1025 WEST SECOND STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 1025 West Second Street is a single-family residence 50-years or older situated in the Downtown Historic District; and

**WHEREAS**, General Plan Goal 3.1 is to “Maintain and enhance Benicia’s historic character” and preservation and rehabilitation of the historic residential building at 1025 West Second Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior’s Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007 considered the Mills Act contract application of Carla and Paula Chiotti.

**NOW, THEREFORE, BE IT RESOLVED** that the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance the historic residential building at 1025 West Second Street.

**BE IT FURTHER RESOLVED** that the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Carla and Paula Chiotti subject to the following changes to the Contract:

1. Modify “Exhibit C” by adding the following: Replace front door with a more historically appropriate door consistent with the classic revival style architecture.
2. Modify “Exhibit C” by adding the following: Replace existing aluminum windows with more historically appropriate wood windows.
3. Modify “Exhibit C” by adding the following: Remove the existing metal cyclone

fence. Any new fence proposed to be installed as a replacement to the cyclone fence shall be reviewed and approved by the Community Development Director prior to installation.

\*\*\*\*\*

On motion of Commissioner Wilson, seconded by Commissioner Donaghue, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on September 27, 2007 by the following vote:

Ayes: Commissioners Conlow, Donaghue, Mang, White and Wilson

Noes: None

Absent: Chair Delgado

Abstain: Commissioner Haughey

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
120 WEST D STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 120 WEST D STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserved the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 120 West D Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN  
120 WEST D STREET**

## EXHIBIT C

Architectural Rehabilitation and/or Restoration

The City and the Owners agree to the following Rehabilitation projects to be undertaken by the Owners in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

	Project (s)	Schedule
1.	<u>Build retaining wall on west side of property</u>	<u>2007</u>
2.	<u>Replace fence on west side of property</u>	<u>2008</u>
3.	<u>Remove non-original overhang over front door.</u>	<u>2009</u>
4.	<u>Paint exterior of house and repair windows as necessary</u>	<u>2009</u>
5.	<u>Replace front porch/steps with one that is consistent with the Greek Revival architecture and period of the home. The final design of the front porch and steps shall be reviewed and approved by the Community Development Director.</u>	<u>2010</u>
6.	<u>Develop and install low-maintenance landscape plan in front of house</u>	<u>2012</u>
7.	<u>Rehabilitate garage and replace garage door with a door that is architecturally compatible and historically appropriate. The final design of the garage door shall be reviewed and approved by the Community Development Director.</u>	<u>2013</u>
8.	<u>On-going maintenance and repair including the pruning of the two Olive trees on the D Street frontage.</u>	<u>Life of Contract</u>

**HPRC RESOLUTION NO. 07-15**  
**120 WEST D STREET**

**RESOLUTION NO. 07-15 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 120 WEST D STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 120 West D Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to “Maintain and enhance Benicia’s historic character” and preservation and rehabilitation of the contributing building at 120 West D Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior’s Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007 considered the Mills Act contract application of Carla and Paula Chiotti.

**NOW, THEREFORE, BE IT RESOLVED** that the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 120 West D Street.

**BE IT FURTHER RESOLVED** that the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Carla and Paula Chiotti subject to the following changes to the Contract:

1. Item #3 of “Exhibit C” shall be modified to replace front porch/steps with one that is historically appropriate and architecturally consistent with the Greek Revival architecture. The final design of the front porch and steps shall be reviewed and approved by the Community Development Director.

2. Item #5 of "Exhibit C" shall be modified to rehabilitate garage and replace garage door with a door that is architecturally compatible and historically appropriate. The final design of the garage door shall be reviewed and approved by the Community Development Director.

\*\*\*\*\*

On motion of Commissioner Mang, seconded by Commissioner Haughey, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on September 27, 2007 by the following vote:

Ayes:	Commissioners Conlow, Haughey, Mang, White and Wilson
Noes:	None
Absent:	Chair Delgado
Abstain:	Commissioner Donaghue

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
171 WEST H STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 171 WEST H STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on November 15, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserved the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 171 West H Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN  
171 WEST H STREET**

**EXHIBIT C**  
**Architectural Rehabilitation and/or Restoration Plan**

The City and the Owner agree to the following Rehabilitation projects to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

<i><b>Project (s)</b></i>	<i><b>Schedule</b></i>
1. <u>Replace fence around property</u>	2009
2. <u>Replace existing front door with original front door</u>	2009
3. <u>Repair dry rot on front porch columns and steps</u>	2010
4. <u>Reface garage door with siding to match house siding</u>	2010
5. <u>Replace front window with historically appropriate double-hung wood windows</u>	2010
6. <u>Repair front porch, including porch posts</u>	2011
7. <u>Remove brick/cement steps, walkway and half-columns at front entry; replace with historically appropriate concrete or stone entry features</u>	2011
8. <u>Paint entire residence</u>	2011
9. <u>Replace wood retaining wall along front property line and driveway with concrete or stone retaining wall</u>	2012

10. Replace aluminum windows on east-facing side of house with wood windows; where necessary, repair wood sash windows 2012
11. Replace aluminum windows on west-facing side of house with wood windows; where necessary, repair wood sash windows 2013
12. Rehabilitation of, and where necessary, in-kind replacement of damaged siding (where necessary) 2015
13. Replace existing gutters with historically appropriate gutters; repair trim that was altered to accommodate existing gutters on the east-facing side of the house 2016
14. Remove non-original/non-historic garden window on west-facing side of house; replace shiplap siding 2017

**HPRC RESOLUTION NO. 07-24**  
**171 WEST H STREET**

**RESOLUTION NO. 07-24 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 171 WEST H STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 171 West H Street is listed as a potential landmark building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to "Maintain and enhance Benicia's historic character" and preservation and rehabilitation of the historic building at 171 West H Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior's Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on November 15, 2007 considered the Mills Act contract application of William and Susan Venturelli.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1, as the proposed contract will allow the applicant to continue to preserve and enhance a historic building at 171 West H Street.

**BE IT FURTHER RESOLVED THAT** the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of William and Susan Venturelli subject to the following condition:

1. Any changes to the existing structure, not included in the Mills Act contract, shall be brought back to the Historic Preservation Review Commission with a recommendation/evaluation made by an historic expert.

\*\*\*\*\*

On motion of Commissioner White, seconded by Commissioner Conlow, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on November 15, 2007 by the following vote:

Ayes: Commissioners Conlow, Donaghue, Mang and White

Noes: Commissioner Haughey

Absent: Commissioner Wilson and Chair Delgado

Abstain: None

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
270 WEST H STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 270 WEST H STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on November 15, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserve the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 270 West H Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN  
270 WEST H STREET**

## EXHIBIT C

## Architectural Rehabilitation and/or Restoration

The City and the Owners agree to the following Rehabilitation projects to be undertaken by the Owners in conformance with Paragraph 4b of this Agreement. In addition, throughout the life of this contract the owner shall maintain Minimum Property Maintenance as described in Exhibit B of Attachment E. The work will be conducted as indicated below.

PROJECTS	SCHEDULE
1. Repair 2 <sup>nd</sup> floor balcony soffit (underside).	2008
2. Repair or replace windows. Main house, first story – includes 1 dining room window, and potentially 2 bay windows facing south. Main house, second story includes 3 bay windows, 1 in library, 1 in bedroom, and 1 window facing Carquinez Strait; in addition, repair/replace door pane leading to balcony. Carriage house, second level – 1 window. Total windows repaired or replaced: at least 9, at most 11.	2009
3. Repair or replace the front (south facing) porch. Work includes the repair or replacement of porch flooring, porch base,* and stair rails and posts. *Existing plywood replaced with vertical wood siding found in other locations at the base of the main house.	2010
4. Investigate the potential to repair chimney. If necessary, repair or replace chimney based on investigation.	2011-2012
5. Repair or replace side (east facing) porch. Work includes the repair or replacement of porch flooring, porch base,* and stair rails and posts. * Existing plywood replaced with vertical wood siding found in other locations at the base of the main house.	2013-2015
6. Rehabilitate exterior siding of primary house. This includes removal of non-original asbestos siding and repair/replace uncovered original siding with historically appropriate materials.	2015-2017
7. Following completion of Task 6 (replacing siding), paint exterior of main and carriage house.	2017

**HPRC RESOLUTION NO. 07-25**  
**270 WEST H STREET**

**RESOLUTION NO. 07-25 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 270 WEST H STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 270 West H Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to "Maintain and enhance Benicia's historic character" and preservation and rehabilitation of the contributing building at 270 West H Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior's Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on November 15, 2007 considered the Mills Act contract application of Leann and Jaan Taagepera.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 270 West H Street.

**BE IT FURTHER RESOLVED THAT** the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Leann and Jaan Taagepera.

\* \* \* \* \*

On motion of Commissioner Conlow, seconded by Commissioner White, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on November 15, 2007 by the following vote:

Ayes:	Commissioners Conlow, Donaghue, Mang and White
Noes:	None
Absent:	Commissioner Wilson and Chair Delgado
Abstain:	Commissioner Haughey

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
441 WEST J STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 441 WEST J STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on November 15, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserved the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 441 West J Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN  
441 WEST J STREET**

**EXHIBIT C****Architectural Rehabilitation and/or Restoration**

The City and the Owners agree to the following Rehabilitation projects to be undertaken by the Owners in conformance with Paragraph 4b of this Agreement. In addition, throughout the life of this contract the owner shall maintain Minimum Property Maintenance as described in Exhibit B of Attachment E. The work will be conducted as indicated below.

<b>PROJECTS</b>	<b>SCHEDULE</b>
1. Replace windows and sliding door on the north facing (back) side of house. Includes replacement of two (2) horizontally oriented windows with four (4) vertical windows. Aluminum windows to be replaced using wood frames. Aluminum framed sliding door to be replaced with wood.	2008
2. Landscape backyard.	2009-2010
3. Replace windows on the south facing (front) side of house. Includes replacement of three (3) aluminum windows with wood frames.	2011-2012
4. Replace plywood siding only on the building addition. Materials will differentiate from the original wood siding of the original house.	2013-2014
5. Paint exterior	2015

**HPRC RESOLUTION NO. 07-26**  
**441 WEST J STREET**

**RESOLUTION NO. 07-26 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 441 WEST J STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 441 West J Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to "Maintain and enhance Benicia's historic character" and preservation and rehabilitation of the contributing building at 441 West J Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior's Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on November 15, 2007 considered the Mills Act contract application of Barrie and James Coleman.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 441 West J Street.

**BE IT FURTHER RESOLVED THAT** the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Barrie and James Coleman subject to the following condition:

1. Windows identified in Task 2, Exhibit C of Draft Contract, shall be replaced with six-paned windows typical of Greek Revival houses, if documentation can be shown that original windows were of this character, and that replaced windows shall be approved by the Community Development Department prior to installation.

\* \* \* \* \*

On motion of Commissioner Haughey, seconded by Commissioner Conlow, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on November 15, 2007 by the following vote:

Ayes: Commissioners Conlow, Haughey, Mang and White  
Noes: None  
Absent: Commissioner Wilson and Chair Delgado  
Abstain: Commissioner Donaghue

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
242 WEST I STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 242 WEST I STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on November 15, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserve the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 242 West I Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN  
242 WEST I STREET**

**EXHIBIT C**

**Architectural Rehabilitation and/or Restoration**

The City and the Owner agree to the following Rehabilitation projects to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

<i>Project (s)</i>	<i>Schedule</i>
1. <u>Paint exterior</u>	<u>2008</u>
2. <u>Repair wood sash windows</u>	<u>2009</u>
3. <u>Replace missing front porch components</u>	<u>2010</u>
4. <u>Replace missing architectural details</u>	<u>2011</u>

**HPRC RESOLUTION NO. 07-28**  
**242 WEST I STREET**

**RESOLUTION NO. 07-27 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA APPROVING DESIGN REVIEW PERMIT FOR THE EXTERIOR ALTERATIONS TO THE SINGLE-FAMILY RESIDENCE LOCATED AT 242 WEST I STREET (07PLN-87)**

**WHEREAS**, Tom and Crystal DiStefano, owners of 242 West I Street, requested design review approval for exterior modifications and rehabilitation with regards to foundation repair and leveling, front porch re-construction, shed conversion, rear deck construction, window treatments, skylights, and architectural detailing; and

**WHEREAS**, the Historic Preservation Review Commission, at a regular meeting on November 15, 2007, conducted a public hearing to review the request; and

**NOW, THEREFORE BE IT RESOLVED THAT** the Historic Preservation Review Commission of the City of Benicia hereby finds that:

- A. The City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review.
- B. The design of this project is consistent with the purposes of the City of Benicia Zoning Ordinance and the Downtown Mixed Use Master Plan.
- C. The proposed rehabilitation is consistent with the Downtown Historic Conservation Plan's guidelines *because the front porch will be reconstructed to resemble its original appearance, proportions of existing door and window openings and the pattern of existing window sash in replacement work will be maintained, raising and leveling will not alter the street façade in a way that detracts from the original composition or proportions, and the rear conversion of the shed to inhabitable will be located to the rear of the existing structure without alteration to the roof form of the primary residence.*

**BE IT FURTHER RESOLVED THAT** the Historic Preservation Review Commission of the City of Benicia hereby approves the design review permit subject to the following conditions:

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans dated received "October 31, 2007" prepared by the applicant marked Exhibit "A" and on file in the Community Development Department.

2. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
3. This approval shall expire two years from the date of approval, unless made permanent by the issuance of a building permit and the commencement of work that is diligently pursued to completion. Alternatively, the time period may be extended, by the Community Development Director, if the application for time extension is received prior to the end of the initial two year deadline and there has been no change in the City's development policies which affect the site, and there is no change in the physical circumstances nor new information about the project site which would warrant reconsideration of the approval.
4. Any alteration of the approved plans, including substitution of materials, shall be requested in writing and approved by the Community Development Director or designee prior to changes being made in the field.
5. Construction activities shall meet all municipal code requirements for hours of operation. Construction equipment shall be adequately muffled and controlled. These requirements shall be made a condition of all related contracts for the project.
6. To differentiate new construction, the siding located below the trim/original foundation line (18" above grade on the east-facing side of the residence) shall be 1" x 10" V-Rustic wood material.
7. Any excavation that occurs on site shall abide by the following cultural resource monitoring plan:
  - a. If deposits of prehistoric or historic archeological materials are encountered during project construction, all work at the find shall be halted until an archeologist can examine the find and make recommendations.
  - b. If human remains are encountered at any point during project construction, work shall halt at the find and the Solano County Coroner shall be notified immediately. In addition, an archeologist shall be contacted to examine the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. Pursuant to Section 5097.98 of the public Resources Code, the Native American Heritage Commission will identify a Native American Most Likely Descendent to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods.
8. The final design of the front porch reconstruction, supported by physical and photographic evidence, shall be reviewed and approved by the Community Development Director prior to construction

9. The 24"x 24" wood windows at the basement level of the east-facing side of the residence shall maintain their size and proportions, pursuant to the Downtown Historic Conservation Plan (DHCP).
10. The shed conversion/ addition on the rear south-facing side of the residence shall be in compliance with plans submitted on November 7<sup>th</sup>, 2007, and shall be clad in 1" x 6" V-Rustic siding. The final design of the shed conversion/addition and the resulting window placements shall be reviewed and approved by the Community Development Director prior to construction.
11. The new construction of the rear deck on the rear-facing southeast corner of the residence shall be in compliance with plans submitted on November 7<sup>th</sup>, 2007, and shall adhere to several parameters. The east side of the deck shall be recessed by 1-foot from the rear east-facing façade; the south-facing side of the deck shall be flush with the south side of the converted shed/addition, as depicted in project plans. Additionally, the fence that runs parallel to the street shall be moved forward by 4-feet towards West I Street, further buffering the deck from street visibility.
12. Prior to the issuance of a building permit, tree trimming and/or removal permits from the Parks and Community Services department are required if the scope of work has an impact on existing trees.
13. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director's, Historic Preservation Review Commission or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

\*\*\*\*\*

On motion of Commissioner White, seconded by Commissioner Conlow, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on November 15, 2007 by the following vote:

Ayes: Commissioners Conlow, Donaghue, Mang and White

Noes: None

Absent: Commissioner Wilson and Chair Delgado

Abstain: Commissioner Haughey

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
392-396 EAST H STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 392-396 EAST H STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserved the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 392-396 East H Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN**  
**392-396 EAST H STREET**

## EXHIBIT C

### Architectural Rehabilitation

The City and the Owner agree to the following Rehabilitation projects to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

The following work shall be completed by 2015:

1. Repair and/or replace wood fence along side yard with historically appropriate fence. Fence shall be constructed of appropriate materials to the time period and architecture of the home, such as; wood or wrought iron. In appropriate materials include; brick, masonry, stone, stucco etc. Final design of fence shall be reviewed and approved by the Community Development Director, or designee.

**HPRC RESOLUTION NO. 07-13**  
**392-396 WEST H STREET**

**RESOLUTION NO. 07-13 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 392-396 EAST H STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 392-396 East H Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to "Maintain and enhance Benicia's historic character" and preservation and rehabilitation of the contributing building at 392-396 East H Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior's Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007, considered the Mills Act contract application of Angela Fortain.

**NOW, THEREFORE, BE IT RESOLVED** that the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 392-396 East H Street.

**BE IT FURTHER RESOLVED** that the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Angela Fortain subject to the following changes to the Contract:

1. Add paragraph 4b which states that the "*Owner shall make improvements to bring the Property into good condition. Attached hereto, marked as Exhibit "C", and incorporated herein by this reference, is a list of work that both City and Owners agree is necessary to bring the Property into good condition*" etc. As part of this amendment the applicant and City Staff shall prepare an Architectural Rehabilitation and/or Restoration Plan "Exhibit C" that addresses all work that needs to be completed to bring this property into good condition. Recommendations for this work plan include; replacing the existing vinyl windows and replacement of inappropriate siding.

\*\*\*\*\*

On motion of Commissioner Donaghue, seconded by Commissioner Haughey, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on September 27, 2007 by the following vote:

Ayes: Commissioners Donaghue, Haughey, Mang, White  
Noes: Commissioner Wilson  
Absent: Chair Delgado  
Abstain: Commissioner Conlow

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
141 WEST H STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 141 WEST H STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserve the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 141 West H Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN  
141 WEST H STREET**

## EXHIBIT C

Architectural Rehabilitation and/or Restoration

The City and the Owner agree to the following Rehabilitation projects to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

Project (s)	Schedule
1. <u>Replacement of the front door with a more historically appropriate door (Queen Anne Cottage style). The final door selection shall be approved by the Community Development Director prior to installation.</u>	2009
2. <u>Remove non-original aluminum slider window on front façade and replace with two wooden-framed windows to match the original design. Final window design shall be approved by the Community Development Director prior to installation.</u>	2009
3. <u>Repair or replace concrete retaining wall in front yard.</u>	2010
4. <u>Install new landscaping in front yard.</u>	2012
5. <u>Replace small aluminum window on the east side with a historically appropriate wood window.</u>	2015
6. <u>Add vertical wood siding to the base of the front porch to cover-up the existing concrete/stucco finish.</u>	2017
7. <u>General maintenance and repair as needed</u>	Life of Contract

**HPRC RESOLUTION NO. 07-14**  
**141 WEST H STREET**

**RESOLUTION NO. 07-14 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 141 WEST H STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 141 West H Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to "Maintain and enhance Benicia's historic character" and preservation and rehabilitation of the contributing building at 141 West H Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior's Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007 considered the Mills Act contract application of Carla and Paula Chiotti.

**NOW, THEREFORE, BE IT RESOLVED** that the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 141 West H Street.

**BE IT FURTHER RESOLVED** that the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Carla and Paula Chiotti subject to the following changes to the Contract:

1. "Exhibit C" shall be modified to include the replacement of the small aluminum window on east side with a historically appropriate wood window.

2. "Exhibit C" shall be modified to include the addition of vertical wood siding to the base of the front porch to cover-up the existing concrete/stucco finish.

\*\*\*\*\*

On motion of Commissioner Haughey, seconded by Commissioner White, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on September 27, 2007 by the following vote:

Ayes: Commissioners Conlow, Donaghue, Haughey, Mang, White and Wilson  
Noes: None  
Absent: Chair Delgado  
Abstain: None

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

**DRAFT RESOLUTION  
140 EAST G STREET**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A  
MILLS ACT CONTRACT FOR 140 EAST G STREET IN THE CITY OF  
BENICIA**

**WHEREAS**, the General Plan is the guiding land use and development document of the City of Benicia; and

**WHEREAS**, General Plan Goal 3.1 is to maintain and enhance Benicia's historic character and General Plan Policy 3.1.6 to promote restoration of public and privately-owned historic and architecturally significant properties; and

**WHEREAS**, the Benicia City Council adopted Resolution No. 03-12 approving the implementation of a Mills Act program in the City of Benicia; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007, recommended approval of the proposed Mills Act Contract; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the City Council at a regular meeting on December 18, 2007, considered public comment and reviewed the proposed Mills Act contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia makes the following findings:

- a) The Mills Act contract for the specified property is consistent with General Plan Goal 3.1 and General Plan Policy 3.1.6 because they will require that the property be well maintained to better enhance and preserve the Downtown Historic District.
- b) The Mills Act contract for the specified property will help preserve these listed historic resources for the City of Benicia.

**BE IT FURTHER RESOLVED** that the City Council directs the City Manager to negotiate and execute a Mills Act contract, subject to the review and approval as to form of the City Attorney, with the property owners of 140 East G Street.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

ATTEST:

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

**WORK PLAN  
140 EAST G STREET**

## EXHIBIT C

Architectural Rehabilitation and/or Restoration

The City and the Owner agree to the following Rehabilitation projects to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. The work will be conducted as indicated below.

Project (s)	Schedule
1. <u>Replace the roof with a composition shingle type roof similar to the existing. Repair the gutters. Final roofing materials shall be approved by the Community Development Director prior to installation.</u>	2008
2. <u>Foundation inspection report shall be prepared and submitted to the Community Development Department</u>	2008
3. <u>Paint exterior.</u>	2008
4. <u>Install new landscaping in front yard.</u>	2010
5. <u>Cosmetically repair and stabilize the retaining wall along the G Street property line.</u>	2017
6. <u>General maintenance and repair as needed</u>	Life of Contract

**HPRC RESOLUTION NO. 07-17**  
**140 EAST G STREET**

**RESOLUTION NO. 07-17 (HPRC)**

**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 140 EAST G STREET**

**WHEREAS**, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

**WHEREAS**, the property at 140 East G Street is listed as a potential landmark building in the Downtown Historic Conservation Plan; and

**WHEREAS**, General Plan Goal 3.1 is to "Maintain and enhance Benicia's historic character" and preservation and rehabilitation of the historic building at 140 East G Street is consistent with this Goal; and

**WHEREAS**, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior's Standards; and

**WHEREAS**, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties are categorically exempt from further CEQA review; and

**WHEREAS**, the Historic Preservation Review Commission at a regular meeting on September 27, 2007 considered the Mills Act contract application of Neil Leary.

**NOW, THEREFORE, BE IT RESOLVED** that the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a historic building at 140 East G Street.

**BE IT FURTHER RESOLVED** that the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Neil Leary subject to the following changes to the Contract:

1. Remove Item #2 of "Exhibit C" that states, construction of the approved single-story structure to replace the structure that was demolished in 2007.
2. Item #3 of "Exhibit C" shall be changed so state that the exterior painting will be completed in 2008.
3. Modify "Exhibit C" by adding the following rehabilitation item: cosmetically repair and stabilize the retaining wall along the G Street property line.

4. Modify "Exhibit C" by adding a foundation inspection report to be completed within one year of the granting of this Contract. The report shall be submitted to the Community Development Department.

\*\*\*\*\*

On motion of Commissioner Conlow, seconded by Commissioner Mang, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on September 27, 2007 by the following vote:

Ayes: Commissioners Conlow, Mang, White and Wilson

Noes: Commissioner Haughey

Absent: Chair Delgado

Abstain: Commissioner Donaghue

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Gina D. Eleccion  
Historic Preservation Review Commission Secretary

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
DECEMBER 4, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:01 p.m. on Tuesday, December 4, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:  
Three unexpired terms to September 30, 2010
- Open Government Commission:  
One full term to November 30, 2011

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

- Proclamations welcoming Benicia High School Exchange Students

ADOPTION OF AGENDA:

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:  
WRITTEN:

PUBLIC COMMENT:

1. Joseph Lee – Mr. Lee spoke in opposition to the recent closure of the skate park at Willow Glen Park.
2. Lorraine Bettencourt – Ms. Bettencourt stated that she hoped the skate park at Willow Glen Park would not be turned into a dog park. Council should put the reuse of the skate park at Willow Glen Park up for a vote by the City.
3. Jeanine Seeds – Ms. Seeds discussed the trash problem at the skate park at Willow Glen Park. She suggested having the kids police themselves with regards to the trash issue.
4. Bob Mutch – Mr. Mutch thanked the outgoing Council Members. He was glad the new Council Members were present to hear the citizens talk about the skate park closure at Willow Glen Park.
5. Joseph Roncowitz – Mr. Roncowitz discussed the number of fast food restaurants compared to the number of skate parks in Benicia. He spoke in opposition to the recent closure of the skate park at Willow Glen Park.
6. Joe Kearns – Mr. Kearns discussed the trash and marijuana problems at the skate park at Willow Glen Park. He suggested giving the skaters another chance at the park.
7. Jim Erickson, City Manager – Mr. Erickson discussed Council’s direction to Staff at the last Council meeting. Council directed Staff to find an alternate location for a skate park south of I-780. The City’s insurance administrator informed the City that it was unsafe to keep the park open.
8. Sabina Yates – Ms. Yates gave Council a handout titled ‘How much does a vote cost in Benicia?’

CONSENT CALENDAR:

Council pulled items VII-A, VII-B, VII-D, VII-E, and VII-H.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

ORDINANCE 07-27 - AN ORDINANCE AMENDING SECTION 1.44.040 (PROCEDURE FOR APPEAL) OF CHAPTER 1.44 (APPEALS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE BY ADDING NEW SUBSECTIONS

ORDINANCE 07-28 - AN ORDINANCE AMENDING SECTION 3.24.120 (APPEAL) OF CHAPTER 3.24 (TRANSIENT OCCUPANCY TAX) OF TITLE 3 (REVENUE AND FINANCE) OF THE BENICIA MUNICIPAL CODE

# DRAFT

ORDINANCE 07-29 - AN ORDINANCE AMENDING SECTION 5.04.290 (REVOCAION OR SUSPENSION - PROCEDURE) OF CHAPTER 5.04 (BUSINESS LICENSES) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-30 - AN ORDINANCE AMENDING SUBSECTION B OF SECTION 5.08.080 (SUSPENSION AND REVOCATION OF LICENSE), SUBSECTION E OF SECTION 5.08.140 (ISSUANCE OF WORK PERMITS FOR EMPLOYEES), SECTION 5.08.170 (PERMITTED GAMES DESIGNATED), AND SUBSECTION C OF SECTION 5.08.230 (EXCLUSION OR EJECTION OF INDIVIDUALS FROM CARD ROOMS) OF CHAPTER 5.08 (CARD ROOMS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-31 - AN ORDINANCE AMENDING SECTION 5.24.070 (APPEAL) OF CHAPTER 5.24 (JEWELRY AUCTIONS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-32 - AN ORDINANCE AMENDING SECTION 5.28.100 (PERMIT – DENIAL – APPEAL) AND SECTION 5.28.120 (PERMIT – REVOCATION - APPEAL) OF CHAPTER 5.28 (PEDDLERS, SOLICITORS AND CANVASSERS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-33 - AN ORDINANCE AMENDING SECTION 5.36.050 (EXEMPTIONS – FILING OF CLAIM) AND SECTION 5.36.100 (APPEALS) OF CHAPTER 5.36 (CONSTRUCTION OF STRUCTURES) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-34 - AN ORDINANCE AMENDING SUBSECTION B (HEARING) OF SECTION 5.38.090 (FEE ADJUSTMENTS) OF CHAPTER 5.38 (TRAFFIC IMPACT MITIGATION) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-35 - AN ORDINANCE AMENDING SECTION 5.48.090 (APPEALS) OF CHAPTER 5.48 (MOTION PICTURES PRODUCTION, TELEVISION PRODUCTION AND COMMERCIAL STILL PHOTOGRAPHY) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-36 - AN ORDINANCE AMENDING SECTION 8.08.050 (APPEAL FROM NOTICE) OF CHAPTER 8.08 (WEEDS AND RUBBISH) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-37 - AN ORDINANCE AMENDING SECTION 8.20.070 (SOUND-AMPLIFYING EQUIPMENT – APPEAL FROM DISAPPROVAL) OF CHAPTER 8.20

# DRAFT

(NOISE REGULATIONS) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-38 - AN ORDINANCE AMENDING SECTION 8.28.080 (APPEALS) OF CHAPTER 8.28 (FIRE PREVENTION AND LIFE SAFETY CODE) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-39 - AN ORDINANCE AMENDING SUBSECTION B OF SECTION 8.38.100 (ABATEMENT AT OWNER'S EXPENSE - HEARING) OF CHAPTER 8.38 (GRAFFITI CONTROL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-40 - AN ORDINANCE AMENDING SECTION 9.20.040 (APPEAL – DENIAL OF RENEWAL, SUSPENSION OR REVOCATION OF PERMIT) OF CHAPTER 9.20 (FORTUNE TELLING) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-41 - AN ORDINANCE AMENDING SUBSECTION C OF SECTION 9.44.070 (SUSPENSION OF POLICE RESPONSE) OF CHAPTER 9.44 (ALARM SYSTEMS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-42 - AN ORDINANCE AMENDING SUBSECTION A OF SECTION 10.44.130 (APPEALS) OF CHAPTER 10.44 (ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES) OF TITLE 10 (VEHICLES AND TRAFFIC) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-43 - AN ORDINANCE AMENDING SUBSECTION D OF SECTION 12.12.060 (PERMITS AND FEES) OF CHAPTER 12.12 (ENCROACHMENTS) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-44 - AN ORDINANCE AMENDING SUBSECTION D OF SECTION 12.24.150 (APPEALS) OF CHAPTER 12.24 (STREET TREES) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-45 - AN ORDINANCE AMENDING SECTION 13.28.090 (ENFORCEMENT – CIVIL REMEDIES) OF CHAPTER 13.28 (CONTROL OF BACKFLOW AND CROSS-CONNECTION TO CITY WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-46 - AN ORDINANCE AMENDING SECTION 13.52.045 (DECISION BY PUBLIC WORKS DIRECTOR - APPEAL) OF CHAPTER 13.52 (RATES AND CHARGES) OF TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE

# DRAFT

ORDINANCE 07-47 - AN ORDINANCE AMENDING SECTION 15.28.170 (APPEAL PROCEDURES) OF CHAPTER 15.28 (GRADING AND EROSION CONTROL) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-48 - AN ORDINANCE AMENDING SUBSECTION A OF SECTION 15.36.190 (APPEAL - PROCEDURE) OF CHAPTER 15.36 (MOVING BUILDINGS) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-49 - AN ORDINANCE AMENDING SUBSECTION K OF SECTION 15.52.010 (VARIANCE - GENERAL) OF CHAPTER 15.52 (VARIANCES) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-50 - AN ORDINANCE AMENDING SECTION 15.56.010 (APPEALS TO THE BUILDING DEPARTMENT BOARD OF APPEALS) AND SECTION 15.56.020 (APPEALS TO THE CITY COUNCIL) OF CHAPTER 15.56 (APPEALS) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-51 - AN ORDINANCE AMENDING SUBSECTION A OF SECTION 15.64.220 (REMEDIES NOT EXCLUSIVE) OF CHAPTER 15.64 (STORM WATER MANAGEMENT AND DISCHARGE CONTROL) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-52- AN ORDINANCE AMENDING SUBSECTION K (4) OF SECTION 16.20.060 (PRELIMINARY SUBMITTAL FOR CITY APPROVAL) OF CHAPTER 16.20 (FINAL SUBDIVISION MAPS – FIVE OR MORE PARCELS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-53 - AN ORDINANCE AMENDING SUBSECTION A OF SECTION 16.24.060 (APPEALS OF COMMUNITY DEVELOPMENT DIRECTOR ACTION) AND SECTION 16.24.070 (EXPIRATION AND EXTENSIONS) OF CHAPTER 16.24 (SUBDIVISIONS OF FOUR OR FEWER PARCELS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-54 - AN ORDINANCE AMENDING SUBSECTION C (3) OF SECTION 16.28.060 (RIGHTS OF VESTING TENTATIVE MAPS) OF CHAPTER 16.28 (VESTING TENTATIVE MAPS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-55 - AN ORDINANCE AMENDING SUBSECTION E (2) OF SECTION 16.36.060 (IMPROVEMENT PLANS) OF CHAPTER 16.36 (IMPROVEMENTS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE

# DRAFT

ORDINANCE 07-56 - AN ORDINANCE AMENDING SECTION 16.44.050 (APPEALS), SUBSECTION B OF SECTION 16.44.060 (MERGERS UNDER PRIOR LAW) AND SUBSECTION C OF SECTION 16.44.100 (REQUEST FOR DETERMINATION BY OWNER) OF CHAPTER 16.44 (PARCEL MERGERS AND UNMERGERS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-57 - AN ORDINANCE AMENDING SECTION 16.52.050 (APPEALS OF COMMUNITY DEVELOPMENT DIRECTOR ACTION) OF CHAPTER 16.52 (ENFORCEMENT) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-58 - AN ORDINANCE AMENDING SUBSECTION C OF SECTION 17.08.040 (RULES FOR INTERPRETATION) OF CHAPTER 17.08 (ORGANIZATION, APPLICABILITY, AND INTERPRETATION) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-59 - AN ORDINANCE AMENDING SUBSECTION B (2) OF SECTION 17.54.030 (LAND USE AND DEVELOPMENT REGULATIONS) AND SUBSECTION E OF SECTION 17.54.100 (DEMOLITION AND DESIGN REVIEW PROCEDURES) OF CHAPTER 17.54 (H HISTORIC OVERLAY DISTRICT) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-60 - AN ORDINANCE AMENDING SUBSECTION E OF SECTION 17.70.060 (ACCESSORY DWELLING UNITS) AND SUBSECTION S OF SECTION 17.70.320 (INCLUSIONARY HOUSING) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-61 - AN ORDINANCE AMENDING SECTION 17.82.120 (EFFECTIVE DATE OF COMMITTEE DECISION – RIGHT OF APPEAL) OF CHAPTER 17.82 (TREES AND VIEWS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-62 - AN ORDINANCE AMENDING SECTION 17.86.110 (APPEALS) OF CHAPTER 17.86 (WIND ENERGY CONVERSION SYSTEMS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-63 - AN ORDINANCE AMENDING SECTION 17.90.110 (APPEALS) OF CHAPTER 17.90 (CONDOMINIUM CONVERSIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-64 - AN ORDINANCE AMENDING SECTION 17.94.060 (APPEALS) OF CHAPTER 17.94 (MOBILE HOME PARK CONVERSIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

# DRAFT

ORDINANCE 07-65 - AN ORDINANCE AMENDING SUBSECTION F OF SECTION 17.100.020 (APPLICATION FOR ZONING PERMIT), SECTION 17.100.040 (EFFECTIVE DATE – LAPSE OF PERMIT – APPEAL), SUBSECTION A (3) OF SECTION 17.100.060 (ENVIRONMENTAL REVIEW) AND 17.100.080 (ZONING ADMINISTRATOR) OF CHAPTER 17.100 (ZONING PERMITS – ENVIRONMENTAL REVIEW – FEES AND DEPOSITS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-66 - AN ORDINANCE AMENDING SECTION 17.104.080 (EFFECTIVE DATE - APPEALS) AND SUBSECTION E OF SECTION 17.104.110 (TEMPORARY USE PERMITS) OF CHAPTER 17.104 (USE PERMITS AND VARIANCES) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-67 - AN ORDINANCE AMENDING SUBSECTION B OF SECTION 17.108.060 (REVIEW RESPONSIBILITIES), SUBSECTION A OF SECTION 17.108.090 (EFFECTIVE DATE – LAPSE AND RENEWAL – ALTERATIONS) AND SECTION 17.108.110 (APPEALS) OF CHAPTER 17.108 (DESIGN REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-68 - AN ORDINANCE AMENDING SECTION 17.112.070 (APPEALS) OF CHAPTER 17.112 (DEVELOPMENT PLAN REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-69 - AN ORDINANCE DELETING AND REPLACING CHAPTER 17.124 (APPEALS AND CALLS FOR REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-70 - AN ORDINANCE AMENDING SUBSECTION F OF SECTION 17.128.060 (REVOCATION OF DISCRETIONARY PERMITS) OF CHAPTER 17.128 (ENFORCEMENT) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07-71 - AN ORDINANCE AMENDING SUBSECTION A OF SECTION 18.08.070 (APPEALS) OF CHAPTER 18.08 (PERMITS) OF TITLE 18 (SIGNS) OF THE BENICIA MUNICIPAL CODE

RESOLUTION 07-136 - A RESOLUTION AUTHORIZING THE SPENDING PLAN OF THE SUPPLEMENTAL LAW ENFORCEMENT GRANT FUND FOR FISCAL YEAR 2007/08.

RESOLUTION 07-137 - A RESOLUTION ACCEPTING THE WEST K STREET OVERLAY PROJECT AS COMPLETE, INCLUDING CHANGE ORDER NOS. 1 THROUGH 3, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of minutes of November 20, 2007:

Vice Mayor Schwartzman pulled the minutes, as he was absent from the November 20, 2007 Council meeting and needed to abstain from voting.

On motion of Council Member Patterson, seconded by Council Member Whitney, Council approved the Minutes of November 20, 2007, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Whitney, and Mayor Messina

Noes: None

Abstain: Vice Mayor Schwartzman

Second reading of an ordinance amending Title 6 pertaining to animal regulation and adopting a comprehensive animal control program:

Public Comment:

1. Sue Johnson – Ms. Johnson discussed the feral cats in the community.
2. Sue Wika – Ms. Wika discussed concerns regarding the feral cats in the community and how they are addressed in the proposed ordinance.
3. Gretchen Burgess – Ms. Burgess discussed concerns with feral cats in the community.
4. Tony Shannon – Mr. Shannon stated that he supported the proposed ordinance, including the step to have it reviewed in six months.

Council discussed the performance measurements that were built into the proposed ordinance.

ORDINANCE 07-72 – AN ORDINANCE AMENDING TITLE 6 (ANIMALS)  
PERTAINING TO ANIMAL REGULATION AND ADOPTING A COMPREHENSIVE  
ANIMAL CONTROL PROGRAM

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Ordinance was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

Approval of implementation of the market-based pay adjustments for four employee groups and unrepresented positions and approval of new job descriptions associated with the 2006-07 Classification and Compensation Study:

Council and Staff discussed integrating regular classification studies so that surprises like this would not happen, concerns with the proposed funding for the pay adjustments, looking for other areas for funding, and possibly reducing the City's operational expenditure in each of the next two years – by \$170,000 in the first year and \$140,000 in

the second year to substitute the funding – which would allow the City to maintain a balanced budget.

Vice Mayor Schwartzman made a motion to adopt the resolution, with the change of reducing the City's operational expenditure in each of the next two years – by \$170,000 in the first year and \$140,000 in the second year to substitute the funding.

RESOLUTION 07-138 - A RESOLUTION APPROVING THE IMPLEMENTATION OF THE MARKET-BASED ADJUSTMENTS FOR FOUR EMPLOYEE GROUPS AND UNREPRESENTED POSITIONS, APPROVING NEW JOB DESCRIPTIONS ASSOCIATED WITH THE 2006-07 CLASSIFICATION AND COMPENSATION STUDY AND IMPLEMENT THE RECOMMENDED BUDGET ADJUSTMENTS

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, the above Resolution was adopted as amended, on roll call by the following vote:  
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

Request to CalPERS to allow John Bailey to work in excess of 960 hours this year:  
Council and Staff discussed the current status of selecting a replacement for the position. Staff has not started the interview process. Staff hopes to begin the interview process early next year.

RESOLUTION 07-139 - A RESOLUTION REQUESTING PERS AUTHORIZE JOHN BAILEY TO EXCEED 960 HOURS AS A RETIREE TO ALLOW HIM TO WORK FOR THE CITY OF BENICIA AND TO FILL AN URGENT NEED

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, the above Resolution was adopted, on roll call by the following vote:  
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

Approval of property tax refund agreement with Valero Refining Company – California:  
Public Comment:

1. J. B. Davis – Mr. Davis spoke in opposition to the proposed agreement.
2. Joe Kearns – Mr. Kearns spoke in opposition to the proposed agreement.

Council and Staff discussed the events leading up to the proposed agreement, the suggestions made by the public, alternate uses for the money, and the need to proceed with the proposed Resolution.

RESOLUTION 07-140 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH VALERO REFINING COMPANY - CALIFORNIA

# DRAFT

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

## PUBLIC HEARINGS:

None

## ACTION ITEMS:

Approving the results of the Consolidated Districts Election held November 6, 2007:

Lisa Wolfe, City Clerk, reviewed the staff report.

## RESOLUTION 07-141 - A RESOLUTION APPROVING THE RESULTS OF THE CONSOLIDATED DISTRICTS ELECTION HELD NOVEMBER 6, 2007

On motion of Council Member Whitney seconded by Vice Mayor Schwartzman, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

## Presentation to outgoing officials:

Mayor Messina thanked Council Member Whitney and Virginia Souza for their public service and presented them with gifts from the City.

Vice Mayor Schwartzman thanked Mayor Messina for his public service and presented him with a gift from the City.

## Comments by outgoing Council Members and Mayor:

Mayor Messina read a statement reviewing the Council's accomplishments during his tenure and thanking the citizens for their support.

Council Member Whitney congratulated the newly elected City officials. He thanked past and present Council Members, City Staff, the citizens of Benicia, friends, and supporters, and most importantly his family for their support.

## INFORMATIONAL ITEMS:

None

## COMMENTS FROM COUNCIL MEMBERS:

None

## ADJOURNMENT:

Mayor Messina adjourned the meeting at 8:08 p.m.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
DECEMBER 4, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Vice Mayor Schwartzman at 8:11 p.m. on Tuesday, December 4, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

After calling the meeting to order, Vice Mayor Schwartzman turned the meeting over to Mayor Patterson.

Mayor Patterson introduced the Solano Youth Theatre Teen Touring Company, who then performed a song.

ADMINISTRATION OF OATH OF OFFICE TO ELECTED OFFICIALS:

Vice Mayor Schwartzman administered the Oath of Office to City Clerk Lisa Wolfe.

Lisa Wolfe, City Clerk, administered the Oath of Office to Mayor Patterson, Council Member Campbell, Council Member Ioakimedes, and City Treasurer Teddie Bidou.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

REMARKS BY ELECTED OFFICIALS

Council Member Campbell thanked his friends, family, and the citizens of Benicia for their support.

Council Member Ioakimedes thanked his friends, family, and the citizens of Benicia for their support.

Mayor Patterson thanked her friends, family, and the citizens of Benicia for their support.

NOMINATION AND ELECTION OF MAYOR PRO TEM:

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council elected Council Member Campbell as Mayor Pro Tem, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Abstain: Vice Mayor Campbell

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:  
Three unexpired terms to September 30, 2010
- Open Government Commission:  
One full term to November 30, 2011

Mayor's Office Hours:

Mayor Patterson announced she would 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 746-4210 or by email [acardwell@ci.benicia.ca.us](mailto:acardwell@ci.benicia.ca.us).

APPOINTMENTS:

Resolution Approving Mayor's Appointments to Council Committees:

RESOLUTION 07-142 - A RESOLUTION CONFIRMING MAYOR'S

APPOINTMENTS OF MEMBERS OF THE CITY COUNCIL TO COMMITTEES

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:  
WRITTEN:

PUBLIC COMMENT:

1. J.B. Davis – Mr. Davis requested that with the 20% reserve, there were 865,208 reasons Council could declare an emergency and pay a bill.
2. Jeanine Seeds – Ms. Seeds discussed the issue of clean, open government and fair voting practices.
3. Jon Van Landschoot – Mr. Van Landschoot asked Council to consult its heart, head, and tummy when considering issues on behalf of the City of Benicia. He presented Council with gifts of chocolate.
4. Ryan Young - Mr. Young spoke in opposition to the recent closure of the skate park at Willow Glen Park.

Mayor Patterson asked Ms. McLaughlin to discuss how Mr. Young could appeal the closure of the skate park at Willow Glen Park. Ms. McLaughlin stated that one of the Council Members would have to request the item be brought back for discussion. The Council would then vote whether or not to bring the item back for discussion.

5. Sarah Roncowitz – Ms. Roncowitz spoke in opposition to the recent closure of the skate park at Willow Glen Park. There needs to be more activities for the youth in Benicia.
6. Joseph Lee – Mr. Lee spoke in opposition to the recent closure of the skate park at Willow Glen Park. He suggested that the City provide grant money that could be matched by private donations for the repairs required to fix the skate park.
7. Taylor Kennedy – Mr. Kennedy spoke in opposition to the recent closure of the skate park at Willow Glen Park.
8. Clara Lowell – Ms. Lowell stated that she had a petition signed by many people to keep the skate park at Willow Glen Park open.
9. Jennifer Davis – Ms. Davis suggested the City put up a gated fence to block the skate park at Willow Glen Park off from the street, as that is the only safety concern she has noticed at the park.
10. Susan Street – Ms. Street discussed engaging the youth in solving the problem of the closure of the skate park at Willow Glen Park.
11. Tony Shannon – Mr. Shannon discussed the closure of the skate park at Willow Glen Park and the rumor it would be turned into a dog park.
12. Bob Mutch – Mr. Mutch discussed the recent closure of the skate park at Willow Glen Park. He would like Council to reconsider its decision to close the skate park. He discussed Bus Route 21, which stops right in front of Matthew Turner. He would like the City to promote the route to get the word out that it is an option.
13. Joe Kearns – Mr. Kearns discussed the liability issues related to the skate park at Willow Glen Park. He discussed his concerns with the skaters.
14. Citizen – The citizen requested the City look into lighting at the X-Park. He discussed people's perception of skaters. He would like Council to reconsider closing the skate park.

15. Bonnie Silveria – Ms. Silveria discussed the recent closure of the skate park at Willow Glen Park. She discussed the impact the skate park has had on the surrounding neighbors.

Council Member Hughes discussed his concerns. He could not support bringing the item back for discussion.

Vice Mayor Campbell suggested forming a committee of the skaters, neighbors, etc. to try and work this issue out.

Mayor Patterson stated that at the next Council meeting, Council would agendaize clarification of the direction given to Staff with regards to the skate park at Willow Glen Park at the last Council meeting.

CONSENT CALENDAR:

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

(END OF CONSENT CALENDAR)

PUBLIC HEARINGS:

None

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

Mayor's Cultural Committee:

Mayor Patterson stated that the committee was intended to be an ad-hoc temporary committee that would report to Council about the nature and character of a cultural commission. The purpose of the ad-hoc committee would be to revisit the 1984 recommendation by Council on the need for a cultural commission. She would like this item to be on the next agenda.

Public Comment:

1. Paul Zill, member, Benicia Old Town Theatre Group – Mr. Zill discussed the possibility of developing a cultural arts center in Benicia.
2. Mary Eichbauer – Ms. Eichbauer expressed support for Mayor Patterson's proposal to have a cultural commission.
3. Marilyn Bardet – Ms. Bardet expressed support for Mayor Patterson's proposal to have a cultural commission.
4. Rick Ernst- Mr. Ernst expressed support for Mayor Patterson's proposal to have a cultural commission.
5. Bonnie Widell – Ms. Widell expressed support for Mayor Patterson's proposal to have a cultural commission.

# DRAFT

Council and Staff discussed the two-step process for Council Members requesting items to be placed on an agenda.

On motion of Vice Mayor Campbell, seconded by Council Member Ioakimedes, Council approved putting this issue on a future agenda, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

## COMMENTS FROM COUNCIL MEMBERS:

## ADJOURNMENT:

Mayor Patterson adjourned the meeting at 9:33 p.m.

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
DECEMBER 4, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 9:33 p.m. on Tuesday, December 4, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

OPPORTUNITY FOR PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Lisa Wolfe, City Clerk, read the announcement of Closed Session

CLOSED SESSION:

- A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Subdivision (a) of Government Code Section 54956.9)  
Name of case: Mendozo, et al. v. Whitehouse, et al.**
  
- B. CONFERENCE WITH LEGAL COUNSEL -EXISTING LITIGATION  
(Subdivision (a) of Government Code Section 54956.9)  
Name of case: City of Benicia v. Nationwide**

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 9:35 p.m.

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 18, 2007  
CONSENT CALENDAR**

**DATE** : December 7, 2007  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **ADOPTION OF THE 2008 CITY COUNCIL REGULAR MEETING  
CALENDAR**

**RECOMMENDATION:**

Adopt, by motion, the 2008 City Council Regular Meeting Calendar.

**EXECUTIVE SUMMARY:**

The proposed calendar lists the City Council's regular meeting dates for 2008.

**BACKGROUND:**

The Open Government Ordinance (Section 4.08.040 of Ordinance No. 05-6) states that each body established by ordinance shall establish and publish an annual schedule of regular meetings. Attached for review and adoption is the 2008 City Council Regular Meeting Calendar.

As reflected on the attached calendar, it is recommended that the first regular meeting in August be cancelled. In previous years, a City Council meeting has been cancelled during the summer months as business to be addressed is typically lighter during this time of year and residents are more likely to be out of town on vacation. It also provides both Council and staff an opportunity to make vacation plans accordingly, if they wish, as well as giving staff an extra few weeks prior to the next Council meeting to address various projects.

Attachment:

- 2008 City Council Regular Meeting Calendar

**2008 CITY COUNCIL  
REGULAR MEETING CALENDAR**



## 2008 City Council Regular Meeting Calendar

All meetings are on a Tuesday beginning at 7:00 p.m. in the Council Chambers at City Hall, unless otherwise noted.

This schedule does not include special City Council meetings, including study sessions. For information on upcoming special meetings, please visit the City's website at [www.ci.benicia.ca.us](http://www.ci.benicia.ca.us) or contact the City Manager's Office at (707) 746-4210.

### January

- January 1<sup>st</sup> – Holiday – No meeting
- January 15<sup>th</sup>

### February

- February 5<sup>th</sup>
- February 19<sup>th</sup>

### March

- March 4<sup>th</sup>
- March 18<sup>th</sup>

### April

- April 1<sup>st</sup>
- April 15<sup>th</sup>

### May

- May 6<sup>th</sup>
- May 20<sup>th</sup>

June

- June 3<sup>rd</sup>
- June 17<sup>th</sup>

July

- July 2<sup>nd</sup>
- July 16<sup>th</sup>

August

- August 5<sup>th</sup> – No Council Meeting
- August 19<sup>th</sup>

September

- September 2<sup>nd</sup>
- September 16<sup>th</sup>

October

- October 7<sup>th</sup>
- October 21<sup>st</sup>

November

- November 4<sup>th</sup>
- November 18<sup>th</sup>

December

- December 2<sup>nd</sup>
- December 16<sup>th</sup>

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 18, 2007  
CONSENT CALENDAR**

**DATE** : December 4, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works  
**SUBJECT** : **APPROVAL OF CONSULTANT CONTRACT FOR THE BHS  
TRAFFIC SIGNAL AND ENTRANCE CIRCULATION  
IMPROVEMENT PROJECT**

**RECOMMENDATION:**

Adopt the resolution approving a consultant agreement in the amount of \$86,000 with Fehr and Peers for professional engineering services for the Benicia High School Traffic Signal and Entrance Circulation Improvement project and authorizing the City Manager to execute an agreement on behalf of the City.

**EXECUTIVE SUMMARY:**

The City Council approved as part of the FY 2007–2009 budget process a project to address problems of vehicle and pedestrian congestion and the need for traffic calming on Military West at Benicia High School. The Public Works Department recommends awarding a consultant agreement in the amount of \$86,000 to Fehr and Peers for preparation of the conceptual and final design. The project is planned to be substantially constructed during the 2009 summer school break.

**BUDGET INFORMATION:**

The adopted FY 2007–2009 municipal budget includes \$400,000 in funding for design and construction of the project. There are adequate funds in the Traffic Mitigation Fund for the consultant agreement.

Project Revenues

Adopted FY 2007–2009 Budget (Account No. 034-8705-9765).....\$400,000

Proposed Expenditures

Design Services (This Request) .....\$86,000  
Construction including Construction Management and Contingency .....\$314,000  
Total Estimated Expenditures .....\$400,000

## **SUMMARY:**

After receiving supportive and positive input from members of the public including students from Benicia High School, the City Council approved as part of the FY 2007–2009 budget process a project to address problems of vehicle and pedestrian congestion and the need for traffic calming on Military West at Benicia High School. The Public Works Department is now proceeding with the conceptual and final design phases of the project and accordingly, a request for proposal for professional engineering services was sent to ten qualified consultant firms in accordance with City policy. Two proposals were received and evaluated by the Public Works Department.

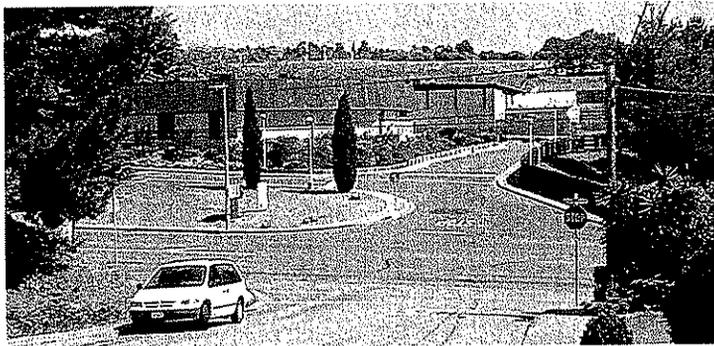
After careful consideration, Fehr and Peers was ranked as the most qualified based on their experience on similar Bay area (including Benicia) signal improvement and traffic calming projects and their demonstrated strength guiding and facilitating the public involvement process.

Two consultant agreements are planned: The first (this request) will be for Tasks 1 through 4. Staff recommends including a \$5,610 contingency to be included with the consultant agreement for additional public meetings and technical studies that may be needed during the design phase. Awarding Task 5-Construction Management and Inspection services to this consultant will be considered based on their ability and satisfactory performance during the design process. This may be brought to the City Council along with the construction contract award in early spring 2009.

It is therefore recommended to enter into a consultant agreement with Fehr and Peers for Tasks 1 through 4 and 6 in the amount of \$86,000.

## **BACKGROUND:**

The Benicia High School Traffic Signal and Entrance Circulation Improvement project consists of features intended to accommodate ingress/egress activities, reduce vehicle and pedestrian conflicts, and manage congestion during the morning drop-off, lunchtime, and afternoon pick-up



of students. The project will incorporate traffic calming ideas from the Benicia Traffic, Pedestrian and Bicycle Safety Committee (TPBS), the Benicia Safe Routes to School (SR2S) Plan, the Solano Transportation Authority Countywide SR2S Plan, and the Benicia Traffic Calming Program. Significant public input and outreach is expected to be gathered from the

school district, students, parents, and surrounding neighborhoods. This project will also be an opportunity to create a landscaped, campus-oriented linear gateway adjacent to Benicia High School. Many of the possible solutions to the identified congestion and traffic problems are shown in Figure 1 (following page).

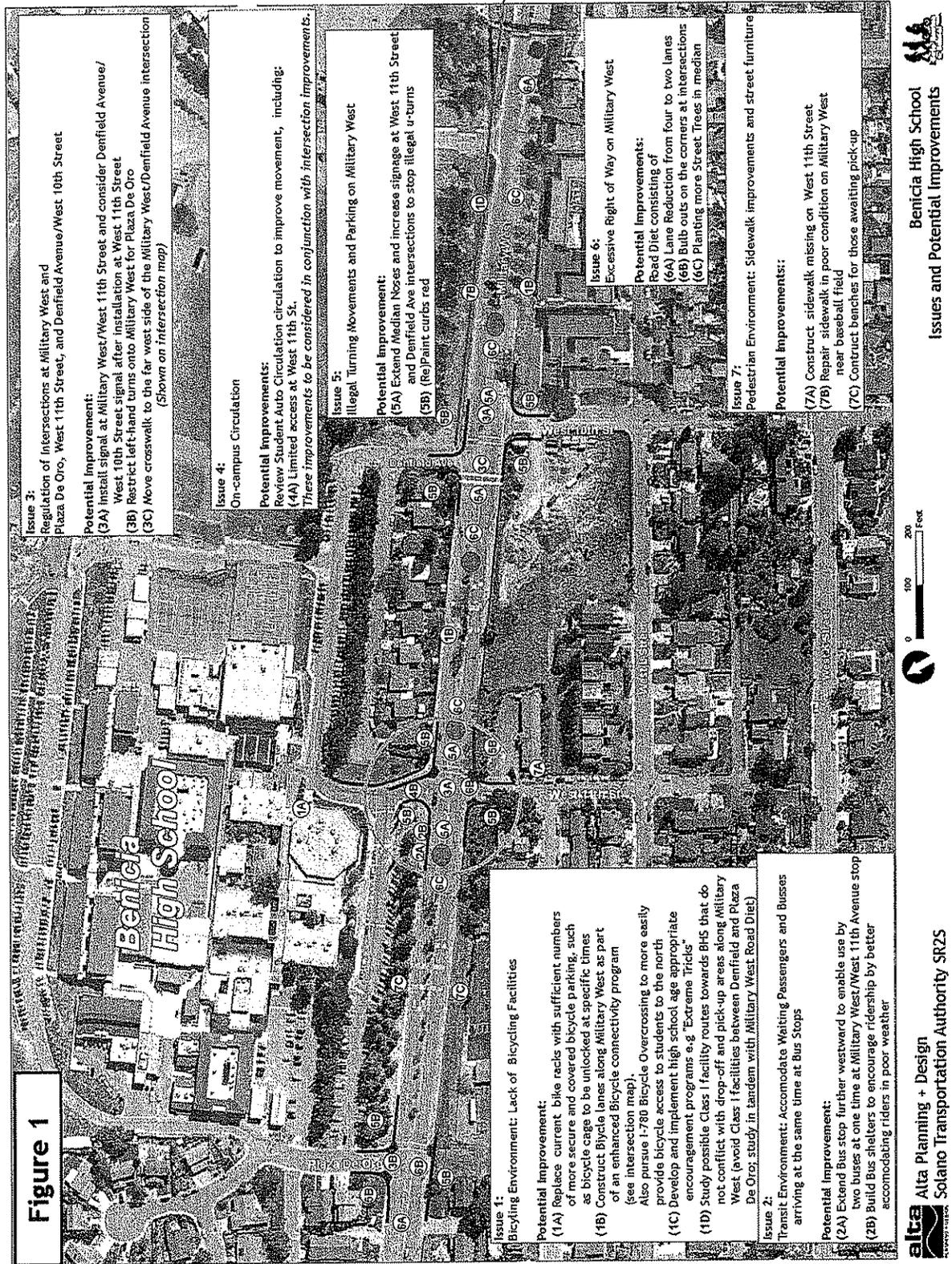


Figure 1—Identified Issues and Potential Solutions

The consultant team will be integrating the ideas, recommendations and solutions proposed by the various stakeholder groups into a cohesive set of plans and specifications that can be substantially constructed during the 2009 summer break. They will be addressing many key project issues such as:

- Investigating affects of proposed traffic calming measures on Military West, West K Street, and neighborhood streets.
- Identifying problems, concerns, options, and solutions related to implementing congestion management and traffic calming measures.
- Compiling public input into conceptual plans for review by city and school district officials and other stakeholders.
- Determining if the conceptual plan can be accomplished within the current budget or if phasing and/or additional funding is needed.
- Preparing plans, specifications, and cost estimates.
- Providing project management, advertisement, and bid phase services.

The first public involvement session is scheduled for the January 17, 2008, TPBS Committee meeting. Four to six more sessions will be conducted through the end of the school year after which the finalized conceptual design will be presented to the School Board/City Council Liaison Committee and the TPBS Committee for review. Final design work will commence shortly thereafter and should be completed by March 2009 with construction commencing in May 2009.

Attachments:

- Proposed Resolution
- Consultant Agreement with Scope of Work

DS/MT:kt

cc: City Attorney  
City Engineer

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
APPROVING A CONSULTANT AGREEMENT IN THE AMOUNT OF \$86,000  
WITH FEHR AND PEERS FOR PROFESSIONAL ENGINEERING SERVICES  
FOR BENICIA HIGH SCHOOL TRAFFIC SIGNAL AND ENTRANCE  
CIRCULATION IMPROVEMENT PROJECT AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE AN AGREEMENT ON BEHALF OF THE CITY**

**WHEREAS**, the City Council approved as part of the FY 2007–2009 budget a project to address problems of vehicle and pedestrian congestion and the need for traffic calming on Military West at Benicia High School; and

**WHEREAS**, a professional engineering firm is needed to lead the public involvement process and prepare conceptual and final plans, specifications, and cost estimates that can be used to advertise for bidding and construction purposes; and

**WHEREAS**, Fehr and Peers, in accordance with the City’s consultant selection procedures, was determined to be the top-ranked firm with the knowledge, skill, and ability to provide the required public involvement and professional engineering services for the project.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia approves a consultant agreement in the amount of \$86,000 with Fehr and Peers for professional engineering services for the Benicia High School Traffic Signal and Entrance Circulation Improvement project and authorizes the City Manager to execute an agreement on behalf of the City.

\* \* \* \* \*

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 18<sup>th</sup> day of December 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

# Consultant Agreement with Scope of Work

## CONSULTANT AGREEMENT

This agreement ("Agreement") entered into \_\_\_\_\_, 200\_\_, is between the City of Benicia, a municipal corporation (hereinafter "CITY"), and Fehr & Peers, a California corporation, with its primary office located at 332 Pine Street, 4th Floor, San Francisco, California (hereinafter "CONSULTANT") (collectively, "the Parties").

### RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain professional services for Benicia High School Traffic Signal and Entrance Circulation Improvement Project. The scope of work for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

WHEREAS, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

### AGREEMENT

1. INCORPORATION OF RECITALS. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE.

(a) Services to be Furnished. Subject to such policy direction and approvals as CITY through its staff may determine from time to time, CONSULTANT shall perform the services set forth in the Task Order labeled Exhibit A, which is attached hereto and incorporated herein by reference.

(b) Schedule for Performance. CONSULTANT shall perform the services identified in Exhibit A according to the completion schedule included in Exhibit A and as expeditiously as is consistent with generally accepted standards of professional skill and care, and the orderly progress of work.

(i) CONSULTANT and CITY agree that the completion schedule in Exhibit

A represents the best estimate of the schedule. CONSULTANT shall comply with completion dates noted in Exhibit A unless a written waiver is granted by the CITY's project manager.

(ii) CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT'S field of expertise. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT'S activities under this Agreement shall be performed to the full satisfaction and approval of the Director of Public Works.

(d) Compliance With Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Benicia business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by CITY. CITY is not responsible or liable for CONSULTANT'S failure to comply with any or all of the requirements contained in this paragraph.

### 3. COMPENSATION.

(a) Schedule of Payment. The compensation to be paid by CITY to CONSULTANT for the services rendered hereunder shall be on a time and materials basis based upon the rate schedule in Exhibit B attached hereto and hereby incorporated by reference.

The rate schedule in Exhibit B itemizes those standard and expected expenses for which CONSULTANT shall receive compensation. If CONSULTANT obtains CITY'S prior written approval from the Director of Public Works, CONSULTANT may be reimbursed for extraordinary costs incurred on the Project.

(b) Additional Services. CITY shall make no payment to CONSULTANT for any

additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the City Council can act on behalf of CITY to authorize CONSULTANT to perform additional services.

(ii) CONSULTANT shall not commence any work or services exceeding the Scope of Services in Section 2 without prior written authorization from CITY in accordance with Section 7. CONSULTANT'S failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work CITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify CITY of this fact before commencing the work. CITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If CITY finds that such work does constitute additional services, CITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

(c) Invoicing and Payment. CONSULTANT shall submit monthly invoices for the services performed under this Agreement during the preceding period. Invoices or billings must be submitted in duplicate and must indicate the hours actually worked by each classification and employee name, as well as all other directly related costs by line item in accordance with Exhibit B. CITY shall approve or disapprove said invoice or billing within thirty (30) days following receipt thereof and shall pay all approved invoices and billings within thirty (30) days. Interest at the rate of one and one-half (1.5) percent per month will be charged on all past due amounts starting thirty (30) days after the invoice date, unless not permitted by law, in which case interest will be charged at the highest amount permitted by law. Payments will be credited first to interest, and then to principal.

4. PRODUCT REVIEW AND COMMENT. CONSULTANT shall provide CITY with at least two (2) copies of each product described in Exhibit A. Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review

and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT. This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until completed, amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION:

(a) CITY shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CONSULTANT written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, addressed to CONSULTANT at the address indicated in Section 11.

(b) If CITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, Photostatting, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof;

(iii) CITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, subject to the limitations prescribed by Section 3 of this Agreement, less any compensation to CITY for damages suffered as a result of CONSULTANT'S failure to comply with the terms of this Agreement. Such payment shall be in accordance with Exhibit B. However, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT'S services which are of benefit to CITY.



Benicia, CA 94510

If to CONSULTANT: Fehr & Peers  
332 Pine Street, 4th Floor  
San Francisco, California 94104  
Attn: Matthew Ridgeway, Principal

12. OWNERSHIP OF MATERIALS. CITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of CITY, CONSULTANT shall deliver to CITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without CITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING.

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by CITY without CITY's prior express written consent.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of CITY. Any attempted assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of CITY. If CITY consents to CONSULTANT'S hiring of subcontractors, CONSULTANT shall provide to CITY copies of each and every subcontract prior to its execution. All subcontractors are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT. This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of CITY and CONSULTANT in the same manner as if they were expressly named herein.

15. WAIVER.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION.

(a) Consultant 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, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S 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. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY. CONSULTANT specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement, however caused, regardless of any negligence of the CITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the CITY. The CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees.

18. INSURANCE.

(a) Required Coverage. CONSULTANT, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only CONSULTANT, but also, with the exception of workers' compensation and employer's liability insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

<u>Policy</u>	<u>Minimum Limits of Coverage</u>
(i) Workers' Compensation	Statutory
(ii) Comprehensive Automobile Insurance Services Office, form #CA 0001 (Ed 1/87) covering auto liability code 1 (any auto)	Bodily Injury/Property Damage \$1,000,000 each accident
(iii) General Liability Insurance Services Office Commercial	\$1,000,000 per occurrence. If Commercial General Liability

General Liability coverage on an occurrence basis (occurrence form CG 0001)	Insurance or other form with a general aggregate limit shall apply separately to this Project/ location, the general aggregate limit shall be twice the required occurrence limit
(iv) Errors and Omissions/ Professionals' Liability, errors and omissions liability insurance appropriate to the CONSULTANT'S profession.	Generally \$1,000,000 per occurrence

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to this Project, the CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after giving CITY 30 days' prior written notice by certified mail, return receipt requested.

(d) Acceptability of Insurers. CONSULTANT shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless CONSULTANT requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. CONSULTANT must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by CONSULTANT'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

#### 19. WORKERS' COMPENSATION.

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT'S insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT'S workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

20. FINANCIAL RECORDS. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. CITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST. CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement. CONSULTANT shall immediately notify CITY of any and all violations of this Section upon becoming aware of such violation.

22. TIME OF THE ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County.

25. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. INTEGRATION. This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.

[SIGNATURES ON FOLLOWING PAGE]

Executed by CITY and CONSULTANT on the date shown next to their respective signatures. The effective date of this Agreement shall be the date of execution by the CITY as shown below.

FEHR & PEERS

CITY OF BENICIA

BY: \_\_\_\_\_  
DATED:

BY: \_\_\_\_\_  
DATED:

RECOMMENDED FOR APPROVAL

\_\_\_\_\_  
Director of Public Works

APPROVED AS TO FORM

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

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06/30/03

**EXHIBIT A  
TASK ORDER NO. 1  
FEHR & PEERS  
BHS TRAFFIC SIGNAL AND ENTRANCE CIRCULATION IMPROVEMENT  
PROJECT —  
PROFESSIONAL ENGINEERING SERVICES**

1. Purpose

The purpose of this TASK ORDER is to authorize and direct CONSULTANT to proceed with the work specified in Item 2 of this TASK ORDER, in accordance with the provisions of Section 2 of the Specific Provisions of that AGREEMENT between the parties hereto dated \_\_\_\_\_.

2. Scope of Work

The work authorized by this TASK ORDER is outlined in the "Scope of Services" attached hereto as Attachment No. 1. This TASK ORDER applies solely to Tasks 1 through 4 of the Fehr & Peers scope of work.

3. Time of Performance

The work authorized by this TASK ORDER shall commence upon execution by both parties and shall be prosecuted diligently to completion.

4. Compensation and Payment

Compensation shall be on a specific rate of compensation basis as provided in Section 3 of the Specific Provisions of that AGREEMENT between the parties hereto dated \_\_\_\_\_. The cost of the work authorized by this TASK ORDER is a lump sum fee of \$86,000 including a contingency amount of \$5,610 to be used when authorized by the City. Payment shall be in accordance with Section 3 of the aforementioned AGREEMENT.

5. Effective Date

This TASK ORDER shall become effective immediately upon its execution by both parties.

6. Items and Conditions

All items and conditions contained in the AGREEMENT for Professional Engineering Services dated \_\_\_\_\_, between the City of Benicia and Fehr & Peers are incorporated herein by reference.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**CITY OF BENICIA**

**FEHR & PEERS**

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

By: \_\_\_\_\_  
Matthew Ridgeway  
Principal

**VII-C-20**

*Proposed for*

# **Benicia High School Traffic Signal and Entrance Circulation Improvement Project**



ATTACHMENT 1 TO CONSULTANT  
AGREEMENT



**FEHR & PEERS**  
TRANSPORTATION CONSULTANTS

*332 Pine Street, 4th Floor  
San Francisco, CA*

*Proposal P-7664-SF*

*November 8, 2007*

**VII-C-21**

# APPROACH

## PROJECT UNDERSTANDING AND APPROACH

### **Approach**

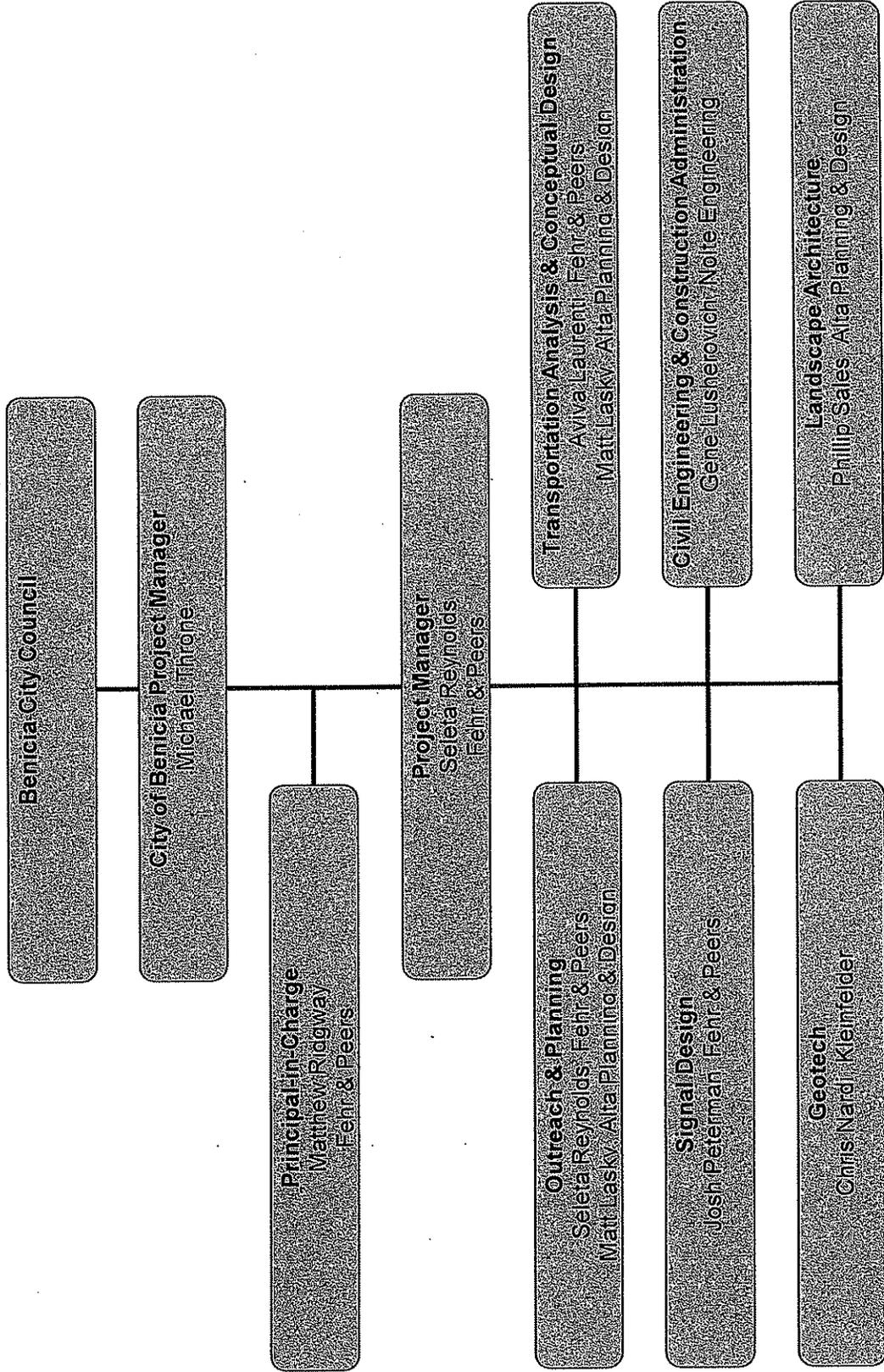
As the work program includes an outreach and scoping effort at the outset, it is still unclear what the ultimate project description will be. As such, the scope and fee assumes that the team will be designing a signal and associated improvements. However, in anticipation that the design may evolve, the team composition includes landscape architects, traffic and civil engineers, and geotechnical services. The Fehr & Peers – Nolte team's approach includes:

- *Focus on consensus-building:* A key aspect of the scoping process is to create a proposal with widespread support from the community. Given the nature of Military West, the ultimate project has the potential to impact the entire community in a positive way, and well-run public outreach will be the key to its short and long-term success. The transportation issues surrounding the High School are varied – they touch all aspects of the three E's laid out in the Traffic Calming Program: Education, Enforcement, and Engineering. The ultimate project should include each of these aspects. The Fehr & Peers team has conducted successful neighborhood traffic calming meetings as well as larger, community meetings in Benicia as well as many other communities, and our approach to the scoping process draws on tools that have worked in the past, such as clear, easy-to-understand presentations that rely heavily on photos, active engagement strategies such as walkabouts and dot-exercises, and charrette-style sessions where participants design and present their own solutions.
- *Conducting solid analysis and communicating results effectively:* The community has long engaged the TPBSC and the City Council in a dialogue about issues and solutions related to walkability, livability, and circulation in the neighborhoods surrounding Benicia High School and at the school itself. However, as an observer of TPBSC meetings, a noted lack of data has typified this dialogue. It will be important to acknowledge the issues already raised by the community while sharing information about their true nature. Analyzing the results of constructing a signal or implementing a road diet are critical to the conversation. Communicating these in an accessible way is essential to the project's success. Fehr & Peers is a leader in this area. Our approach to the analysis includes a simulation of Military West so that the community can watch what happens in real time when a road diet or new signal is constructed, rather than a static review of Level of Service or queuing.
- *Enabling grant-competitive projects:* Although the City has funding identified for the first phase of the project, which will likely consist of a signal and other improvements, the ultimate project may encompass elements to improve pedestrian safety and overall circulation around the school which are unfunded. Fehr & Peers has a long track record of successful grant writing, which will enable us to advise the City about the best way to phase the final project in order to leverage outside funds.
- *Excellent Design and Construction Administration Services:* A key benefit of the Fehr & Peers team is our streamlined approach to the project. Our internal expertise allows us to offer planning, outreach, analysis, and signal design services. We have a long track record of efficiently-designed projects, and our partner, Nolte Engineering supplements the team with Civil Engineering, surveying, and construction administration services.

### **Description of Organization, Management, and Team Members**

The organization chart on the next page identifies key team members for major tasks, followed by bio sketches for each one. In general, Fehr & Peers will lead the outreach, analysis, and signal design. Nolte Engineering will lead the civil engineering tasks, surveying, and construction administration. Alta Planning & Design supplements Fehr & Peers' Safe Routes to School experience and adds landscape architecture expertise. Finally, Kleinfelder provides geotechnical services, as needed.

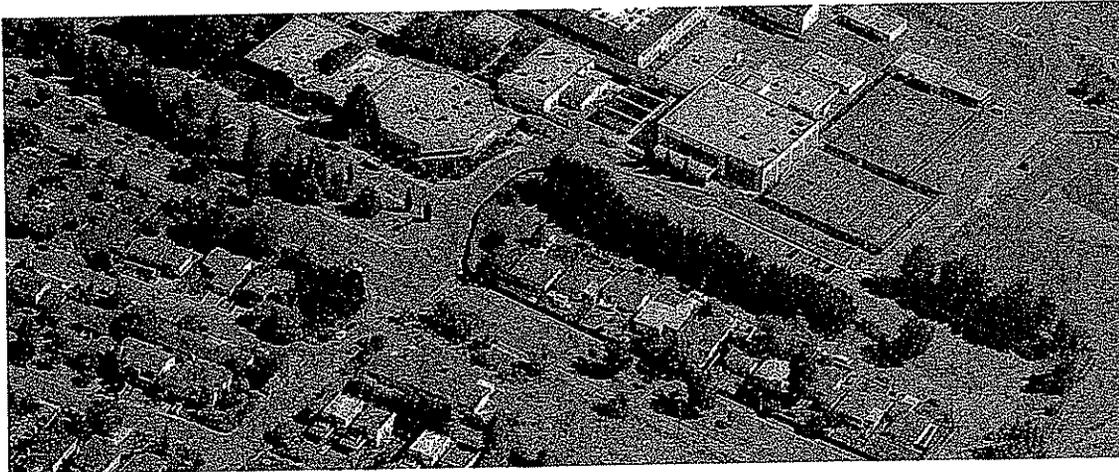
**ORGANIZATION CHART**



Proposal for Benicia High School Traffic Signal and Entrance Circulation Project. Fehr & Peers

# SCOPE OF WORK

## WORK PROGRAM



The following work program encompasses the tasks outlined in the RFP. In addition to providing a description of the work to be performed and deliverables for each task, the scope also identifies which individuals will lead each task.

### Task 1.1 – Develop Detailed Work Program and Schedule

Seleta Reynolds will lead this task. In consultation with City of Benicia staff, the consultant will develop a Draft detailed work program with a refined scope, tasks, work products and schedule. The program will include detailed methodologies (e.g. for prioritizing project lists), sequences of tasks, subtasks, and milestones. It will also identify target dates for completing tasks and deliverables.

The consultant will meet with City staff to review the Draft work plan, schedule, and outreach program. Changes to the Draft Workplan will be made based on comments received and a Final Detailed Scope of Work, Schedule, and Outreach Program will be published.

#### *Deliverables:*

- Draft Detailed Scope of Work, Schedule, and Outreach Program
- Final Detailed Scope of Work, Schedule, and Outreach Program

### Task 1.2—Collect and Evaluate Baseline Data

Seleta Reynolds will lead this task, with assistance from Alta Planning. We will collect data in four main categories:

- Traffic counts at Military West/Southampton, Military West/West 11<sup>th</sup> Street, and Military West/West 9<sup>th</sup> Street Pedestrian Bridge during the AM, PM, and midday peaks, as well as one 24-hour hose count along Military West and one along West K Street
- Pedestrian counts at Military West/West 11<sup>th</sup> Street during the AM, PM, and midday peaks and photos of existing conditions for pedestrians, bicyclists, and motorists
- Travel time surveys along Military West and West K Street

## SCOPE OF WORK

- Collision records for the Military West between Southampton and the West 9<sup>th</sup> Street Ped Bridge

This data will assist us during the public outreach and options analysis tasks. Additionally, we will create an "issues" board that will summarize the issues collected during the recent Safe Routes to School planning. We will summarize the data on aerials and submit to the City for review. We will also create a series of annotated photos illustrating various issues. While aerials are intuitive for some, they are confusing to others. Presenting the data in two ways will help clarify it for a larger audience.

*Deliverables:*

- Data collection and issues summaries overlaid on aerials, accompanied by annotated photos

### Task 1.3 – Initial Public Meetings

The consultant team will prepare outreach materials—including maps, handouts, questionnaires, and meeting notices—for the series of meetings listed below. The scope assumes that the City of Benicia will publicize the meetings specified in this task. The Fehr & Peers team could create a "Main Street" project web site to allow for open and/or member-only access to project news; documents, maps, and calendars. This could help facilitate announcements, updates, and feedback on the Plan. As described under letter "b," there could be an alternate approach to public outreach than the one described in the RFP:

a) **City Staff.** We will share the information gathered as part of Task 1 and take staff on a "virtual tour" of the site. Given the high degree of familiarity that staff has with the corridor, a walking audit is not expected. Rather, we would like to use this opportunity to review all the issues and solutions from staff's perspective and brainstorm with staff about new solutions and desired outcome of the remaining meetings. We expect that the meeting could be broken into three groups: one to critique the issues and existing conditions maps; one to provide feedback on solutions provided to date; and one to brainstorm new solutions, including education and enforcement.

b) **Benicia High School Stakeholders.** The stakeholders include staff from the Benicia Unified School District and Benicia High School, students, and parents. The RFQ envisions two half-day charrettes with this group and separate meetings with the TPBSC and other groups. This is a good approach; however, a dialogue between the school and the community could strengthen the outreach process. Another approach would be to conduct the initial half-day charrette with the school, TPBSC and other interested community members in order to take a walking audit, identify issues, and brainstorm solutions. In the interim, the team would analyze solutions that have impacts to circulation, described in Task 4. The second half-day charrette would be composed of a smaller group with representatives from the various stakeholders to refine solutions, which could then be presented to the TPBSC. There are other options as well, which would be discussed and refined with the City as part of the first task.

c) **Other Stakeholders.** The scope assumes at least one meeting with neighbors on West K Street, and two additional meetings, to be used at the City's discretion.

Key outcomes of this task include identifying goals for the project, current issues, and a set of alternatives for analysis.

*Deliverables:*

- Meeting summaries for each public meeting, including updated Issues and Solutions graphics
- Main Street website

# SCOPE OF WORK

## Task 1.4 – Transportation Analysis

Aviva Laurènti will lead this task. In the RFP, this task occurs when the opportunity for public comment is complete. Another approach would be to conduct the analysis following the initial set of community meetings, so that community members have an opportunity to review the results and be better incorporated into the selection of the preferred alternative. Fehr & Peers will analyze up to three alternatives that would have major impacts on traffic circulation. We anticipate that one of these will involve a signal at the entrance to Benicia High School; one could involve a "road diet," or lane reduction, and one could involve both a road diet and signal. As part of this task, we will provide a comparison of travel times on Military West and West K Street, in order to determine how much, if any, additional traffic might divert to West K Street based upon the project on Military West. This information will be essential to the selection of the preferred alternative, and as a result, the project description may include elements on West K Street from the Traffic Calming Program, such as speed tables, traffic circles, or chicanes in order to keep traffic volumes down on West K Street.

### *Deliverables:*

- Simulation of up to three improvement alternatives

## Task 1.5 – Scoping Scrapbook and Preferred Plan

Fehr & Peers will lead this task, with assistance from Alta Planning & Design. The goal is to synthesize the input collected in Tasks 1-4 in a "scrapbook" that will present the alternatives considered and the preferred alternative. This intent of the scrapbook is to present a narrative of the process to the TPBSC and City Council to enable them to approve a project for design and construction.

### *Deliverables:*

- Scoping scrapbook, as hard copy and PDF, with aerials of alternatives; annotated photos; narrative description of the process to date; education, policy, and enforcement recommendations; and analysis results
- Preferred alternative

## Task 1.6 – Conceptual Design

Fehr & Peers will lead this task. Following Task 5, we will convert the preferred alternative into a concept design, with sufficient detail to estimate construction costs and move to 35% design. We will also refine education and enforcement recommendations, as well as recommendations for traffic calming on auxiliary streets, including West K Street. This task also includes a meeting with City staff to discuss the design scope and phasing of the project.

### *Deliverables:*

- Six copies of the Conceptual Design Report, which includes cost estimate and phasing plan, if applicable, traffic calming plans for auxiliary streets, and a description of the selection process
- One original strip map mounted on foam board
- Four color copies of strip map and one PDF version

## SCOPE OF WORK

### **Optional Task: Benicia High School Residential Permit Parking Plan**

If Benicia elects to proceed with the RPP Program developed in Task 2, Fehr & Peers will initiate the use of the program by developing a permit parking plan for the neighborhood surrounding Benicia High School. Field surveys of existing conditions in the neighborhoods surrounding Benicia High School will be conducted to determine the approximate number of students parking in those areas, the duration of their stay, and the occupancy rates for on-street parking in the neighborhoods. The survey will last from one hour before the beginning of school through the end of the school day and will cover the area bounded by Benicia High School, West K Street, West 9<sup>th</sup> Street, and West 13<sup>th</sup> Street. The estimated time for the survey is eight hours for four staff members.

Once we have an understanding of existing conditions, we can determine the extent of the program. Critical components of the RPP Program will be addressed: which streets will it affect? What will be the duration of parking for non-permit holders? How many residents will actually buy into the program?

As part of this task, we will also identify potential alternative solutions. For instance, is there a way to provide incentives for students to park along more appropriate streets, such as Military? Are there other solutions, such as installing metered parking on certain neighborhood streets that could discourage students from parking along these streets? Is there a solution that will involve a change in school policy pertaining to on-campus parking?

The Residential Permit Parking Plan for the neighborhood surrounding Benicia High School will be summarized and presented to City Staff.

*The cost for the optional task is \$15,000. It is not included in the attached fee.*

### **Optional Task – Geotechnical Investigation and Construction Support**

Chris Nardi at Kleinfelder will lead this task. We propose exploring the subsurface conditions between Southampton Road and Mary Farnar Drive by using conventional truck-mounted drilling equipment. Approximately six test borings will be completed to evaluate soils conditions for signal base installation, trenching and pavement construction. Boring depths will be in the range of five to ten feet below existing grade. Representative soil samples will be obtained for laboratory testing. An engineer/geologist from our firm will supervise the field exploration operations and maintain logs of the materials encountered within the test borings. We have assumed that the pavement is asphalt concrete that can be drilled, and that no concrete coring will be required. The borings will be backfilled with drill cuttings at the completion of sampling and monitoring. The pavement surfacing will be replaced with asphalt concrete cold patch material.

At the conclusion of our field exploration program, we will transport the samples to our Fairfield laboratory for testing. The purpose of this testing program will be to determine certain strength and compression/expansion properties of the native soils. Tests that may be performed include moisture content, dry unit weight, unconfined compressive strength, gradation/hydrometer analyses, and Atterberg limits tests. Selected samples will also be tested for corrosivity (pH, electrical resistivity, water-soluble sulfates, and water-soluble chlorides). These test results may be used by a qualified corrosion engineer in designing an appropriate corrosion control plan for the project. The tests selected and the frequency of testing will be based on the subsurface conditions actually encountered. Results of our field explorations, laboratory testing, and engineering analyses will be summarized in a final report for the alignments containing the following:

- A description of the proposed project
- A description of the surface and subsurface soil conditions encountered during our field investigation
- A description of the site geologic setting and possible, associated geology-related
- hazards

## SCOPE OF WORK

- A brief discussion of the corrosion potential of the near-surface soils encountered during our field exploration based on laboratory corrosivity tests performed. Kleinfelder does not practice corrosion engineering and, therefore, detailed analysis of corrosion test results is not included in this proposal.
- Recommendations related to the geotechnical aspects of:
  1. Site preparation and engineered fill
  2. Design parameters for temporary excavations, shoring, and trench backfill
  3. Discussion of temporary dewatering systems, if warranted
  4. Uniform Building Code (UBC) seismic site coefficients for use in structural analysis of lateral loads
  5. Lateral earth pressures for below-grade structures
  6. Recommendations for pavement reconstruction
  7. Appendices that will include a summary of the field investigation and laboratory testing programs.

### Meetings and Construction Support

We anticipate attending two meetings with you during the course of this project. The purpose of these meetings will be to discuss the coordination of our proposed field explorations, subsurface conditions encountered with respect to the proposed project and any conclusions and/or recommendations presented by Kleinfelder.

We have included a total of 35 hours for limited support during construction, including review of plans and specifications and shoring plans, two engineer site visits (2 hours each) and ten technician trips (2 hours each). Our actual level of effort should be reviewed once the design is complete to assess that this level of effort is appropriate.

*The cost for this optional task is \$19,500, which includes \$5,000 for construction support. It is not included in the attached fee.*

### **Task 2.1 – 35% Design**

This task assumes that Fehr & Peers will provide traffic engineering design services for the installation of a new traffic signal and intersection safety lighting at the intersection of Military West Street and West 11<sup>th</sup> Street. Josh Peterman will lead this task. This scope of work assumes the following:

- Existing roadway lighting on Military West St will be retained, and other than intersection lighting, no additional lighting will be required;
- The electrical service for the traffic signals will be coordinated by Fehr & Peers through application to PG&E. Others will be responsible for the payment of permit fees;
- Traffic signal interconnect will not be required;
- Traffic signal timing plans will be prepared by others (note Fehr & Peers can provide these additional service upon authorization by the City)
- The plans will be reviewed by the City of Benicia;
- Plans will be prepared in AutoCAD format, in English units.

Under this task, we will prepare 35% traffic signal design documents based on the Conceptual Design Report. We will attend a design "kick-off" meeting to discuss issues relevant to the PS&E work. Information necessary for design, that has not already been collected, will be collected from the City at this time. This includes roadway as-builts, historical engineering drawings, utility drawings and utility contacts. It is anticipated that other participants at this meeting will include City of Benicia and Solano Transportation Authority.

# SCOPE OF WORK

## Data Collection

- Nolte will conduct a topographic survey of the intersection extending a minimum of 250 feet in each direction. Information on the survey will include existing roadway geometrics, right-of-way, curbs, gutters, medians, sidewalks, ramps, drainage, and utilities. The survey will locate above-ground utilities. Where overhead utilities are in potential conflict with traffic signal poles, the overhead lines will be surveyed for horizontal and vertical location.
- A detailed field review of the project area will be conducted. Locations and confirmation of existing roadway elements pertinent to our design will be noted.
- We will contact owners of local utilities (e.g. PG&E, Comcast, AT&T, City Water) to determine approximate locations of utilities. Where potential conflicts are found, we will arrange for potholes to be dug (as an additional service).

Fehr & Peers will prepare traffic signal plans depicting key elements of the traffic signal design. This includes phasing, controller/service location, detection, pole type and location, as well as the appropriate signing and striping. We will prepare striping plans to accommodate left-turn and right-turn storage requirements, intersection lane allocation, and taper requirements.

## Plan Sheets Maximum Number of Sheets

Signal Installation at 1:20 scale	2
Signing and Striping at 1:40 scale	1

*Meetings: Up to two (2)*

*Deliverables: Six sets of plans (A-size)*

## **Task 3 – 100 % Design**

### **Task 3.1 – 65% Design**

Based on comments received on the 35% submittal, PS&E will be more fully developed for each project element. Written responses to comments on the 35% submittal will be prepared.

- 35% PS&E Review: Review comments on the 35% plans from the City of Benicia and STA. Fehr & Peers will attend one meeting to review the comments, if necessary.
- 65% Submittal: Develop PS&E showing principal design elements. Plans will include details such as equipment type, conduit/conductor schedules, and service points.

## Plan Sheets Maximum Number of Sheets

General Notes & Abbreviations	1
Project Notes	1
Signal Installation at 1:20 scale	2
Signing and Striping at 1:40 scale	1
Details	1
	(6 Total)



## SCOPE OF WORK

- **Electrical Service:** Fehr & Peers will work with PG&E to identify service points. We will submit a formal application to PG&E for the traffic signal, identifying load requirements. It is assumed that the City will pay any Engineering fees charged by PG&E.
- **Special Provisions:** Prepare draft technical special provisions for each project element ork per City of Benecia and Caltrans' special provisions (referencing its May 2006 Standard Specifications).
- **Construction Cost Estimate:** Prepare preliminary estimate of construction costs for each element..

### *Deliverables:*

- Six sets of D-size plans
- Electrical load calculations
- Draft technical special provisions
- Engineer's estimate of construction costs

### **Task 3.2 – 90% PS&E**

- **90% PS&E Review:** Attend one meeting to review all comments on the 65% submittal. Prepare and submit written responses to these comments.
- **90% PS&E:** Prepare the 90% PS&E submittal incorporating comments from 65% Submittal.
- **Quality Control:** During the preparation of the 90% submittal, a registered engineer will conduct an independent review of the PS&E.

### *Deliverables:*

- Six sets of D-size project plans
- One reproducible set of technical special provisions
- Engineer's estimate of construction costs
- Written response to 65% submittal comments

### **Task 3.3 – Final (100%) PS&E**

- **90% PS&E Review:** Attend one meeting to review all comments on the 100% submittal. Prepare and submit written responses to these comments.
- **Final PS&E:** Prepare the final PS&E submittal incorporating pertinent comments from 90% Submittal. A registered engineer will sign all final plans.
- **Electronic Files:** Provide the Final PS&E package in AutoCAD electronic format (English units).

### *Deliverables:*

- Ten sets of D-size project plans, signed and sealed
- One reproducible set of signed technical special provisions
- Engineer's estimate of construction costs
- Written response to 90% submittal comments
- Electronic files

# SCOPE OF WORK

## Task 3.3 – Bid and Construction Support

During the bidding and construction phase, Fehr & Peers will provide the following services in association with installation of the traffic signal:

- Attendance at pre-bid meeting;
- Response to questions and RFI's during the bid process (up to five RFI's);
- Preparation of one bid addendum;
- Assistance with assessment of bids;
- Attendance at pre-construction meeting;
- Review of contractor submittals;
- Response to RFI's;
- Attendance at up to three construction meetings (at the site);
- Preparation of up to one change order.

Additional services can be provided upon authorization by the City, including construction staking of the traffic signal poles, preparation of record drawings, and preparation of start-up signal timing parameters.

## Task 4 – Project Management

Seleta Reynolds will lead this task, which includes monthly progress reports and invoices, as specified in the RFP.

### *Deliverables:*

- Monthly Progress Report
- Monthly Progress Payment

## Task 5 – Construction Management and Inspection

Nolte will lead this task. At Nolte, we believe we should know more about the project than the contractor. The solid program for Pre-construction Services described below supports this philosophy.

### Task 5.1 – Pre-Construction Services

#### Document Review

During pre-construction, Nolte will review the contract documents for this project including plans, specifications, permits, and utility and/or property agreements. This review will allow us to become familiar with all aspects of the design prior to the beginning of construction. In addition, our analysis will include a review of the documented elements of the extensive history of the project such as the data collected from the Safe Routes to Schools audits, walkabouts performed by the City and by Solano Transportation Authority, and input received from the various stakeholder groups, including but not limited to, Benicia Traffic, school district officials, students, and neighborhood groups. This review will provide Nolte's CM team with a sensitivity to issues that have lead to this construction project and an understanding of the extent to which it affects agencies and individuals in the community.



## SCOPE OF WORK

Nolte will document existing site conditions by taking digital video images, with digital audio commentary, of the status of the site prior to the beginning of construction. These along with digital documentation of the ongoing construction will be maintained throughout the project and copied to the City at project completion.

### ***Kick-off Meeting***

In preparing to begin the construction, Nolte will establish project procedures for the Benicia High School Entrance Improvement project in coordination with City of Benicia staff. One of the many components of the project procedures is the establishment of our record keeping documentation. This coordination and establishment of project procedures will be accomplished during a kick-off meeting.

Nolte will attend the kick-off meeting with city staff and the Design Engineer to discuss the design, schedule, and to coordinate responsibilities of city staff and the Design Engineer with the construction management and inspection team.

### ***Pre-Construction Conference***

Nolte will coordinate and lead a pre-construction conference with the construction contractor after contract approval and before start of work to review the project and discuss coordination efforts. This meeting will be used to establish managerial and administrative procedures with the contractor to ensure efficient startup and execution of the project.

### **Task 5.2 – Construction Management and Inspection Services During Construction**

Included with this task are: 1) project coordination and correspondence, 2) schedule management, progress meetings and reports, 3) monthly payment review, 4) design clarification and submittals management, 5) requests for information (RFIs), 6) construction observance/inspection services, and 7) change orders and claims.

#### **Task 5.2.1 – Project Coordination and Correspondence**

##### ***Interaction with City of Benicia Staff, Design Engineer, Other Agencies and Stakeholders***

Team interaction with City staff, Design Engineer, agencies, and local property owners is a primary function of construction management services. To assist the project team in serving this role, our key personnel will utilize Nolte provided laptop computers, which can be networked to the City network and that of other appropriate agencies via the internet. In order for the project to run smoothly, Nolte will serve as the main contact for the City and other agencies.

##### ***Document Control***

When performing construction management activities, an area of importance that cannot be over-emphasized is document control. Effective control of a construction project cannot be maintained without paperwork – to inform, to change, to expedite, and to provide a permanent record. Nolte will serve as the focal point responsible for the coordination of the required documents.

##### ***Progress Meetings***

Nolte will hold weekly progress meetings with the contractor and their appropriate subcontractors to review construction progress. Monthly meetings to specifically discuss scheduling will also be held to identify work completed and plan of activities for the coming month. We will keep minutes of the meetings, assigned action items, responsibilities, and documenting project trends.

# SCOPE OF WORK

## **Task 5.2.2 – Schedule Management, Progress Meetings, and Reports**

### **Schedule Management**

Nolte will review both the construction baseline schedule and schedule updates as provided by the contractor. Analysis of the schedules will look for flaws and areas of special concern (including impacts of weather and change orders).

### **Statement of Working Days**

Our inspector will prepare a record of weather conditions, controlling operation (s), and the status of working days remaining on a weekly basis. A copy of this record will be sent to the contractor to allow them an opportunity to dispute the statement.

### **Project Reporting**

A monthly status report will be prepared and submitted to the City Project Manager. The report will include: 1) progress to date, 2) summary statement of working days, and 3) progress pay estimates.

## **Task 5.2.3 – Monthly Payment Review**

We will review applications for payment with the contractor and negotiate any differences between the amount requested and the engineer's estimate for work completed. Payments will be processed through the City Project Manager. The estimate will include a systematic determination of the quantities of work completed and their values.

## **Task 5.2.4 – Submittals Managements**

Contract provisions identify specific items to be provided by the contractor which are subject to review. When Nolte receives submittals from the contractor, they will be stamped and logged in by date of receipt. Nolte will then forward the submittals to the City and/or the Design Engineer, as appropriate, for review and compliance with the contract documents. Nolte will coordinate the reviews to ensure consistent and complete reviews prior to returning review comments to the contractor.

## **Task 5.2.5 – Requests for Information (RFIs)**

Nolte will manage contractor-requested design clarifications during construction. The status of RFIs will be accounted for in our RFI log. All clarifications are to be presented in writing by the contractor to Nolte. RFIs requiring design input will be discussed with the City Project manager and the Design Engineer. If necessary, we will conduct meetings with the contractor and other parties to discuss and resolve requests for information.

## **Task 5.2.6 - Construction Observation/Inspection Services**

Several forms of documentation and correspondence will be used during this project. We will use records, such as still photographs (in digital format), to document existing conditions, major features, and construction progress. A log of all still photographs will be maintained by Nolte and submitted to the City upon completion of the project. Daily diaries will be the core of project documentation. In addition to our forms and any forms required by the City, Nolte will keep diaries.

### **Field Inspection and Documentation**

Our inspector will assist the contractor's responsible field personnel to produce an acceptable product by:

- Reviewing in detail the contract requirements applicable to the prospective work.

## SCOPE OF WORK

- Discussing the contractor's work plans in detail with his responsible field people to highlight special contract requirements and to identify and avoid potential problems.
- Observing work preparations, verifying the suitability of these preparations for the work planned, and providing appropriate feedback to those involved.
- Identifying construction flaws as soon as possible and exploring possible remedies with those concerned to get an acceptable product.
- Observing the construction activity, commenting on progress, and preparing related reports.
- Confirm that contractor coordinates his activities with adjacent contractors and utility relocations, as appropriate.

### Task 5.2.7 – Change Orders and Claims

#### Change Orders

Evaluation and negotiation of contract change orders (CCOs) are among the most important functions of the construction management team. A quick and accurate evaluation can help keep the project on schedule and avoid contractor claims. Prior to requesting City approval, all contract change orders will be evaluated and prepared by Nolte.

Our CCO process will include:

- Keep City Project Manager informed on status of all CCOs.
- Maintain a log of proposed CCOs, indicating action dates and status.
- Identify source of potential CCO (owner directed, unforeseen site conditions etc.).
- Determine if the condition is actually a changed condition and document rationale.
- Coordinate with the City Project Manager and the Design Engineer regarding impacts on the design.
- Request contractor's CCO cost estimate.
- Evaluate contractor's CCO cost estimate and schedule impacts, negotiate as required.
- Prepare CCO documentation for City and contractor signatures.
- Process and incorporate the CCO into the progress payment breakdown.
- Document information that may be necessary for a possible future claim.
- Continually inspect and document work on time and material CCOs.

#### Claims Management

Nolte will take the lead in the resolution of any contract claims for this project during the construction contract period. We will keep current logs of Notice of Potential Claims and will prepare documents and supporting evidence regarding claims. Information on each individual Notice of Potential Claim is kept separately in the project files. Documentation and arguments will also be assembled into a report and submitted to the City Project Manager for review and use. We will be available to provide additional claims resolution support if further action is required. Claims resolution work, if any, is typically handled in the post construction services and will be performed as an extra work item because the amount of work cannot be determined ahead of time.

# SCOPE OF WORK

## Task 6 – Post-Construction Services

### Perform Final Inspection

Items to be corrected or furnished by the contractor before project acceptance will be entered in the formal punch list as the work nears completion. Nolte's construction management inspector will conduct a final inspection with City staff, contractor, and appropriate agencies before acceptance of the project.

### Record Drawings Assistance

Deviations from the design drawings during construction will be noted by the contractor as they occur on a set of "As Built" drawings kept by the contractor. Nolte will review the individual marked up "As Built" plans periodically as kept by the contractor and provide comments. Any requested revisions will be documented on one marked up copy of the project plans.

### Prepare Final Payment Request

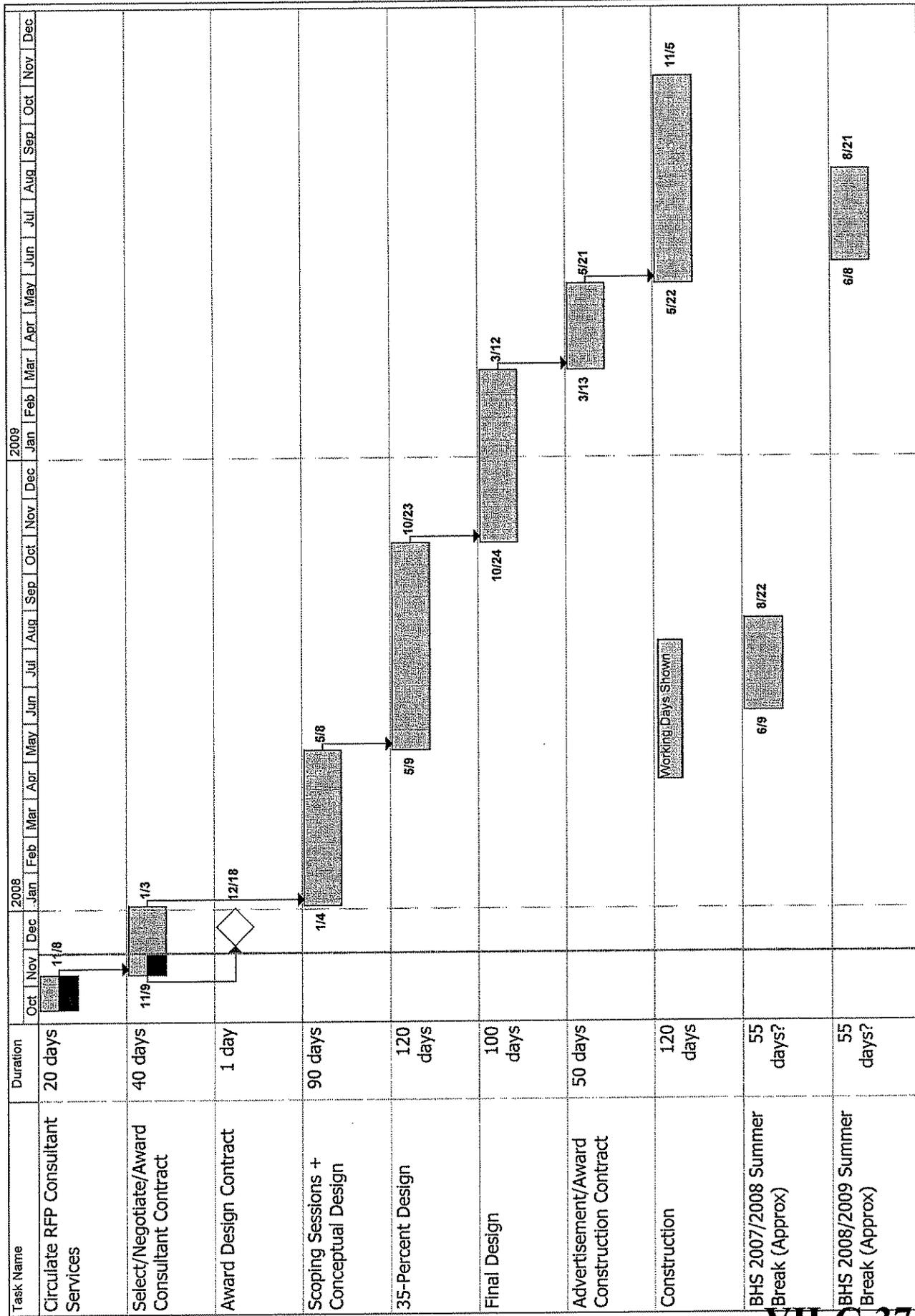
After project acceptance, Nolte will prepare a proposed final estimate (PFE) to allow the contractor to make exceptions to the final amount of compensation. Prior to submitting the PFE, we will meet with the contractor to attempt to agree on final payment for all contract items and change orders. If the contractor still objects to the PFE, we will assist the City Project Manager in negotiating final settlement with the contractor and process the final estimate.

### Start-Up Training

When all operating systems have been installed and are operational, Nolte will coordinate system start-up and training services to include City personnel, representatives for the manufacturer and the contractor.







Milestone



Progress



Task

# TENTATIVE SCHEDULE

Project: BHS Signal/Circulation Improv  
 Date: Mon 11/26/07

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 18, 2007  
CONSENT CALENDAR**

**DATE** : December 3 2007

**TO** : City Manager

**FROM** : Director of Public Works

**SUBJECT** : **ACCEPTANCE OF COMPLETED WORK, RELEASE OF CONTRACTOR, AND AWARD OF NEW CONTRACT FOR THE WEST 2<sup>ND</sup> STREET SEWER IMPROVEMENT PROJECT**

**RECOMMENDATION:**

Adopt the following resolutions:

- a) accepting work completed by Bay Pacific Pipelines for a portion of the West 2<sup>nd</sup> Street Sewer Improvement Project for a final cost of \$31,284.29, releasing Bay Pacific Pipelines from the remaining obligations of the contract, authorizing the City Manager to sign the Settlement Agreement and Notice of Partial Completion, and authorizing the City Clerk to file said Notice with the Solano County Recorder;
- b) awarding a construction contract in the amount of \$342,200 to Hess Concrete Construction Company for the remaining work on the West 2<sup>nd</sup> Street Sewer Improvement Project and authorizing the City Manager to sign the Construction Contract on behalf of the City.

**EXECUTIVE SUMMARY:**

Shortly after beginning work on the West 2<sup>nd</sup> Street Sewer Improvement Project, Bay Pacific Pipelines caused flooding from water main breaks and sewer back-ups damaging homes and displacing residents. Public Works staff subsequently issued a Stop Work notice and recommends releasing Bay Pacific Pipelines from their remaining contractual obligations. Staff recommends awarding a construction contract to complete the project to Hess Concrete Construction Company, the second lowest bidder on the project.

**BUDGET INFORMATION:**

Hess Concrete Construction Company's proposed construction contract is for their original bid amount of \$342,200. Credits to the contract for work already completed by Bay Pacific Pipelines can be negotiated after contract award. For budgeting purposes, the credits are estimated to be \$31,300, which is the proposed settlement amount for Bay Pacific Pipelines.

The proposed revised project budget is outlined below:

**Project Budget**

FY 2007/08 Adopted Budget:

Sanitary Sewer Line Upgrades: Acct #014-8315-9840 .....	\$130,000
Acct #044-8044-9896 .....	150,000
Acct #516-8357-9960 .....	35,920
West 2 <sup>nd</sup> Street Overlay: Acct #017-8705-9761 .....	90,500
<b>Total Project Budget.....</b>	<b>\$406,420</b>

A summary of the revised anticipated project expenditures is outlined below:

**Project Expenditures**

Construction Contract ( <i>Hess Construction</i> ) .....	\$342,200
10% Construction Contingency ( <i>Hess Construction</i> ) .....	34,220
Credit for Work Completed ( <i>Hess Construction</i> ) .....	(\$31,300)
Construction Contract ( <i>Bay Pacific Pipelines</i> ) .....	\$31,300
Construction Management/Engineering Support Services .....	30,000
<b>Total Project Expenditures .....</b>	<b>\$406,420</b>

The revised total project budget of \$406,420 is \$14,420 greater than the original project budget of \$392,000 calculated at the time when Bay Pacific Pipelines was awarded the construction contract.

**BACKGROUND:**

On August 21, 2007, the City Council awarded a \$329,100 construction contract to Bay Pacific Pipelines for the West 2<sup>nd</sup> Street Sewer Improvement Project. On October 10, 2007, the first day of construction, Bay Pacific Pipelines ruptured a marked waterline while trenching with their excavator. Apartments downhill from the project were flooded with muddy water and suffered property damage. The next day, the waterline ruptured a second time at the same location because Bay Pacific Pipelines did not properly support the line across the newly excavated trench. In addition to flooding the apartments again with water, a sewer main was surcharged, due to the second break, causing raw sewage back-ups in the apartments and basements of several homes. Residents were temporarily relocated to hotels so that a remediation company could sanitize and make repairs to the residences. The City's insurance carrier is currently collecting payment from the Contractor's insurance company for the cost of this clean-up and repairs.

At the end of the second day of construction, a Stop Work notice was issued to Bay Pacific Pipelines due to their problems and to prevent them from engaging in further work activities. After careful consideration and consultation with the City Attorney, staff concluded it would be in the best interest of the City to release Bay Pacific Pipelines from their remaining contractual obligations.

Subsequently a settlement agreement accepting the completed work and making a full and final release of all claims was agreed to by Bay Pacific Pipelines in the amount of \$31,284.29.

Hess Concrete Construction Company, the second lowest bidder on the project, has agreed to construct the project for their original bid amount of \$342,200, less a credit for work already

completed. The actual credit amount will be negotiated once the construction contract has been awarded. Hess Concrete Construction can begin work on the project in early January and complete the project by mid-March.

It is therefore recommended that the City release Bay Pacific Pipelines from their contractual obligations, in accordance with the proposed settlement agreement, and award the remaining work to Hess Construction Company.

Attachments:

- Proposed Resolutions (2 total)
- Notice of Partial Completion
- Settlement Agreement with Bay Pacific Pipelines

# Proposed Resolutions

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE WORK COMPLETED BY BAY PACIFIC PIPELINES FOR A PORTION OF THE WEST 2<sup>ND</sup> STREET SEWER IMPROVEMENT PROJECT FOR A FINAL COST OF \$31,284.29, RELEASING BAY PACIFIC PIPELINES FROM THE REMAINING OBLIGATIONS OF THE CONTRACT, AUTHORIZING THE CITY MANAGER TO SIGN THE SETTLEMENT AGREEMENT AND NOTICE OF PARTIAL COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, by Resolution No. 07-94, City Council awarded the construction contract for the West 2<sup>nd</sup> Street Sewer Improvement Project to Bay Pacific Pipelines of Novato, CA; and

**WHEREAS**, Bay Pacific Pipelines has completed a portion of the work on this project; and

**WHEREAS**, based upon Bay Pacific Pipelines' problematic performance it is in the City's best interest to release Bay Pacific Pipeline from the remaining obligations of the contract.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the work completed by Bay Pacific Pipelines for a portion of the West 2<sup>nd</sup> Street Improvement Project for a final cost of \$31,284.29.

**BE IT FURTHER RESOLVED** that the City hereby releases Bay Pacific Pipelines from the remaining obligations of the contract.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to sign the Settlement Agreement and Notice of Partial Completion and the City Clerk is authorized to file said Notice with the Solano County Recorder.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

**VII-D-5**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$342,200 TO HESS CONCRETE CONSTRUCTION FOR THE REMAINING WORK ON THE WEST 2<sup>ND</sup> STREET SEWER IMPROVEMENT PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, on August 21, 2007 by Resolution No.07-94, the City Council awarded the construction contract for the West 2<sup>nd</sup> Street Improvement Project to Bay Pacific Pipelines; and

**WHEREAS**, on December 18, 2007, by Resolution 07-\_\_\_, the City Council accepted portions of the project as complete and released Bay Pacific Pipelines from the remaining obligations of the contract; and

**WHEREAS**, it is in the City's best interest to complete the project in a timely manner; and

**WHEREAS**, the second low bidder, Hess Concrete Construction, is willing and available to complete the project.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby awards a construction contract to Hess Concrete Construction for their original bid amount of \$342,200 and authorizes the Director of Public Works to negotiate a credit for work already completed.

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

\*\*\*\*\*

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 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

**VII-D-6**

# Notice of Partial Completion

Recorded at the request of:

CITY OF BENICIA

After recording return to:

CITY OF BENICIA  
ATTN: CITY ENGINEER  
250 EAST L STREET  
BENICIA, CA 94510

**NOTICE OF PARTIAL 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:  
  
**West 2<sup>nd</sup> Street** located in the City of Benicia, County of Solano, State of California.  
  
**Nature of title as stated owner: In Fee.**
2. A work of improvement known as the **West 2<sup>nd</sup> Street Sewer Improvement Project** at the property described was partially completed and accepted by the City Council of the City of Benicia on December 18, 2007 and in accordance with the settlement agreement.
3. The name of the contractor for the improvement is **Bay Pacific Pipelines of Novato, California.**

CITY OF BENICIA

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

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

Attest: \_\_\_\_\_  
Lisa Wolfe, City Clerk

The undersigned, being duly sworn, says: that she is the person signing the above document; that she has read the same and knows the contents thereof, and that the facts stated therein are true, under penalty of perjury.

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

# Settlement Agreement

## SETTLEMENT, MUTUAL RELEASE, AND INDEMNITY AGREEMENT

This settlement, mutual release, and indemnity agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, at Benicia, California, between Bay Pacific Pipeline, Inc. (hereinafter referred to as "CONTRACTOR") and the City of Benicia (hereinafter referred to as the "CITY") (hereinafter referred to collectively as the "PARTIES") for the West 2<sup>nd</sup> Street Sewer Improvement Project (hereinafter referred to as the "PROJECT").

### RECITALS

**WHEREAS**, the West 2<sup>nd</sup> Street sewer main between West H Street and West J Street provides critical sewer collection service to the adjacent residents and business owners. Because the sewer main is old, requires frequent repairs, and is undersized, the CITY prepared construction plans and specifications to replace it.

**WHEREAS**, the CITY publicly advertised for construction bids and the CITY awarded the construction contract for the PROJECT to CONTRACTOR as the lowest responsive, responsible bidder per Resolution No. 07-94.

**WHEREAS**, during the course of the PROJECT, a water main ruptured twice causing flooding from water and sanitary sewer overflows. Said flooding damaged property, required residents to be relocated, and required costly private property structural remediation work.

**WHEREAS**, because of said water main breaks, the CITY temporarily suspended work in an October 10, 2007 letter to the CONTRACTOR.

**WHEREAS**, the PARTIES have met and discussed the terms and conditions required to terminate the contract for the PROJECT.

**WHEREAS**, after inspecting the material delivered and installed at the PROJECT, the CITY is satisfied with the workmanship of those portions of the PROJECT partially completed. The CITY indicated that it could accept and make the appropriate reimbursement to CONTRACTOR for those portions of the PROJECT partially completed.

**WHEREAS**, the PARTIES acknowledge that it is in the best interest of the CITY to release CONTRACTOR from their remaining obligations of the contract at this time.

### TERMS AND CONDITIONS

**NOW, THEREFORE**, the Parties agree as to follows:

- A. The CITY accepts the partial work completed by CONTRACTOR and will pay CONTRACTOR \$31,284.29 as complete payment for the partial work. Payment will be made upon complete execution of this Agreement.
- B. The CITY hereby releases CONTRACTOR from the remaining obligations of the contract. The CITY will file a Notice of Partial Completion with the Solano County Recorder and return the 10 percent retention for the partial work completed 35 calendar days after filing the Notice of Partial Completion if no liens are received during that time.

- C. CONTRACTOR, on behalf of themselves and on behalf of each of their respective heirs, executives, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, servants, representatives, and all persons, firms and other entities connected with them, hereby release and forever discharge the CITY and any of its subsidiaries, officers, directors, agents, insurers, related entities, representatives, employees and all persons, firms and associations connected with them, (hereinafter, collectively, "RELEASEES") from any and all claims, demands, causes of action, obligations, damages, losses, liabilities, costs and expenses of every kind and nature whatsoever, known or unknown, relating to any and all known or unknown damage which was or could have been connected with the PROJECT, the facts and circumstances referenced in the recitals and this Agreement.
- D. This is a full and final Release of any and all claims against said RELEASEES arising out of these facts and circumstances and the undersigned agree as a further consideration and inducement for this compromise that this Release extends to all claims of every nature and kind whatsoever against said RELEASEES, known or unknown, suspected or unsuspected, regarding said facts, and that all rights under Section 1542 of the Civil Code of the State of California are hereby expressly relinquished and waived by the undersigned. Said section reads as follows:
- SECTION 1542, GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.
- E. This Agreement shall have no effect upon any of CONTRACTOR'S contractual obligations to its subcontractors. CONTRACTOR stipulates that all equipment, material, supplies, and services have been paid in full and that there are no outstanding liens or claims against the PROJECT.
- F. The PARTIES enter into this Agreement pursuant to a compromise and settlement of disputed claims for the purpose of furthering the public interest, necessity, health, and safety.
- G. The undersigned further expressly agree that this Release shall be binding upon their successors and assigns and shall inure to the benefit of RELEASEES, and each of them. The undersigned further represents any approvals of the settlement required to be obtained by the undersigned have been obtained and that they are expressly or otherwise fully authorized to release and discharge RELEASEES as described herein.
- H. Any claim, dispute, or other controversy between the PARTIES to this Agreement arising out of or relating to this Agreement or breach thereof shall be settled by arbitration in accordance with the California Arbitration Act, Code of Civil Procedure Section 1280 et. seq., and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. Any arbitration shall be carried out under the management of the American Arbitration Association's procedural rules, in effect on the date of the demand for arbitration. Code of Civil Procedure Section 1283.05 relating to the

manner of taking deposition is hereby incorporated into this Agreement and make a part hereof by reference. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

A demand for arbitration shall be made within a reasonable time after the claim, dispute, or other controversy has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other controversy would be barred by the applicable statutes of limitations. The cost of arbitration shall be borne by the party losing the arbitration.

- I. All notices, requests, demands, and other communications prescribed herein shall be in writing and shall be delivered personally, or sent by registered or certified mail, postage prepaid-return receipt requested, or by overnight package express, to the address of the respective parties set forth below, or to such other address or other person as any of the parties shall hereafter designate by written notice to the other parties given as aforesaid. Any such notice given by mail or overnight package express shall be deemed given when received by the party to whom it is directed, or five business days after the posting thereof, whichever first occurs.

Notices shall be given as follows:

If to Bay Pacific Pipeline, Inc.:

Catherine Carew, President  
Bay Pacific Pipeline, Inc.  
P.O. Box 1162  
Novato, California 94948-1162

If to CITY:

Daniel Schiada, Director of Public Works  
City of Benicia  
250 East L Street  
Benicia, California 94510

- J. This Agreement is the product of discussion and negotiation between and among the parties hereto, and therefore it shall not be presumptively construed against any party.
- K. This Agreement is entered into in the State of California and shall be construed according to the laws of the State of California.
- L. The undersigned expressly agree to defend, protect, indemnify and save harmless the RELEASEES if any person, firm, corporation or entity of any kind shall assert or attempt to assert any claim against RELEASEES arising out of or in any way related to the PROJECT including the flooding incidents and other facts and circumstances referenced herein, including any such claims which may allegedly arise out of the sole negligence of the CITY.

- M. CONTRACTOR has had the opportunity to rely upon the advice and representation of counsel and consultants of their own selection, has read and fully understands the foregoing Release, and has been advised as the legal effect thereof.
- N. This Agreement constitutes the entire agreement between the PARTIES. It is expressly understood that this Agreement may not be modified in any respect except by mutual written consent of all PARTIES.

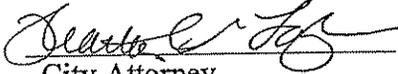
IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first written above.

CITY OF BENICIA

BAY PACIFIC PIPELINE, INC.

By: \_\_\_\_\_  
 Jim Erickson  
 City Manager

By: Catherine Carlew  
 Name: CATHERINE CARLEW  
 Title: PRESIDENT  
 (Attach Notary)

Approved as  
 to form:   
 City Attorney

**California Jurat  
 Attached**

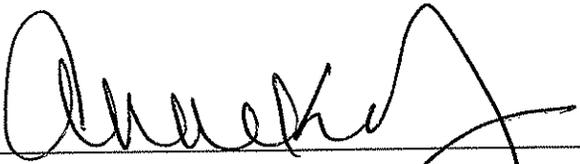
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 F:\pubworks\Specs\West 2<sup>nd</sup> Street Sewer Replacement Project/Settlement Agreement Rev2

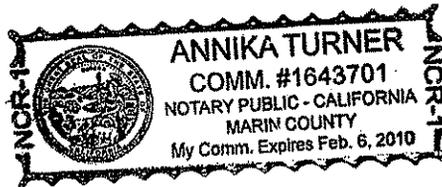
# CALIFORNIA JURAT

State of California

County of Marin

Subscribed and sworn to (or affirmed) before me on  
this 3 day of DECEMBER, 2007,  
by CATHERINE CAVEW  
personally known to me or proved to me on the basis  
of satisfactory evidence to be the person(s) who  
appeared before me.

  
\_\_\_\_\_  
Notary Signature



## OPTIONAL INFORMATION

### DOCUMENT

Title or Type of Document \_\_\_\_\_

Date of Document \_\_\_\_\_ Number of Pages \_\_\_\_\_

Other Signer(s) \_\_\_\_\_

### SIGNER'S CLAIMED CAPACITY

Individual  Other \_\_\_\_\_

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 18, 2007  
CONSENT CALENDAR**

**DATE** : December 6, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works  
**SUBJECT** : **APPROVAL OF TASK ORDER #2 OF THE 2007-2008 SANITARY SEWER FLOW MONITORING PROJECT**

**RECOMMENDATION:**

Adopt a resolution approving Task Order #2 with SFE Global, in an amount not-to-exceed \$89,000 for the 2007-2008 Sanitary Sewer Flow Monitoring Project.

**EXECUTIVE SUMMARY:**

SFE Global is performing sewer system flow monitoring around the city to assess the impact of recent improvements and the magnitude of infiltration and inflow into the collection system. This important assessment is recommended to continue.

**BUDGET INFORMATION:**

There is sufficient funding available in Account Number 044-8044-9896 for the costs.

**BACKGROUND:**

In 2000, the City of Benicia completed an Infiltration/Inflow (I/I) Improvements Projects Master Plan that resulted in a ten-year Capital Improvement Plan (CIP) for the wastewater collection system. As a follow-up to the master plan, SFE Global was contracted in February 2007 to update the existing I/I flow evaluation of the City's wastewater collection system.

It is recommended for SFE Global to continue this technical service through the winter months (December through May) as described in the attached scope of work.

cc: City Attorney  
Assistant Director of Public Works  
City Engineer

**Attachments:**

- Proposed Resolution
- Task Order #2

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING TASK ORDER #2 FOR SFE GLOBAL, IN A NOT-TO-EXCEED AMOUNT OF \$89,000 FOR THE 2007-2008 SANITARY SEWER FLOW MONITORING PROJECT**

**WHEREAS**, SFE Global of Sacramento has satisfactorily conducted the Sewer Flow Monitoring Services for the City in 2007; and

**WHEREAS**, the scope of work was expanded based on the requirements for additional monitoring services during the 2007-2008 winter season.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves Task Order #2 for SFE Global, in a not-to-exceed amount of \$89,000 for the 2007-2008 Sanitary Sewer Flow Monitoring Project.

\* \* \* \* \*

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 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

## Task Order No. 2

**EXHIBIT A  
TASK ORDER NO. 2  
SFE GLOBAL  
2007-2008 SANITARY SEWER FLOW MONITORING PROJECT PROJECT —  
PROFESSIONAL ENGINEERING SERVICES**

1. Purpose

The purpose of this TASK ORDER is to authorize and direct CONSULTANT to proceed with the work specified in Item 2 of this TASK ORDER, in accordance with the provisions of Section 2 of the Specific Provisions of that AGREEMENT between the parties hereto dated \_\_\_\_\_.

2. Scope of Work

The work authorized by this TASK ORDER is outlined in the "Scope of Services" attached hereto as Exhibit A Proposal 07-121. This TASK ORDER applies solely to Tasks 1 through 7 of the SFE Global scope of work.

3. Time of Performance

The work authorized by this TASK ORDER shall commence upon execution by both parties and shall be prosecuted diligently to completion.

4. Compensation and Payment

Compensation shall be on a specific rate of compensation basis as provided in Section 3 of the Specific Provisions of that AGREEMENT between the parties hereto dated \_\_\_\_\_. The cost of the work authorized by this TASK ORDER is a lump sum fee of \$89,000 to be used when authorized by the City. Payment shall be in accordance with Section 3 of the aforementioned AGREEMENT.

5. Effective Date

This TASK ORDER shall become effective immediately upon its execution by both parties.

6. Items and Conditions

All items and conditions contained in the AGREEMENT for Professional Engineering Services dated \_\_\_\_\_, between the City of Benicia and SFE Global are incorporated herein by reference.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF BENICIA

SFE GLOBAL

By: \_\_\_\_\_

James R. Erickson  
City Manager

By: \_\_\_\_\_

Robert Larson  
Business Development Manager



**PROPOSAL #07-121**

**2007/2008 Sewer Flow Monitoring Services**

**City of Benicia**

---

Prepared For:

City of Benicia  
Public Works Department  
250 East L Street  
Benicia California 94510

**Attn: Michael Throne, P.E.**

Prepared By:

SFE Global  
4141 Northgate Blvd., Suite 3  
Sacramento, CA 95834

Robert Larson

(925) 457-8989





4141 Northgate Blvd., Suite 3  
Sacramento, CA 95834  
Ph (916) 925-2511 Fx (916) 925-2637  
Toll Free Ph 1-866-332-9876

November 29, 2007

07-121

Michael Throne, P.E.

City of Benicia  
Public Works Department  
250 East L Street  
Benicia California 94510

PROPOSAL – BENICIA, CA 2007/2008 SANITARY SEWER FLOW MONITORING SERVICES

Dear Michael

In accordance with your request, the firm of SFE Global is pleased to provide you with our proposal for the Benicia Master Plan Project. We look forward to the opportunity to work with The City of Benicia on this important project.

SFE Global is a full service flow monitoring provider conducting these services for Municipal, Governmental and Private clients since 1991. We have extensive experience with sanitary sewer monitoring; SFE Global is fully capable of completing this project on schedule, on budget, and with excellent results. If you have any question please feel free to call.

I would encourage meeting with you to discuss our qualifications and the advantages of awarding this important project to SFE Global. If you have any question please feel free to call.

Sincerely,  
**SFE Global**

Robert Larson  
Business Development Manager  
(925) 457-8989  
[rlarson@sfeonline.com](mailto:rlarson@sfeonline.com)  
[www.sfeonline.com](http://www.sfeonline.com)

**VII-E-8**

# **TABLE OF CONTENTS**

**A. Qualifications**

**B. Project Understanding and Approach**

**C. Commercial Items**

## Qualifications

### 1. Firm Profile

SFE Global is a field service engineering company that provides flow monitoring and data collection services. SFE has been conducting these professional services for Municipal, Governmental and Private clients since 1991. We have extensive experience with flow monitoring projects and have established standard operating procedures ensuring accurate data collection and delivery to our customers.

SFE has six (6) offices between Canada and the United States with a total of 25 employees. SFE has excellent references, a track record for delivering quality services. The company's overall philosophy is to provide each client with technical and professional services exceeding expectation in a professional, friendly manner throughout each project. Our success is based upon the ability to deliver personalized, un-biased, and responsive services. SFE will bring the expertise and experience that you require for a successful project.

The combined team has provided services similar to your requirements on several flow monitoring projects throughout United States and Canada. Below is our proposed project team to service your account.

Core Project Team			
Team Member	Project Role	Years of Experience	Selected Project Experience
Glenn Cumyn	General Manager	18	Operations & Admin Manager, Senior Management
Paul Loving	Senior Project Manager	15	Project Manager, Scheduling, Coordination, Procurement
Jason Scott	Lead Technician	4	Installations, Maintenance, Removals, Data Collection
Adrian Marshall	Lead Technician	5	Installations, Maintenance, Removals, Data Collection
Robert Larson	Regional Sales Manager	15	Proposals, Contracts, Commercial Items

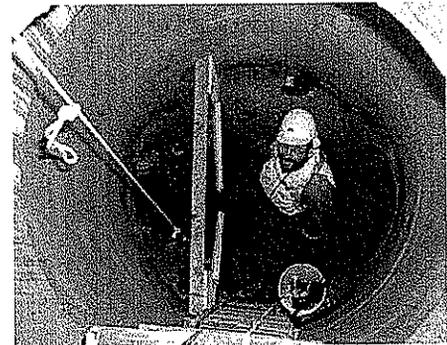
SFE Offices		
United States of America		
Washington 1313 E. Maple St., Suite 201 Bellingham, WA 98225	California 4141 Northgate Blvd, Suite 3 Sacramento, CA 95834	Oklahoma 2410 W. Memorial Rd. Suite C Oklahoma City, OK 73134
Canada		
British Columbia 201, 26641 Fraser Hwy Aldergove, B.C. V4W 3L1	Alberta #4, 3600 - 19th Street N.E Calgary, Alberta T2E 6V2	Alberta 10743-178 Street Edmonton, Alberta T5S 1J6

## 2. Firm Experience

SFE Global has successfully completed many flow monitoring projects similar in scope and services required on your project, below are some of our most recent projects.

**City of Salinas, CA, Sewer Flow Monitoring Services** – SFE Global was retained by the City to work with CDM Consulting Engineers in the winter of 2005 to deploy (8) flow monitoring stations using ISCO 2150 series flow meters with SFE Custom Compound Weirs. Monitoring period is for 90 days. Data will be used to calibrate a sewer hydraulic model and determine wet-weather flow factors contributing to a regional WWTP.

**City of Richmond, CA, Sewer Flow Monitoring Services & RDII Report** – SFE Global was retained by Veolia Water North America in the winter of 2005 to deploy 29 flow monitoring stations using ISCO 2150 Area Velocity flow meters, of the 29 stations, 17 were SFE Custom Compound Weirs stations, and 9 Area Velocity stations. Monitoring period was for 60 days. Data will be used to calibrate a sewer hydraulic model, determine severity of I/I, and prioritize sewer rehabilitation projects.



**City of Yuba City, CA, Sewer Flow Monitoring Services** – SFE Global was retained by Kennedy Jenks Consulting Engineers in the winter of 2005 to deploy (7) flow monitoring stations using ISCO 2150 series flow meters with SFE Custom Compound Weirs where applicable. Monitoring period was for 120 days. Data will be used to calibrate a sewer hydraulic model.

**LOTT Alliance, WA, Sewer Flow Monitoring Services** – SFE Global is retained by LOTT Alliance in the winter of 2005 to deploy (9) flow monitoring stations using American Sigma series flow meters with SFE Custom Compound Weirs. Monitoring period is for 4 Years. Data will be used to calibrate a sewer hydraulic model and determine I/I wet weather flow factors by Brown and Caldwell.

**City of Sweet Home, OR, Sewer Flow Monitoring Services** – SFE Global was retained by Brown and Caldwell Consulting Engineers in the winter of 2005 to deploy (22) flow monitoring stations using ISCO 2150 series flow meters with SFE Custom Compound Weirs and DataGator flow meters. Monitoring period was for 7 months. Data will be used to calibrate a sewer hydraulic model and determine I/I wet weather flow factors by the consultant.

**City of St. Helens, OR, Sewer Flow Monitoring Services** – SFE Global was retained by Brown and Caldwell Consulting Engineers in the winter of 2005 to deploy (8) flow monitoring stations using ISCO 2150 series flow meters with SFE Custom Compound Weirs and DataGator flow meters. Monitoring period was for 7 months. Data will be used to calibrate a sewer hydraulic model and determine I/I wet weather flow factors by the consultant.

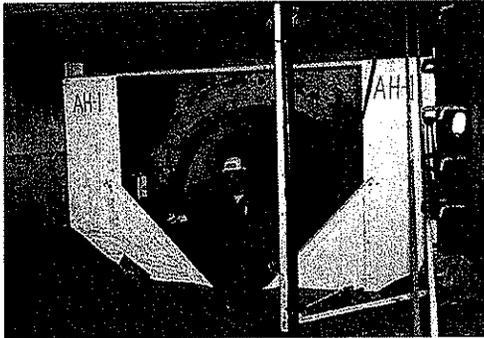
**City of McMinnville, OR, Sewer Flow Monitoring Services** – SFE Global was retained by West Yost Associates in the winter of 2005 to deploy (11) flow monitoring stations using ISCO 2150 series flow meters with SFE Custom Compound Weirs in many these stations. Monitoring period is was for 90 days. Data will be used to calibrate a sewer hydraulic model and determine wet-weather flow factors.

**City of Reno, NV, Sewer Flow Monitoring Services** – SFE Global was retained by Brown and Caldwell Consulting Engineers in the spring of 2006 to deploy (8) flow monitoring stations using ISCO 2150 series flow meters with SFE Custom Compound Weirs. Monitoring period is for 3 weeks. Data will be used to determine bypass pumping requirements for a rehabilitation project

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City of Sacramento, CA, Infiltration/Inflow Study – SFE was selected in the fall of 2003 for a two-year I/I study in the Pocket Area, which is located on the south eastern edge of the City of Sacramento, and is roughly bounded on the North, South, and West by the Sacramento River. The objective of the study was to identify areas within the collection system responsible for contributing disproportionate levels of I/I, and to quantify the amount and type of extraneous flows.



2003/2004 SFE deployed twenty-one (21) Marsh McBirney flow meters, four (4) rain gauges, eight (8) ground water monitoring wells for a period of six (6) months.

2004/05 season SFE deployed thirteen (13) ISCO 2150 flow monitoring stations, two (2) rain gauges eight (8) ground water monitoring wells, and one rain gauge for approximately seven (7) months.

City of Richmond, CA, Sewer Flow Monitoring Services – SFE Global was retained by Veolia Water North America in the summer of 2005 to deploy (8) flow monitoring stations using ISCO 2150 series flow meters with SFE Custom Compound Weirs where applicable. Monitoring period was for 30 days. Data was then used to calibrate a sewer hydraulic model.

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## Project Understanding and Approach

### 1. Understanding

The City of Benicia is seeking professional services providing "Turn-Key" sewer flow monitoring services for the City of Benicia master plan project. Services to be provide include supply, install, maintain, remove and report on seven (7) flow monitoring stations and two (2) rain-gauges

The project will entail a wet-weather component for a period of five months and two weeks, data collection to start November 1<sup>st</sup> 2007 and will continue through April 15<sup>th</sup> 2008.

The purpose of the flow monitoring project is to collect sanitary sewer flow data that will be used to calibrate a sewer hydraulic model, determine Infiltration and Inflow (*i/i*) rates, and measure past CIP project performance.

### 2. Approach

We have reviewed The City of Benicia's request for these services and are confident we can meet all aspects of this project. We draw upon many years of experience and resources overcoming difficult and dangerous challenges associated with sewer flow monitoring programs. Many of our staff have been with our firm since inception and are committed to successfully completing this project.

Our proposed flow monitoring duration is for 5 ½ months from November 1<sup>st</sup> 2007 and end April 15<sup>th</sup> 2008 to capture wet periods of anticipated high intensity, long duration storms under saturated ground are optimal for RDII and model calibration. It is desirable to capture a number of rain events of varying intensity in order to allow a confident linear regression evaluation of Q (flow) vs. *i* (intensity of rainfall).

Our FTP web site allows project staff to view and download the latest project information from any computer. SFE Data management services are located at a secure Data Center providing high speed Internet connectivity and Internet access.

SFE Custom Compound Weir (CCW) will be installed as a primary device which is highly accurate and constructed out of wood for short term monitoring. The CCW is specifically designed for sanitary and storm systems and have been installed in thousands of locations. The station shall be battery powered and installed in sewer manhole located throughout the collection system.

The major steps to be completed for the flow monitoring project include the following scope-of-services;

- Project management
- Verify hydraulic suitability
- Finalize flow monitoring plan
- Equipment installation
- Weekly Maintenance
- Equipment removal
- Data processing
- FTP project access
- Final report

Our approach is non-biased and focused solely upon quality flow data and customer service. SFE can supply, maintain, and operate all major brands of monitoring equipment. SFE is fully trained by the manufactures and follow stringent safety procedures. Our approach is as followed.

**Task 1: Project Management & Kick-Off Meeting:** SFE will supply Project Management throughout the entire flow monitoring project. SFE personnel will attend a Kick-off meeting at a prescribed location at your discretion. This meeting is intended to finalize flow monitoring plan, project schedules, and address any questions you may have.

**Task 2: Site Investigations/Assessments:** SFE will perform detailed site investigations/assessments of the potential monitoring sites, assuring they are hydraulically suitable for accurate flow monitoring measurements. The site documentation shall include a location map with address, pipe size, channel condition, site drawings, pictures, meter manufacture, primary device, sensor type, sensor location within the pipe, traffic control and safety issues.

**Task 3: Installation:** Experienced SFE staff will install equipment in accordance to the adopted Flow Monitoring Plan and approved site assessment documents. SFE staff will meticulously complete all field documentation in accordance to our QA/QC procedures and our Operating Procedures.

The assigned SFE will notify appropriate personal prior to performing field work within the cities collection system, includes confined space entry, traffic control, and other requirements that may be in effect.

SFE will be responsible for taking all necessary safety precautions in the performance of its services. Due to the requirement to enter active sewer lines to fulfill this contract, SFE shall follow all applicable Federal, State, local and OSHA Regulations for manhole work and confined space entry.

**Task 4: Maintenance:** Trained SFE staff will maintain equipment on site weekly schedule. During routine maintenance SFE will follow strict QA/QC protocols that includes depth/velocity verification, calibrations, diagnostics, field documentation, downloading and data review by lead technicians. Data and maintenance records are submitted to the Project Manager for review. Sites requiring additional maintenance are identified by the Project Manager. If any discrepancies or problems arise a corrective plan of action will be taken to achieve accuracy goals and up-time requirements.

**Task 5: Data Processing:** Downloaded data and field maintenance information is transmitted to the Project Manager for secondary review. The Project Manager releases this data to the data processing department via SFE's FTP server.

SFE data processing technicians retrieve data and maintenance information from the FTP server along with Project Manager summary sheets. Data is imported into SFE data processing software and verified against maintenance and installation sheets:

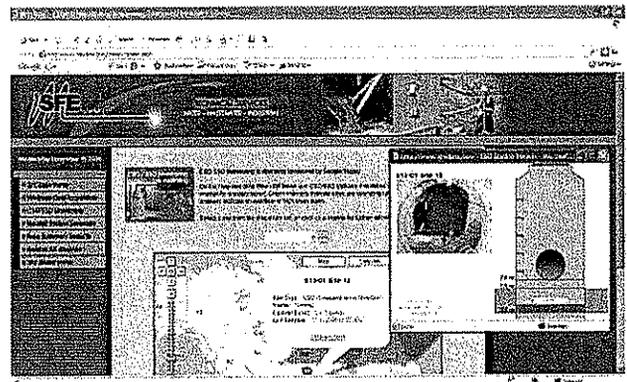
Data is outputted to hydrographs and daily summaries. Final data graphs and summaries are forwarded to SFE Senior Data Analyst with over ten years experience for final data review and release to the client.

Problematic sites are reviewed and corrected if applicable and noted on data exception reports. Project or data problems are detailed in SFE's NCR (non-conformance reporting) and forwarded to Senior Management for discussion and development of improved procedures or equipment to eliminate problematic situations.

**Task 5: Removal:** SFE staff will remove equipment in accordance to the project schedule. SFE requires authorization prior to decommissioning site.

**Task 6: FTP Site:** SFE will post all project data on a password protected FTP site for downloading and viewing.

- Site Assessments
- Maps powered by Google Maps
- Installation Report
- Field Maintenance Sheets
- Pictures
- Flow Hydrographs and Summaries
- Finalized Data
- Final Report



**Task 7: Final Report:** At the end of the flow monitoring term SFE will mail two (2) hard copies of the

final report within 3 weeks after removal.

### 3. Flow Measurement Methodology

Our extensive experience shows us that all sites are not the same. Manhole configurations, pipe conditions, pipe sizes, flow regime, levels, velocities, surcharge, and reactions to rain events. To overcome these challenges a company must have experience in open channel flow monitoring and an arsenal of flow monitoring technologies to choose from to achieve optimal results you require.

On this project SFE anticipates using two (2) different types of flow monitoring devices to achieve optimal results. The first is Area Velocity which there are many manufactures of; Teledyne ISCO and American Sigma are common in the industry. The second type of station will be a combination of an Area Velocity measurement and a SFE designed Custom Compound Weir (CCW) as a primary device.

The CCW has the ability to monitor difficult application where hydraulics and structural limitation limit the use of Area Velocity. CCW can monitor preferred locations with fewer monitors thus decreasing cost of project. Using CCW technology has greater accuracy over Area Velocity during all flow conditions unless surcharged. In a surcharge condition flow will be derived from the upstream velocity sensor calculated on a full pipe until the surcharge condition resides then flow will be calculated from the CCW accurately. By implementing this strategy the data will be of the highest quality for all conditions low, medium, high, and surcharged condition.

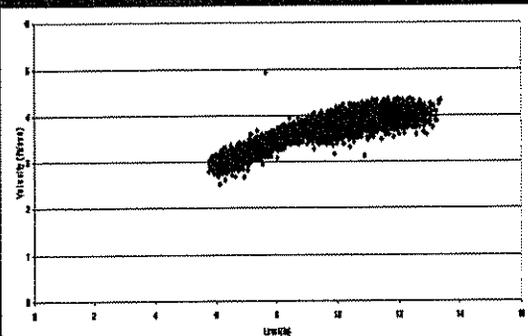
With this approach SFE is prepared to guarantee mechanical and usable data uptime at least 95%. We view the opportunity of using of CCW technology versus AV technology at certain locations essential in ensuring high quality data. SFE has utilized this technology in thousands of sites the past 15 years with excellent results. Based upon similar projects we estimate 75% Custom Compound Weir Stations and 25% Area Velocity stations will be installed.

## Conducive to Area Velocity Measurement

### Requirements

- Medium to large pipes (16" - 120")
- Level > 10" with minimal turbulence
- Straight pipe
- 2-6 Feet/per second velocities
- Frequent surcharge condition
- Repeatable scatter plots



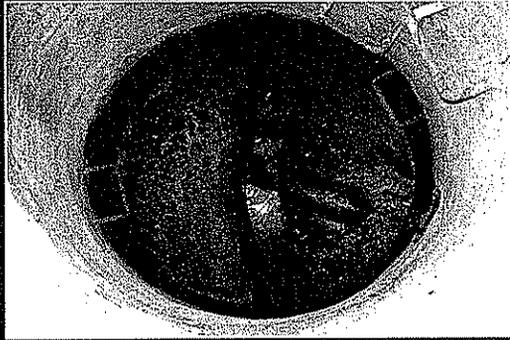
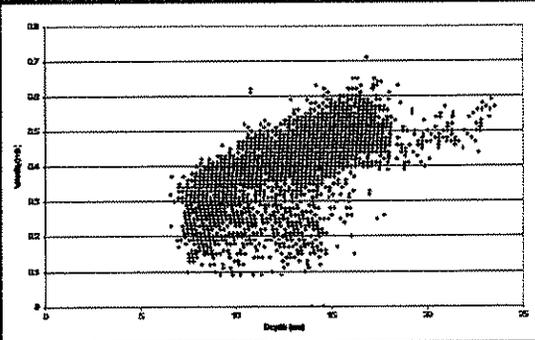
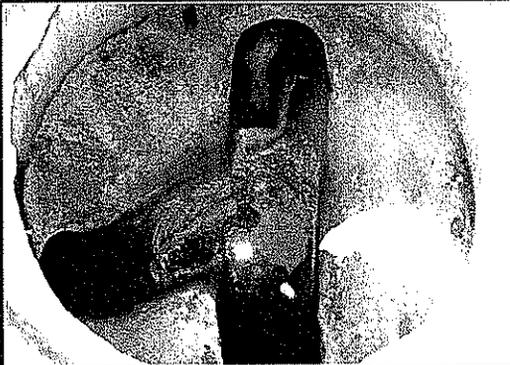




## Not Conducive to Area Velocity Measurement

### Obstacles

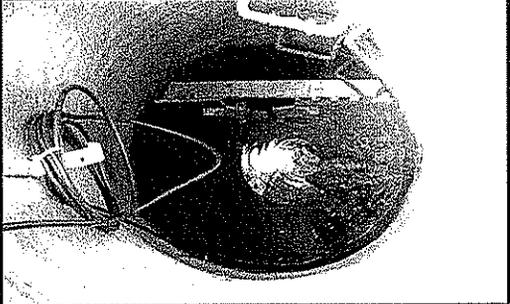
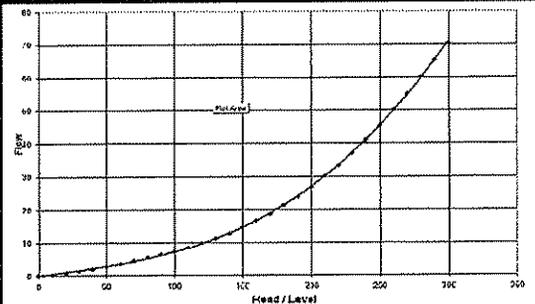
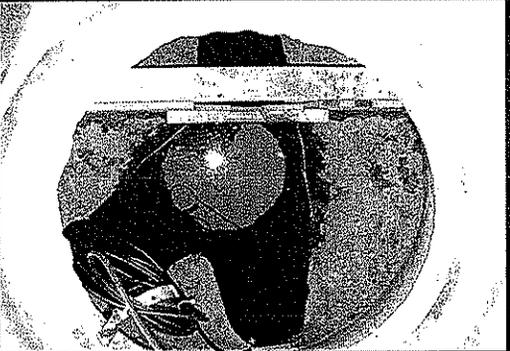
- Small to medium pipes (6" - 36")
- Level < 8" and/or turbulence
- Low flows
- Non uniform pipes and manholes
- .5 - 2 Feet/per second velocity
- High velocity with turbulence
- Non repeatable scatter plots



## Custom Compound Weir Technology

### Advantages

- High Accuracy for small to medium pipes
- Measures to 0 flow
- Overcomes turbulence
- Low Flow / High Velocities
- Non Uniform Pipes or Manholes
- .5 - 2 Feet/Second Velocities
- No Scatter Plots / Level = Flow
- In-situ Installation



## Commercial Items

### 1. Timeline

SFE can commit labor, equipment and resources to complete the aforementioned project and per your requirements. SFE will have sites and installed and operational by November 1<sup>st</sup> 2007

### 2. Traffic Control

The City of Benicia will be providing traffic control services on this project.

### 3. Professional Fees & Billing Schedule

The following professional fees have been generated through the aforementioned scope of services. Please do not hesitate to contact us directly should SFE have misunderstood or misrepresented the desired scope of services.

Billing Schedule			
Task	Description	When	Amount
1	Site Assessments for 7 Flow Monitoring Stations	11/01/2007	\$1,000.00
2	Flow Monitoring Installation for 7 Sites + 2 Rain Gauge	11/01/2007	\$8,000.00
3	1st Month of Flow Monitoring Services for 7 Sites + 2 RG	12/01/2007	\$13,000.00
4	2nd Month of Flow Monitoring Services for 7 Sites + 2 RG	1/1/2008	\$13,000.00
5	3rd Month of Flow Monitoring Services for 7 Sites + 2 RG	2/1/2008	\$13,000.00
6	4th Month of Flow Monitoring Services for 7 Sites + 2 RG	3/1/2008	\$13,000.00
7	5th Month of Flow Monitoring Services for 7 Sites + 2 RG	4/1/2008	\$13,000.00
8	2 Week Flow Monitoring Services for 7 Sites + 2 RG	5/1/2008	\$9,000.00
9	Wet Weather Removals for 7 Sites +2 RG	5/1/2008	\$1,066.00
10	Flow Monitoring Reporting	5/15/2008	\$2,999.00
Total Project Fees			\$87,065.00

Proposal End

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 18, 2007  
CONSENT CALENDAR**

**DATE** : November 28, 2007

**TO** : City Manager

**FROM** : Director of Public Works

**SUBJECT** : **ACCEPTANCE OF PUBLIC IMPROVEMENTS AND OFFERS OF DEDICATION FOR SOUTHAMPTON UNIT D-6**

**RECOMMENDATION:**

Adopt the resolution accepting the public improvements and offers of dedication of rights-of-way and easements for the Southampton Unit D-6 subdivision.

**EXECUTIVE SUMMARY:**

The public improvements for the Southampton Unit D-6 subdivision have been completed to the satisfaction of the City Engineer. The next step is for the City to accept the improvements and offers of dedication so that the City can provide maintenance and the public has full access to the streets within the subdivision. Once the public improvements are accepted, the Developer's construction bonds will be released and the guarantee bond will become effective for one year.

**BUDGET INFORMATION:**

This item has no impact on the City's budget. Funding to maintain the new public improvements (streets, water, sewer, and storm drain lines) is included in the current budget.

**BACKGROUND:**

The Southampton Unit D-6 subdivision is located in the vicinity of McAllister Drive and Arguello Drive. This subdivision created 205 new single-family homes and constructed the necessary supporting public infrastructure including the streets, water, sewer, and storm drain lines. All required public improvements have passed final inspection and are now ready to be accepted for City maintenance.

The Final Map and Subdivision Improvement Agreement for this project were originally approved by City Council Resolution No. 97-46 on April 1, 1997. The offers of dedication for the street rights-of-way and easements within the subdivision were rejected at that time to reduce the City's liability while the improvements were under construction. Now that the improvements have been completed, the proposed resolution accepts the offers of dedication to enable the City

**VII-F-1**

to maintain the improvements (streets, utilities, etc.) and to provide for public access on the streets within the subdivision.

Following acceptance of the public improvements by City Council, the \$2,370,651 labor and materials bond and the \$2,370,651 performance bond insuring completion of work will be released by the City. The \$237,065 bond guaranteeing the improvements will become effective for one year.

All work has been completed in accordance with the Final Map, Improvement Plans, and to the satisfaction of the City Engineer. Staff recommends that the City accept the public improvements and offers of dedication for City ownership and maintenance purposes.

cc: City Attorney  
City Engineer

Attachments:

- Proposed Resolution
- Location Map

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE PUBLIC IMPROVEMENTS AND OFFERS OF DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS FOR THE SOUTHAMPTON UNIT D-6 SUBDIVISION**

**WHEREAS**, the Final Map for the Southampton Unit D-6 subdivision was approved by City Council on April 1, 1997 by Resolution No. 97-46; and

**WHEREAS**, the public improvements for this subdivision, including streets, water lines, sewer lines and storm drain lines have been completed to the satisfaction of the City Engineer.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Benicia hereby accepts the public improvements for the Southampton Unit D-6 subdivision as complete.

**BE IT FURTHER RESOLVED** that the rejection of the offers of dedication of rights-of-way and easements made on the Final Map for Southampton Unit D-6 is hereby rescinded and now accepted on behalf of the public as follows:

- All street rights-of-way including Kearney Street, Townsend Drive, Arguello Drive, Lloyd Court, McAllister Drive, Lansing Circle, Samuel Court, McKenna Court, Smith Court.
- All easements designated as public utility easements (PUE), storm drain easements (SDE) and sanitary sewer easements (SSE).

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

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 18<sup>th</sup> day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

# Location Map



**AGENDA ITEM**  
**CITY COUNCIL MEETING: DECEMBER 18, 2007**  
**CONSENT CALENDAR**

**DATE** : December 7, 2007

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **APPROVAL OF THE JOB DESCRIPTION AND SALARY RANGE FOR HUMAN RESOURCES ASSISTANT**

**RECOMMENDATION:**

Adopt the resolution approving the job description and salary range for the position of Human Resources Assistant.

**EXECUTIVE SUMMARY:**

This action approves the job description and establishes a salary range for the position of Human Resources Assistant. The Civil Service Commission approved this job description at their November 20, 2007 meeting.

**BUDGET INFORMATION:**

The proposed salary range of \$3,594 to \$4,368 per month is set 5% above the benchmark position of Senior Administrative Clerk, which is consistent with the City's salary-setting practices per the 2006-2007 Classification and Compensation Study. The Human Resources Assistant position will replace the current Senior Administrative Clerk position in Human Resources. The addition of this position is expected to be cost neutral for the division, due to the salary savings resulting from replacing the Human Resources Director position with a Human Resources Manager. Note, this action does not add to the number of authorized positions. Instead, it permits the incumbent Senior Administrative Clerk to be reclassified to the more appropriate new job description and salary.

**BACKGROUND:**

Based on a recent review of the roles and responsibilities of the primary administrative support position in the Human Resources division, the proposed new position of Human Resources Assistant is recommended to replace the current Senior Administrative Clerk position in Human Resources.

This position will be added to Benicia Public Service Employees' Association (BPSEA) and is considered non-exempt from the Fair Labor Standards Act (FLSA) requirements for overtime.

Attachments:

- Resolution
- Human Resources Assistant Job Description

# **RESOLUTION**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE JOB DESCRIPTION AND SALARY RANGE FOR HUMAN RESOURCES ASSISTANT**

**WHEREAS**, the job description for Human Resources Assistant better reflects the administrative and technical needs of the Human Resources Division of the City Manager's Office; and

**WHEREAS**, the proposed job description was approved by the Civil Service Commission on November 20, 2007; and

**WHEREAS**, the proposed salary range is recommended to be set 5% above the benchmark position of Senior Administrative Clerk, which is consistent with the City's salary-setting practices per the 2006-2007 Classification and Compensation Study.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves of the job description of Human Resources Assistant and establishes the following salary range for the position:

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
3,594	3,773	3,962	4,160	4,368

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council on the 18th day of December, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

# **JOB DESCRIPTION**

HUMAN RESOURCES ASSISTANT

DEFINITION:

Under general supervision of the Human Resources Manager, performs a variety of complex, responsible and confidential administrative support for recruitment, classification, compensation and/or training functions within the Human Resources Department.

DISTINGUISHING CHARACTERISTICS:

The incumbent in this position performs a variety of technical and administrative tasks within the Personnel Department. The Human Resources Assistant works under the direction of the Human Resources Manager and handles a variety of responsibilities that involve organization, coordination, records management and problem solving skills. Exercises an advanced level of technical expertise and/or job knowledge relating to the Human Resources functions assigned to.

EXAMPLES OF DUTIES:

Maintains confidentiality of records and information concerning other city employees, including personnel files and medical records, all performance related information such as reviews, reprimands, grievances, disciplinary actions, etc. as well as information relating to the collective bargaining process.

Prepares and maintains worker's compensation injury reports and records; processes claims and related actions; coordinates with various departments and other medical providers/third party administrators; ensures accurate recordkeeping.

Assist in recruiting, testing and selection of employees, including preparing advertisements and recruitment job flyers, coordinating recruitment processes, scheduling, application screening, written performance tests and interviews.

Assists in proctoring and grading employment tests, prepares eligibility lists, notifies candidates at all steps of the selection process; coordinates employee pre-placement physical examinations for newly-hired employees; photographs employees and prepares identification cards.

Maintains training calendar, registers employees for off-site workshops.

Receives and distributes communications and independently prepares correspondence.

Assists in the preparation and monitoring of the Personnel Department budget, and handles appropriate bills for payment.

Interprets and provides information to City employees, other agencies and the general public relative to City personnel policies, procedures and processes.

Performs special surveys and research projects as assigned.

Makes every reasonable effort to continually improve the manner in which the job is performed and increase the quality of service to City departments and the public.

QUALIFICATIONS:

Knowledge of:

Principles, practices, methods, and techniques used in Human Resources administration.

Employment recruiting, and examination techniques and procedures.

Accounting procedures with regard to purchase orders, payment requisitions and funding.

Correct English usage, spelling, grammar, and punctuation.

Modern office methods, procedures, equipment and business letter writing.

File maintenance and management.

Fundamental research and statistical methods.

and

Ability to:

Learn and interpret City personnel rules and regulations and explain and apply them with good judgement.

Effectively provide information to the employees and job applicants on a variety of personnel matters.

Prepare and maintain confidential, technical and statistical records and reports.

Perform responsible clerical work with speed and accuracy.

Type at a speed of 50 words per minute from clear copy.

Operate standard office machines such as computers, scanners and copier equipment and navigate the Internet.

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Understand and carry out oral and written instructions.

Establish and maintain cooperative and effective relationships with the general public and those contacted in the course of work.

Communicate clearly and concisely, both orally and in writing.

Assist in the development and administration of various personnel related programs and projects.

**EXPERIENCE AND EDUCATION:**

Any combination equivalent to experience and education that could likely provide the required knowledge and abilities would be qualifying. A typical way to obtain the knowledge and abilities would be:

**Experience:**

Three years of increasingly responsible experience in personnel work; experience in a local government agency involving work with a personnel board or civil service commission is highly desirable.

**Training:**

Equivalent to graduation of the 12th grade, additional course work in personnel administration is highly desirable.

**WORKING CONDITIONS:**

Essential duties require the mental and/or physical ability to; work in a standard office environment; drive a vehicle; read fine print and Video Display Terminals; operate a computer keyboard; converse by telephone, in person, and to large groups and be clearly understood; stamina to work additional hours to meet deadlines and attend night meetings, as needed.

**POSITION INFORMATION:**

Originated: October 19, 2007

Approved by Civil Service: November 20, 2007

Approved by City Council:

FLSA: Non-Exempt

Bargaining Unit: BPSEA

**CITY COUNCIL MEMBER**

**REQUEST FOR ITEM ON COUNCIL AGENDA**

Please submit this request by the Friday preceding the agenda packet distribution day, or 12 calendar days prior to the meeting. (For example, for a Council meeting on March 21<sup>st</sup>, please submit the request by March 10<sup>th</sup>.)

Requested by:

**Vice Mayor Campbell**

Requested Council Meeting Date:

**December 18, 2007**

While every effort will be made to include your item on the requested date, please note that depending on the number of items already on an agenda, it may be placed on the subsequent meeting date.

Agenda Item Name:

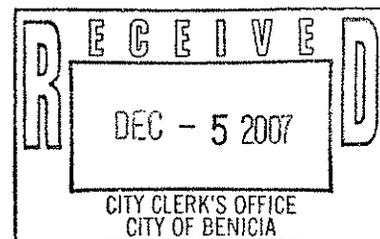
**Request to pay off the Valero Property Tax Settlement at an accelerated rate.**

Description of Item (i.e., the text that will go on the agenda as the middle paragraph, between the title and recommendation):

**Council Member Campbell has requested that the City Council agendize a request to consider an accelerated pay off of the Valero Property Tax Settlement.**

If you would like any attachments regarding your item included in the packet, please note them below and forward them via email to [acardwell@ci.benicia.ca.us](mailto:acardwell@ci.benicia.ca.us), if possible, along with this completed form. If attachment(s) are not available via email, please describe the attachment(s) desired and any information you may have on where to locate (website, etc.) so they can be included in the packet.

A copy of this completed form will be included in the packet, followed by any attachments you note above. Thank you!



I would like to put on the next City Council meeting a request to pay off the Valero Property Tax Settlement at an accelerated rate (following the City Council two step protocol). Something along the lines of \$600,000 for the initial payment and at least \$200,000 more per year than the present schedule. The source of this additional money would be from the City Reserves. This would absolutely lower the reserves below 20% (although I personally believe it already is). I like to think I helped formulate and initiate the 20% reserve policy in 2002. I also think the approach I proposed to build the reserves and not increase expenditures until the Valero property tax appeal had been settled and paid would have been a better approach. That being said it isn't logical to incur hundreds of thousands of dollars in interest payments when the money is available in the reserves. As I remember the discussions in the Audit and Finance Committee and City Council, going below the 20% reserve level was never to be used to balance the annual budget or for discretionary capital expenditures. It was primarily to be used to protect against State takeaways and emergencies. However when the 20% reserve policy was formulated the the facts involved in the Valero property tax settlement didn't exist. If they had I believe this would have qualified as a reason to go at least to some degree below the 20% floor. I realize this is potentially a slippery slope we would be embarking on, but the City Council could reevaluate the accelerated payments on a yearly or quarterly basis. Also because this is such an unusual set of circumstances I don't believe this sets a precedent for raiding the City Reserves.

A handwritten signature in black ink, appearing to be "Tom Campbell".

Tom Campbell

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 18, 2007  
CONSENT CALENDAR**

**DATE** : December 4, 2007

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **APPROVAL OF CALIFORNIA AIR RESOURCES BOARD  
TRANSIT FLEET RULE SETTLEMENT AGREEMENT AND  
RELEASE PAYMENT**

**RECOMMENDATION:**

Adopt the resolution authorizing the City Manager to sign the Settlement Agreement and Release with the California Air Resources Board ("CARB") and authorize payment of \$18,000 from Benicia Breeze Operating Reserves.

**EXECUTIVE SUMMARY:**

The Benicia Breeze is required to reduce emissions on its urban buses by 85% and other transit fleet vehicles (cutaways) by 40% no later than December 31, 2007, per the Transit Fleet Rule adopted in February 2000. In order for the Benicia Breeze to be compliant with the rule, the City Council in April 2007 authorized a loan of \$250,000 from the General Fund in order to facilitate the purchase and installation of diesel particulate devices on the Benicia Breeze fleet of urban buses and cutaways. At the April 3, 2007 Council meeting, staff explained that it was not understood until May 2006 that the Transit Fleet Rule and reporting requirements pertained to Benicia Breeze due to the small size of the fleet. However, because, in fact, the Rule did apply to Benicia Breeze, CARB is requiring that a Settlement Agreement and Release be approved, along with the payment of \$18,000. Since being notified of the applicability of the Rule in May 2006, staff has developed and implemented an aggressive compliance plan and will be fully compliant with the Transit Fleet Rule requirements by December 31, 2007, as required by CARB.

**BUDGET INFORMATION:**

The payment of \$18,000 will be funded through Benicia Breeze operating reserves and remaining loan balance from the City's General Fund. In the meantime, Benicia Breeze staff have applied for FTA and Bay Area Air Quality Management District grants to support the installation of diesel particulate devices on seven urban transit buses and five diesel cutaway vehicles and to perform mid-life rehabilitations on seven urban buses. To date, Benicia Breeze has received tentative grant approvals totaling \$442,800. Once the grant money is received, a portion will be used to pay down the \$250,000 loan from the General Fund, thus reducing the loan payments due from the Benicia Breeze operating reserves.

## **BACKGROUND:**

### **2000 Transit Fleet Rule**

The Benicia Breeze is required by the California Air Resources Board (CARB) to reduce emissions on its urban buses by 85% and other transit fleet vehicles (cutaways) by 40% no later than December 31, 2007, per the Transit Fleet Rule adopted in February 2000. This rule requires diesel transit fleet operators to reduce nitrogen oxide (NOX) and particulate matter (PM) emissions.

Due to a misinterpretation in 2002 of information received from CARB regarding compliance with the Transit Fleet Rule, staff made an incorrect assumption that the City was exempt from meeting the Transit Fleet Rule due to the small fleet size. At the time, the Benicia Breeze consisted of three urban buses, four cutaway vehicles and four minivans. With this in mind, neither Benicia Breeze staff or the staff of the transit contractor filed a series of reports and milestones required under the Transit Fleet Rule, including:

- Declaration of a Compliance Path in 2002
- Report on PM and NOX emissions reductions in 2004
- Annual Transit Fleet Rule Reports in Fiscal Year's 2002, 2003, 2004 and 2005
- Report on Smoke Opacity Standards tests in 2004

Because these plans, tests and reports were not filed in a timely manner, CARB has required a compliance settlement agreement and an \$18,000 payment.

### **Corrective Measures**

In an effort to gain compliance with the Transit Fleet Rule, staff has been aggressive in implementing the following reports and milestones:

- Developed a timeline and compliance plan for meeting the requirements of the Transit Fleet Rule by December 31, 2007. This plan designates that Benicia Breeze will follow the Diesel Path and install Level 3 diesel particulate traps on all 12 of its diesel-powered buses and other transit vehicles.
- Received a loan of \$250,000 from the City's General Fund in April 2007 for the purpose of upgrading the emissions equipment on Benicia Breeze's fleet of buses.
- Installed (or in the process of installing) Level 3 diesel particulate devices to reduce PM and NOX emissions by 85% for the seven urban buses and 40% for the five other transit vehicles.
- Filed Annual Transit Fleet Rule Reports for Fiscal Year's 2002, 2003, 2004 and 2005, thus meeting the Transit Fleet Rule requirements.
- Submitted Diesel Smoke Opacity Standards tests in accordance with the Periodic Smoke Inspection Program (PSIP) and trained MV Transit Maintenance how to perform the PSIP tests.

- Retired the 1997 and 2000 diesel cutaways. The vehicles were replaced with gasoline-powered cutaways.

### Future Funding Issues

Benicia Breeze Staff have been investigating several grant sources in order to assist in recovering the costs of compliance with the Transit Fleet Rule. To date \$442,800 in capital funding from the Federal Transit Administration and the Bay Area Air Quality Management District have been tentatively approved and should be formally approved on December 10, 2007. Once the grant money is received, a portion will be used to reimburse the \$250,000 advance from the General Fund used to install the required emissions devices, thus reducing the loan payments due from the Benicia Breeze operating reserves.

The balance of the grant funds will be used to perform mid-life rehabilitations on the City's seven urban buses over the course of the next 12 to 18 months. Staff expects a major reduction in maintenance costs following the rehabilitation of the aging buses, as they are not scheduled for replacement until 2012.

#### Attachments:

- Resolution
- Settlement Agreement and Release
- Benicia Compliance Plan
- Fact Sheets on the Fleet Rule for Transit

# Resolution

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT  
AGREEMENT AND RELEASE WITH THE CALIFORNIA AIR RESOURCES BOARD**

**WHEREAS**, In February 2000, the California Air Resources Board adopted the Fleet Rule for Transit Agencies and required all Transit Agencies to begin establishing milestones to achieve compliance by December 31, 2007; and

**WHEREAS**, Benicia Transit staff incorrectly determined the Fleet Rule for Transit Agencies did not apply to Benicia Transit because of the "9 Bus Exemption" used to avoid certain Federal reporting mandates; and

**WHEREAS**, upon contacting the California Air Resources Board in May 2006, Benicia Breeze staff was notified of the non-compliance with the Fleet Rule for Transit Agencies and established methods to achieve compliance by December 31, 2007; and

**WHEREAS**, due to the failure to comply with California Air Resources Board reporting and testing requirements, the California Air Resources Board has negotiated a Transit Fleet Rule Settlement Agreement and Release with the City of Benicia that requires a payment of \$18,000 to resolve all late filing and testing violations.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby authorizes the City Manager to enter the Settlement Agreement and Release with the California Air Resources Board.

**BE IT FURTHER RESOLVED THAT** the City Manager is authorized to pay \$18,000 from Benicia Breeze Operating Reserves, in accordance with said agreement.

\*\*\*\*\*

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 18<sup>th</sup> day of December, 2007 and adopted by the following vote:

Ayes:  
Noes:  
Absent:

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

Attest:

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

# Settlement Agreement and Release

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and the CITY OF BENICIA, (hereinafter "CITY") with its principal office at 250 East "L" Street, Benicia, California 94510.

### RECITALS

- (1) *California Health and Safety Code (H&SC) Section 44011.6* established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, Chapter 3.5, Sections 2180-2188, Title 13, California Code of Regulations (CCR).
- (2) *H&SC Section 43701* provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excess smoke emissions.
- (3) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC* section 43701 and, with limited exceptions which are not applicable here, apply to all heavy-duty diesel-powered vehicles with gross vehicle weight ratings greater than 6,000 pounds which operate on the streets or highways within the State of California.
- (4) Title 13, CCR sections 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based truck fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds which operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.
- (5) Title 13, CCR section 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."

- (6) Title 13, CCR section 2023.1(a)(1) states that Transit agencies must choose their compliance path, and notify ARB of their intent to follow either the diesel or the alternative-fuel path, by January 31, 2001. Reporting requirements for that notification are set forth in Title 13, CCR sections 2023.4(a) and (b).
- (7) Title 13, CCR section 2023.1(e)(1)(A) states that no later than January 1, 2004, the diesel particulate matter (PM) emission total for a transit agency on the diesel path shall be no more than 60 percent of its diesel PM emission total on January 1, 2002.
- (8) Title 13, CCR section 2023.1(e)(2)(A) states that no later than January 1, 2005, the diesel PM emission total for a transit agency on the diesel path shall be no more than 40 percent of its diesel PM emission total on January 1, 2002.
- (9) Title 13, CCR section 2023.4(b)(2) states that the following reports on new urban bus purchases and/or leases by transit agencies on the diesel path shall be submitted as described below: Each transit agency shall submit an annual report containing the number, manufacturer, make, and model year of engines, and fuel used for each urban bus it currently owns or operates, and urban bus purchases and/or leases beginning January 1, 2000. The first report shall be submitted by January 31, 2001. Subsequent reports shall be submitted annually by January 31 through the year 2016.
- (10) Title 13, CCR section 2023.4(c)(1) states that each transit agency shall submit the following reports on the urban bus oxides of nitrogen (NOx) fleet average requirement: Initial documentation shall be submitted by January 31, 2001, and contain, at a minimum, the active urban bus fleet NOx emission average, and if that number exceeds the average required in subdivision (d), section 2023.1, title 13, CCR, a schedule of actions planned to achieve that average by October 1, 2002, including numbers and model years of bus purchases, retirements, retrofits, and/or repowerings, or shall indicate the intent of the transit agency to retire all model year 1987 and earlier buses in its active fleet by October 1, 2002.
- (11) Title 13, CCR section 2023.4(c)(2) states that a final report shall be submitted by January 31, 2003, detailing the active urban bus fleet NOx emission average as of October 1, 2002, and actions, if any were needed, taken to achieve that standard, including numbers and model years of bus purchases, retirements, retrofits, and/or repowerings, or documenting the retirement of all model year 1987 and earlier buses.
- (12) Title 13, CCR section 2023.4(d) requires an agency to submit reports on diesel PM emission reduction with the initial report due January 31, 2003, and annual reports due January 31, 2004, January 31, 2005, and January 31, 2006.

- (13) *H&SC* Section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500) per vehicle."
- (14) Title 13, CCR section 2023.4(k)(1) states, "A transit agency that fails to submit a complete report in accordance with this section is subject to civil penalties of not less than \$100 per day for every day past January 31 of each reporting year through 2016."
- (15) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (16) The CITY failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel buses for 2004 and 2005, in violation of Title 13, CCR Sections 2190 et seq.
- (17) The CITY failed to notify ARB of its compliance path selection by the January 31, 2001, deadline pursuant to title 13, CCR section 2023.1(a)(1). Notification was made May 1, 2006.
- (18) The CITY failed to accomplish the diesel PM emission reductions pursuant to title 13, CCR section 2023.1(e)(1)(A).
- (19) The CITY failed to submit reports for years 2001, 2002, 2003, 2004, and 2005 pursuant to title 13, CCR section 2023.4(b)(2).
- (20) The CITY failed to submit the initial report regarding their urban bus NOx fleet average pursuant to title 13, CCR section 2023.4(c)(1).
- (21) The CITY failed to submit the final report regarding their urban bus fleet NOx emission average pursuant to title 13, CCR section 2023.4(c)(2).
- (22) The CITY failed to submit the initial report and reports for 2004 and 2005 pursuant to title 13, CCR section 2023.4(d). The report due January 31, 2006, arrived April 4, 2006.
- (23) The ARB alleges that if the facts described in recital paragraphs (1) – (22) were proven, civil penalties could be imposed against the CITY as provided in *H&SC* section 43016.
- (24) The CITY admits the facts and allegations in Recital paragraphs (1) - (23) above.

- (25) In mitigation, the CITY's current Transit Services Manager was hired by the CITY in April 2005.
- (26) The CITY has been fully cooperative during and subsequent to the inspection by ARB.
- (27) The CITY provides urban and transit services to its residents who would otherwise drive in single-occupant vehicles. The public transit vehicles are generally less polluting than multiple single-occupant vehicles and reduce traffic, congestion, and consumption and combustion of fuels.
- (28) The CITY is a public agency that would be financially burdened by larger penalties.
- (29) After discovering the violations, the CITY instituted a number of measures to mitigate the harms caused by the facts described in recital paragraphs (16) – (22). First, the CITY tested its fleet on August 16 and 17 and November 10, 2006; all vehicles passed the PSIP smoke tests. Second, the CITY tested all of its leased urban and transit vehicles on August 17, 2006; all vehicles passed the PSIP smoke tests. Third, although late, the CITY did notify ARB of its compliance path for the transit rules. Fourth, although late, the CITY did submit an annual report for 2006. Fifth, on or about April 3, 2007, the Benicia City Council approved the CITY'S request to purchase Level 3 devices for the urban and transit fleet vehicles. Sixth, of the three remaining vehicles which were leased from another entity, the CITY replaced them with buses that have level 3 devices. Seventh, the CITY plans on installing devices which also reduce oxides of nitrogen.
- (30) The CITY is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

#### TERMS & RELEASE

In consideration of ARB not filing a legal action against the CITY for the violations alleged above, ARB and the CITY agree as follows:

- (1) Upon execution of this agreement, the CITY shall pay a civil penalty of eighteen thousand dollars (\$18,000). Payment shall be made in check form payable to the **California Air Pollution Control Fund** and the full amount shall be submitted by **no later than December 24, 2007**. Payment shall be sent to the attention of:

Ms. Nancy O'Connor  
California Air Resources Board, Enforcement Division  
P.O. Box 2815  
Sacramento, CA 95812

- (2) The CITY shall not violate H&SC Sections 43701 et seq. and 44011.6 et seq. and Title 13, CCR Sections 2180 et seq., 2190 et seq., 2020 et seq., and 2485 et seq.
- (3) The CITY shall have all staff responsible for compliance with the Periodic Smoke Inspection Program (PSIP) and the Heavy Duty Vehicle Inspection Program (HDVIP) attend the California Council on Diesel Education and Technology (CCDET) class, as described on the ARB's webpage at [www.arb.ca.gov/msprog/hdvp/hdvp.htm](http://www.arb.ca.gov/msprog/hdvp/hdvp.htm). This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP and the HDVIP. Proof of CCDET completion shall be provided to ARB within one year of the date of this Agreement and shall also be maintained in each applicable CITY employee's file for the term of his or her employment, or as provided by the CITY rules, regulations, codes, or ordinances, whichever is longer.
- (4) The CITY shall submit copies of all PSIP compliance records for years 2007, 2008 and 2009 to the ARB no later than the end of each calendar year by January 31 of the following year. Copies shall be addressed to the attention of Nancy O'Connor at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any CITY fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (5) The CITY shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California no later than 45 days after an engine requiring reflash to comply with ARB emission standards is identified or included in its fleet.
- (6) Each heavy-duty commercial vehicle in the CITY fleet shall have proof that its engine meets emissions standards at least as stringent as U. S. federal standards for its model-year by having a manufacturer emission control label (ECL) properly affixed to the engine within 45 days of this agreement.
- (7) The CITY shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485 within 45 days of this Agreement.
- (8) The CITY shall notify ARB within 30 days of any changed circumstances that jeopardize current compliance, or that could jeopardize future compliance, with

the transit bus fleet regulations. For each failure to notify under this paragraph, as determined by ARB, the CITY shall pay ARB liquidated damages of \$1000 per vehicle within 90 days of ARB notification to the CITY.

- (9) This Agreement shall apply to and be binding upon the CITY and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (10) Now, therefore, in consideration of the payment by the CITY to the California Air Pollution Control Fund in the amount of eighteen thousand dollars (\$18,000), ARB hereby releases the CITY and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) through (23) above. The undersigned represent that they have the authority to enter this Agreement.
- (11) This Agreement constitutes the entire agreement and understanding between ARB and the CITY concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and the CITY concerning the subject matter hereof.
- (12) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (13) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (14) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

**California Air Resources Board**

**City of Benicia**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: W. Thomas Jennings

Name: \_\_\_\_\_

Title: Chief Counsel

Title: \_\_\_\_\_

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

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

# Benicia Breeze Compliance Plan

## BENICIA BREEZE COMPLIANCE PLAN

This Benicia Breeze COMPLIANCE PLAN has been prepared by the CITY OF BENICIA (hereinafter "CITY") 250 East L Street, Benicia, California 94510, as the owner of the Benicia Breeze Transit System, in order to comply with California Health and Safety Code Sections relating to Diesel Exhaust Emissions and other matters as noted herein. The STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, shall review the COMPLIANCE PLAN and authorize the CITY to proceed. It is also understood the ARB may require the CITY to enter a SETTLEMENT AGREEMENT that shall be an integral part of and linked directly to this COMPLIANCE PLAN.

### I. RECITALS

- (1) California Health and Safety Code Section 44011.6 authorizes the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes the ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations and notices of violations, accordingly. The program further provides that the vehicle owner is liable for the repairs of engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, Chapter 3.5, Sections 2180-2188, Title 13, California Code of Laws and Regulations (CCR). Health and Safety Code Section 43701 and Sections 2190-2194 of Title 13, California Code of Laws and Regulations authorizes the Periodic Smoke Inspection Program which requires the owners and operators of California based truck fleets of two or more heavy duty diesel motor vehicles to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine. California Health and Safety Code Section 43016 authorizes a civil penalty of not to exceed five hundred dollars (\$500) per vehicle for any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part.
- (2) The ARB Enforcement Division staff, with the cooperation of the CITY OF BENICIA, has documented violations of Health and Safety Code Section 43701 et. seq. and Title 13, CCR, Sections 2190 et. seq. at the CITY OF BENICIA fleet facility in California during the year 2005.
- (3) Section 2023.1(a)(1) of Title 13, CCR, states that transit agencies must choose their compliance path, and shall notify ARB of their intent to follow either the diesel or the alternative-fuel path, by January 31, 2001. Reporting requirements for that notification are set forth in subdivisions (a) and (b) of section 2023.4, Title 13, California Code of Laws and Regulations. The ARB alleges that the CITY OF BENICIA did not notify the ARB of its compliance path selection by the due date of January 31, 2001. Notification was made May 1, 2006.
- (4) Section 2023.1(e)(1)(A) of Title 13, CCR, states that by no later than January 1, 2004, the diesel PM emission total for a transit agency on the diesel path shall be no more than 60 percent of its diesel PM emission total on January 1, 2002. The ARB alleges that the CITY OF BENICIA has not made the required diesel reductions.

- (5) Section 2023.1(e)(2)(A) of Title 13, CCR, states that by no later than January 1, 2005, the diesel PM emission total for a transit agency on the diesel path shall be no more than 40 percent of its diesel PM emission total on January 1, 2002. The ARB alleges that the CITY OF BENICIA has not made the required diesel reductions.
- (6) Section 2023.4(b)(2) of Title 13, CCR, states that the following reports on new urban bus purchases and/or leases by transit agencies on the diesel path shall be submitted as described below: Each transit agency shall submit an annual report containing the number, manufacturer, make, and model year of engines, and fuel used for each urban bus it currently owns or operates, and urban bus purchases and/or leases beginning January 1, 2000. The first report shall be submitted by January 31, 2001. Subsequent reports shall be submitted annually by January 31 through the year 2016. The ARB alleges that the CITY OF BENICIA has not submitted reports for years 2001, 2002, 2003, 2004, and 2005.
- (7) Section 2023.4(c)(1) of Title 13, CCR, states that each transit agency shall submit the following reports on the urban bus NOx fleet average requirement: Initial documentation shall be submitted by January 31, 2001, and contain, at a minimum, the active urban bus fleet NOx emission average, and if that number exceeds the average required in subdivision (d), section 2023.1, title 13, CCR, a schedule of actions planned to achieve that average by October 1, 2002, including numbers and model years of bus purchases, retirements, retrofits, and/or repowerings, or shall indicate the intent of the transit agency to retire all model year 1987 and earlier buses in its active fleet by October 1, 2002. The ARB alleges that the CITY OF BENICIA did not submit the required initial documentation regarding urban bus NOx fleet averages.
- (8) Section 2023.4(c)(2) of Title 13, CCR, states that a final report shall be submitted by January 31, 2003, detailing the active urban bus fleet NOx emission average as of October 1, 2002, and actions, if any were needed, taken to achieve that standard, including numbers and model years of bus purchases, retirements, retrofits, and/or repowerings, or documenting the retirement of all model year 1987 and earlier buses. The ARB alleges that the CITY OF BENICIA did not submit the required urban bus fleet NOx emission average.
- (9) Section 2023.4(d) of Title 13, CCR, requires that an agency submit reports on diesel PM emission reduction with the initial report due January 31, 2003, and annual reports due January 31, 2004, January 31, 2005, and January 31, 2006. The ARB alleges that the CITY OF BENICIA did not submit an initial report, nor the reports for 2004 and 2005. The report due January 31, 2006, arrived April 4, 2006.

## **II. ELEMENTS OF COMPLIANCE PLAN**

The CITY OF BENICIA agrees to perform the following in a timely manner but not less than December 31, 2007 unless noted below or deferred in writing by the ARB:

- (1) The CITY OF BENICIA shall not violate Health and Safety Code Sections 43701 et seq. and 44011.6 et seq., Title 13, California Code of Laws and Regulations, Sections 2180 et seq., 2190 et seq., and 2023 et seq.
- (2) The CITY OF BENICIA shall have any staff and contractors responsible for compliance with the Periodic Smoke Inspection Program (PSIP) and the Heavy Duty Vehicle Inspection Program (HDVIP) attend the California Council on Diesel Education and Technology (CCDET) class, as described on the ARB's webpage at [www.arb.ca.gov/msprog/hdvip/hdvip.htm](http://www.arb.ca.gov/msprog/hdvip/hdvip.htm). This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP and the HDVIP. Proof of CCDET completion shall be provided to the ARB prior to March 31, 2007 and shall also be maintained in each applicable CITY OF BENICIA employee's file for the term of his or her employment.
- (3) The CITY OF BENICIA shall provide copies of all PSIP compliance records for 2007 and subsequent calendar years to the ARB at the end of every calendar year for the next three years (through 2009). The ARB shall have the right to visit any CITY OF BENICIA fleet location at any time to conduct compliance audits for the HDVIP, PSIP, Transit, or any other ARB program.
- (4) The CITY OF BENICIA shall complete all low NOx software upgrades (reflash) on all applicable heavy duty diesel engines in the CITY OF BENICIA'S fleet.
- (5) Each heavy-duty commercial vehicle in the CITY OF BENICIA'S fleet shall have proof that its engine meets emissions standards at least as stringent as U. S. federal standards for its model-year by having a manufacturer emission control label (ECL) properly affixed to the engine.
- (6) The CITY OF BENICIA designates that it will follow the diesel compliance path and ensure that all current and future urban and transit fleet vehicles owned or purchased will meet the requirements established by the ARB..
- (7) The CITY OF BENICIA shall submit annual reports in accordance with 13 CCR 2023.4(d)(1) and 2023.4(d)(2) for the years 2001, 2002, 2003, 2004, and 2005.
- (8) The CITY OF BENICIA shall submit a final report detailing the active urban bus fleet NOx emission average as of October 1, 2002.
- (9) The CITY OF BENICIA will come into compliance with all required NOx and PM reductions. As of January 1, 2007, current diesel PM emission totals for urban fleets should be no more than 15 percent of its diesel emission total on January 1, 2002, or equal

to 0.01 g/bhp-hr times the total number of current diesel-fueled active fleet buses, whichever is greater, as set forth in CCR, Title 13, Section 2023.1(e)(3)(A). The CITY OF BENICIA shall purchase Level 3 devices for its operating Urban and Transit Fleet Vehicles with engine model years between 2000 and 2005 to meet the requirements of the Transit Fleet Rule.

- (10) The CITY OF BENICIA shall instruct all employees and who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, title 13, Section 2485.
- (11) The CITY OF BENICIA must notify ARB within 30 days of any changed circumstances that jeopardize current compliance, or that could jeopardize future compliance, with the transit bus fleet regulations. For each failure to notify under this paragraph, as determined by ARB, the CITY OF BENICIA must pay ARB liquidated damages of \$1000 within 90 days of ARB notification to the CITY OF BENICIA.
- (12) The CITY OF BENICIA shall comply with this COMPLIANCE PLAN in its entirety. The CITY OF BENICIA understands that failure to comply can result in legal action and potential penalties, that may be based on lack of adherence to the COMPLIANCE PLAN or that may have been based on the circumstances described in paragraphs (2) through (9) of the Recitals.

Fleet Rule for Transit Agencies  
Fact Sheets

## FACT SHEET

# Fleet Rule for Transit Agencies

## Transit Fleet Vehicle Requirements

title 13, California Code of Regulations, sections 2020, 2023, 2023.2 & 2023.4

**Purpose** Reduce public exposure to diesel particulate matter (PM) and nitrogen oxide (NOx) emissions from Transit Fleet Vehicles.

**What is a Transit Fleet Vehicle?** On-road vehicles operated by a public transit agency, less than 35' in length and 33,000 gross vehicle weight rate (GVWR), but greater than 8,500 GVWR, powered by heavy-duty engines fueled by diesel or alternative fuel; including service vehicles, tow trucks, dial-a-ride buses, paratransit buses, charter buses, and "commuter service" buses operated only during peak commute hours with 10 or fewer stops per day. Gasoline-powered TFVs are exempt.

**PM Reduction Regulation** A transit agency shall make percentage reductions in the total diesel PM emissions of its diesel transit fleet vehicles (TFV) relative to its January 1, 2005, total TFV fleet diesel PM baseline by the dates shown below.

**NOx Reduction Regulation** A transit agency shall not operate transit fleet vehicles with a NOx fleet average exceeding specified levels by the dates shown below.

Emissions Compliance Deadlines <sup>(1)</sup>	Dec. 31, 2007	Dec. 31, 2010
PM (reduction from 1/1/2005 baseline)	40%	80%
NOx (grams/bhp-hr)	3.2 <sup>(2)</sup>	2.4 <sup>(3)</sup>

(1) Non-Compliance may be subject to civil penalties as specified in state law and regulations

(2) 1997 and earlier model year engines may be retired by 12/31/2007 to comply with this requirement

(3) 2001 and earlier model year engines may be retired by 12/31/2010 to comply with this requirement

**A Transit Agency Must Report** TFVs owned, operated or under contract to a transit agency every January 31<sup>st</sup>, starting in 2006.

**To Obtain Emission Reductions:**

- **Use Alternative Fuels** Compressed natural gas (CNG), propane (LPG), ethanol, methanol, gasoline (when used in hybrid electric buses), hydrogen, electricity, fuel cells, or advanced technologies that do not rely on diesel fuel, can be used to reduce PM and NOx emissions to meet the compliance deadlines.
- **Retrofit, Repower or Replace** Diesel Emissions Control Strategies (DECS), e.g., verified Diesel Particulate Filters (DPF) or verified fuels such as PuriNOx, may be installed or used on TFVs; or repowering and replacing TFVs with engines that meet 2007 heavy-duty engine exhaust emission standards may be performed.

Public Transit Agencies website: <http://www.arb.ca.gov/msprog/bus/bus.htm>  
 TFV Fleet Rule Regulations: <http://www.arb.ca.gov/regact/bus04/bus04.htm>  
 DECS Verification: <http://arb.ca.gov/diesel/verdev/home/home.htm>

## FACT SHEET

### Fleet Rule for Transit Agencies

### Urban Bus Requirements

title 13, California Code of Regulations, sections 1956.1, 2020, 2023, 2023.1 & 2023.4

In February 2000, the Air Resources Board adopted the Fleet Rule for Transit Agencies and more stringent exhaust emission standards for new Urban Bus (UB) engines and vehicles. The regulation also promotes advanced technologies by providing for zero-emission bus (ZEB) demonstration projects and requiring ZEB acquisitions applicable to larger transit agencies.

**What is an Urban Bus?** An UB is a passenger carrying vehicle owned or operated by a public transit agency, powered by a heavy heavy-duty engine, or of a type normally powered by a heavy heavy-duty diesel engine, intended primarily for intra-city operation. A bus normally powered by a heavy heavy-duty diesel engine is usually 35 feet or longer, and/or greater than 33,000 pounds gross vehicle weight rating (GVWR).

**Urban Bus Engine Standard.** New UBs operated in California are required to have engines that meet the more stringent California UB engine exhaust emission standard through the 2006 model year, after which, starting with the 2007 model year, the standard aligns with the California heavy-duty engine exhaust emission standard.

**Fuel Path.** Transit operators are required to choose a fuel path: diesel or alternative fuel. Fuel path choice affects UB purchases and dictates emission reduction deadlines.

- **Alternative Fuel Path.** At least 85% of annual UB purchases shall be fueled by alternative fuel. Alternative fuel includes compressed natural gas (CNG), propane (LPG), ethanol, methanol, gasoline/electric hybrid, hydrogen, electricity, fuel cells, or advanced technologies that do not rely on diesel fuel.

**Reporting Requirements.** A transit agency must report every January 31<sup>st</sup>, starting in 2003 through 2016, the UBs owned, operated, or under contract to the transit agency as of January 1 of that year.

**NOx Fleet Average.** As of October 1, 2002, a transit agency shall not operate a UB fleet with a NOx fleet average exceeding 4.8 g/bhp-hr.

**PM Reduction Requirement.** A transit agency shall make percentage reductions (below) in the total diesel PM emissions of its diesel UB fleet relative to its January 1, 2002, total UB fleet diesel PM baseline:

Fuel Path	Reduction from 2002 Baseline as of January 1st					
	2004	2005	2006	2007	2008	2009
Diesel	40%	60%	-	85%*	-	-
Alternative fuel	20%	40%	-	60%	-	85%*

\*or meet 0.01 g/bhp-hr times the total number of diesel buses in the active fleet.

**Ultra Low Sulfur Fuel.** Since July 2002, transit agencies are required to use ultra low sulfur diesel which contains less than or equal to 15 parts per million sulfur content by weight .

**Zero Emission Bus Purchases.** Begins July, 2008, and affects fleets with greater than 200 UBs.

Public Transit Agencies' website: <http://www.arb.ca.gov/msprog/bus/bus.htm>

DECS Verification: <http://arb.ca.gov/diesel/verdev/home/home.htm>