



**BENICIA CITY COUNCIL
CITY COUNCIL MEETING AGENDA**

**Videoconferencing Meeting
February 2, 2021
7:00 PM**

Coronavirus (Covid-19) Advisory Notice

The Solano County Public Health Department has advised that non-essential gatherings should be canceled, postponed, or done remotely. Additional information is available at <http://www.solanocounty.com/depts/ph/ncov.asp>.

This meeting is necessary so that the City can continue to conduct its business and is considered an essential gathering. Consistent with Executive Orders No. 25-20 and No. 29-20 from the Executive Department of the State of California, the meeting will not be physically open to the public. Members of the City Council and staff will participate in this meeting via videoconferencing as permitted under Executive Orders No. 25-20 and No. 29-20.

As always, the public may submit public comments in advance and may view the meeting from home. Below is information on how to watch the meeting via cable and/or live stream and how to send in public comments that will be part of the public record.

How to Watch the Meeting:

- 1) Cable T.V. Broadcast on Channel 27
- 2) Livestream online at www.ci.benicia.ca.us/agendas.
- 3) Zoom Meeting (link below)

How to Submit Public Comments for this videoconferencing meeting:

Members of the public may provide public comments to the City Clerk by email at lwolfe@ci.benicia.ca.us. Any comment submitted to the City Clerk should indicate to which item of the agenda the comment relates. Specific information follows:

- Comments received by 3:00 pm on the day of the meeting will be electronically forwarded to the City Council and posted on the City's website.

- Comments received after 3:00 pm, but before the start time of the meeting will be electronically forwarded to the City Council, but will not be posted on the City’s website, and will not be read into the record.
- Comments received after the start time of the meeting, but prior to the close of the public comment period for an item will be read into the record, with a maximum allowance of 5 minutes per individual comment, subject to the Mayor's discretion.

Additionally, the public may view and provide public comment via Zoom (via computer or phone) link: <https://us02web.zoom.us/j/84277711538?pwd=SDI3ZXVzQkV2MUxJd3h5T01saUU0Zz09>

- If prompted for a password, enter 454382.
- Use participant option to “raise hand” during the public comment period for the item you wish to speak on. Please note, your electronic device must have microphone capability. Once unmuted, you will have up to 5 minutes to speak.

Dial in with phone:

Before the start of the item you wish to comment on, call any of the numbers below. If one is busy, try the next one.

- 1 669 900 9128
- 1 346 248 7799
- 1 253 215 8782
- 1 646 558 8656
- 1 301 715 8592
- 1 312 626 6799

- Enter the meeting ID number: 842 7771 1538 *please note this is an updated ID number*.
- Enter password: 454382
- When prompted for a Participant ID, press #.
- Press *9 on your phone to “raise your hand” when the Mayor calls for public comment during the item you wish to speak on. Once unmuted, you will have up to 5 minutes to speak.

Any member of the public who needs accommodations should email City Clerk Lisa Wolfe at lwolfe@ci.benicia.ca.us, who will use her best efforts to provide as much accessibility as possible while also maintaining public safety.

Call To Order (7:00 P.M.)

1. Convene Open Session

2. Roll Call

3. Pledge Of Allegiance

4. Reference To The Fundamental Rights Of The Public

The fundamental rights of each member of the public can be found in the municipal code posted on the City’s website per section 4.04.030 of the City of Benicia's Open Government Ordinance.

5. Announcements

5.A - OPENINGS ON BOARDS AND COMMISSIONS

- Arts & Culture Commission
 - 1 Partial Term, Expiring July 31, 2021
 - 1 Partial Term, Expiring January 31, 2022
 - 1 Full Term, Expiring January 31, 2025

- Human Services Board
 - 1 Partial Term, Expiring July 31, 2021

- Library Board of Trustees
 - 2 Full Terms, Expiring January 31, 2024

- Open Government Commission
 - 1 Full Term, Expiring January 31, 2025
 - 1 Partial Term, Expiring January 31, 2022

- Planning Commission
 - 2 Full Terms, Expiring January 31, 2025
 - 1 Partial Term, Expiring January 31, 2024

- Sky Valley Open Space Committee
 - 1 Full Term, Expiring January 31, 2023
 - 3 Full Terms, Expiring January 31, 2025

6. Proclamations

None

7. Appointments

None

8. Presentations

8.A - UPDATE ON THE SOLANO COMMISSION FOR WOMEN AND GIRLS

9. Adoption Of Agenda

10. Opportunity For Public Comments

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11. Written Comment

12. Public Comment

13. 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.

13.A - APPROVAL OF CITY COUNCIL MINUTES FROM JANUARY 19, 2021 MEETING (City Clerk)

Recommendation:
Approve the minutes.

[January 19, 2021 City Council Meeting Minutes](#)

13.B - REVIEW RESOLUTION NO. 20-78 REQUIRING THE WEARING OF FACE COVERINGS IN BENICIA (City Attorney)

In response to the COVID-19 pandemic, on June 16, 2020, the City Council adopted Resolution No. 20-78, that required in certain instances face coverings to be used in certain indoor settings. Shortly thereafter, on June 18, 2020, the State of California issued a face covering order that largely preempted the City's resolution and has since continued to refine this order. Since the City is not relying on this resolution as its primary means of enforcement, and the State has issued a comprehensive order addressing face coverings, it is staff's recommendation to continue the review of Resolution No. 20-78 until June of 2021.

Recommendation:
Direct staff to bring Resolution No. 20-78 (Attachment 1), requiring the wearing of face coverings in certain locations within the City, back for review to rescind in June of 2021.

[Staff Report - Review Resolution No. 20-78](#)

[1. Resolution No. 20-78](#)

[2. State Order – November 16, 2020](#)

13.C - APPROVAL OF THE FIRST AMENDMENT TO THE PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR ADVANCED LIFE SUPPORT FIRST RESPONDER EMERGENCY SERVICES (Fire Chief)

Currently, the City of Benicia is a participating member city, along with Fairfield, Dixon, and Vallejo, in a Public Private Partnership (PPP) with Medic Ambulance Service, Inc., under which the Benicia Fire Department provides Advanced Life Support (ALS) first response emergency services to the community in order to improve the quality and level of emergency medical service. This partnership agreement began in 2000, and a new agreement was signed in 2010 (Attachment 4). Demand for service and the cost of delivering quality emergency medical services has changed substantially over the last decade. Both Medic Ambulance Service, Inc. and the participating member cities find it necessary and desirable to implement changes to the agreement that achieve the purposes of the partnership. Additionally, the First Amendment of the PPP will add the City of Suisun City as a participating member city and party to the PPP Agreement.

Recommendation:

Move to adopt the resolution (Attachment 1) approving the First Amendment to the Public Private Partnership Agreement for Advanced Life Support First Responder Emergency Services (Attachment 2) and authorizing the City Manager to sign the amendment on behalf of the City.

[Staff Report - Approval of First Amendment to PPP Agreement for ALS First Responder Emergency Services](#)

[1. Resolution - Approval of the First Amendment to PPP Agreement for ALS First Responder Emergency Services](#)

[2. First Amendment to PPP Agreement for ALS First Responder Emergency Services](#)

[3. Exhibit C - Quarterly Payments to Participating Member Cities of the Annual Dollar Allocation](#)

[4. PPP Agreement for ALS First Responder Emergency Services - April 30, 2010](#)

13.D - RATIFYING THE CITY MANAGER’S DECLARATION OF A CONTRACTING EMERGENCY AND APPROVING PAYMENT FOR EMERGENCY WASTEWATER SYSTEM REPAIR LOCATED AT 510 WEST I STREET (Public Works Director)

Benicia Municipal Code (BMC) Section 3.09.050.C. Emergency Contracting provides that the City Council shall review the emergency action “... at least at every regularly scheduled meeting...” following its initial review “... until the action is terminated...” This staff report provides for the current status of the emergency action, which has not yet terminated.

On August 29, 2020, Public Works Wastewater Treatment Plant staff discovered the sanitary sewer (wastewater) transmission line located on West I Street near West 5th Street was “backing up” due to a blockage and engaged Ghilotti Construction (Ghilotti) when it was determined the City’s equipment could not safely perform the repair.

On August 31, 2020, the City Manager, in accordance with BMC Section 3.09.050 Emergency Contracting, declared a contracting emergency. On September 15, 2020, the City Council adopted Resolution No. 20-123, ratifying the City Manager’s Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$150,000, which was based on staff’s estimate at that time.

Since that time, City Council has adopted resolutions at subsequent City Council meetings ratifying the City Manager’s declaration of a contracting emergency and approving payment. The last resolution approved by City Council on January 19, 2020, Resolution No. 21-6, approved payment for an amount not to exceed \$244,317.37.

Ghilotti has completed the installation of the new pipe and restored the public sanitary sewer line to full functionality. Construction of the retaining walls, which will replace the original, private-owned retaining walls that were removed to install the new pipe, and restoration of the work area will be the last item of

work to complete the Emergency Wastewater System Repair and will be scheduled following property owner's sign off of the encroachment agreement.

Recommendation:

Move to adopt a resolution (Attachment 1) ratifying the City Manager's declaration of a contracting emergency due to a blockage in a sanitary sewer transmission line located at 510 West I Street, as well as approving payment for an amount not to exceed \$244,313.37.

[Staff Report - Emergency Wastewater Collection System Repair](#)

[1. Resolution - Emergency Wastewater Collection System Repair](#)

13.E - APPROVAL OF AGREEMENT WITH ERIK UPSON AS CITY MANAGER (City Attorney)

At its January 20, 2021 Council meeting, the City Council appointed Erik Upson as the City Manager contingent on an agreement being executed. This staff report includes the City Manager's Agreement to be adopted by the Council at a regular meeting in accordance with state law.

Recommendation:

Move to adopt the resolution (Attachment 1) approving the proposed City Manager Agreement (Attachment 2) with Erik Upson and authorizing the Mayor to execute the agreement on behalf of the City Council.

[Staff Report - Approval of City Manager Agreement](#)

[1. Resolution - Approval of City Manager Agreement](#)

[2. Agreement with Erik Upson as City Manager](#)

13.F - APPROVAL TO WAIVE THE READING OF ALL ORDINANCES INTRODUCED OR ADOPTED PURSUANT TO THIS AGENDA (City Attorney)

14. Business Items

14.A - TWO-STEP CONTINUATION REGARDING WATER AND WASTEWATER RATE INCREASES (Public Works Director)

On January 1, 2021, water and wastewater rates increased pursuant to Resolution 20-52. Vice Mayor Tom Campbell submitted a two-step request for "extending the postponement of water and wastewater rate increases due to hardships caused by COVID-19" pursuant to the "Council Rules of Procedure." The request was discussed at the January 21, 2021 City Council Meeting agenda where City Council voted 4-1 in favor of scheduling this topic for future discussion at a later City Council Meeting. Rather than changing the entire utilities rate structure for all customers, staff recommends leaving the existing rate structure intact and transferring \$100,000 from Available Unassigned Fund Balance for

COVID-19 Contingency to the Family Resource Center where residents can receive assistance paying for water and wastewater utilities.

Recommendation:

Staff recommends adopting a resolution (Attachment 1) transferring \$100,000 from the Available Unassigned Fund Balance for COVID-19 Contingency to the Family Resource Center to assist residents with paying for water and wastewater utilities.

[Staff Report - Two-Step Request to Postpone Water and Wastewater Rate Increases](#)

[1. Resolution - Transfer Funds from Available Unassigned Fund Balance for COVID-19 Contingency to Family Resource Center](#)

[2. City Council Resolution No. 16-117](#)

[3. City Council Resolution No. 18-35](#)

[4. City Council Resolution No. 20-52](#)

[5. City Council Resolution No. 20-51](#)

15. Adjournment (9:30 P.M.)

Public Participation

The Benicia City Council and its Boards and Commissions welcome public participation.

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

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

Disabled Access or Special Needs

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Alan Shear, the ADA Coordinator, at (707) 746-4200. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

Meeting Procedures

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

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

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

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the

City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.

Contact Your Council Members

If you would like to contact the Mayor or a Council Member, please call the number listed below to leave a voicemail message.

Mayor Young: 707-746-4213

Vice Mayor Campbell: 707-746-4213

Council Member Strawbridge: 707-746-4213

Council Member Largaespada: 707-746-4213

Council Member Macenski: 707-746-4213

DRAFT

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JANUARY 19, 2021
7:00 PM

Video Conferencing Meeting: Complete proceedings of which are recorded on tape. These are action minutes; a full video is available online at www.ci.benicia.ca.us/agendas.

CORONAVIRUS (COVID-19) ADVISORY NOTICE

CALL TO ORDER

Mayor Young called the meeting to order at 4:36 p.m.

All Council Members were present.

1) CLOSED SESSION (4:30 P.M.)

**1.A - CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)**

**Name of cases: Thomas A. Welsh, Jr. et al. v. City of Benicia (FCS054527)
People of the State of California, et al. v. Evergreen Relief, Inc.
(FCS054109)**

**1.B - CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED
LITIGATION**

Initiation of litigation pursuant to 54956.9(d)(4): (1 potential case)

**1.C - CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Section 54757.6**

Agency designated representatives: City Manager, Assistant City Manager, Human Resources Manager, Finance Director

Employee Organizations: Benicia Police Officers Association, Benicia Public Service Employees Association, Benicia Fire Fighters Association, Benicia Dispatchers Association, Benicia Supervisor and Professional Association, Middle Management Employees, Police Management Employees, Senior Management Employees, and Unrepresented Employees including City Manager

1.D - CONFERENCE WITH LABOR NEGOTIATORS

**City designated representatives: (Mayor Young and Vice Mayor Campbell)
Unrepresented employee: (City Manager)**

1.E - PUBLIC EMPLOYEE APPOINTMENT

Title: (City Manager)

DRAFT

Mayor Young adjourned the meeting to Closed Session at 4:37 p.m.

2) CONVENE OPEN SESSION (7:00 P.M.)

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

3) ROLL CALL

All Council Members were present.

4) PLEDGE OF ALLEGIANCE

5) REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC

6) ANNOUNCEMENTS

6.A - ANNOUNCEMENTS FROM CLOSED SESSION, IF ANY

Ben Stock, City Attorney, reported that Council met on multiple items, and had two matters to report out on:

- Item 1.A - Council agreed to a settlement whereby the property owners would reimburse the City for its cost of \$56,000 relating to an enforcement action for an illegal cannabis cultivation. The owner will also remit \$100,000 in nuisance damages to the City. Additionally, the parties will enter into an injunction with the court and the owner will ensure their tenants will comply with both State and City regulations for any cannabis business.
- Item 1.D - The City Council voted 5/0 to appoint Erik Upson as the City Manager of the City of Benicia. Council has directed Mr. Stock to finalize the agreement with Mr. Upson, which will be brought back at a future City Council meeting.

No other reportable actions were taken.

Mayor Young stated that although the City was supportive of legal cannabis businesses, they are not supportive of illegal businesses. When we find illegal businesses, we will act swiftly to deal with them.

6.B - OPENINGS ON BOARDS AND COMMISSIONS

7) PROCLAMATIONS

7.A - CULTURAL DIVERSITY AWARENESS WEEK

Proclamation - Cultural Diversity Awareness Week 

8) APPOINTMENTS

9) PRESENTATIONS

9.A - BENICIA PUBLIC LIBRARY ANNUAL REPORT

Benicia Public Library Annual Report 

1. Annual Report of the Library to City Council 

2. Annual Report to the California State Library for Fiscal Year 2019-2020 

10) ADOPTION OF AGENDA

On motion of Council Member Largaespada, seconded by Council Member Strawbridge, Council approved the Adoption of the Agenda, as presented, on a roll call by the following vote:

Ayes: Vice Mayor Campbell, Council Member Largaespada, Council Member Macenski, Council Member Strawbridge, Mayor Young

Noes: (None)

11) OPPORTUNITY FOR PUBLIC COMMENTS

12) WRITTEN COMMENT

1. Stan Golovich - Mr. Golovich submitted written comments regarding bomb train legacies (copy on file).

13) PUBLIC COMMENT

1. Jeff Schade - Mr. Schade discussed concern regarding the treatment of him, his family, and veterans by City, State, and Local officials.
2. Vice Mayor Campbell - Mr. Campbell discussed concern regarding the intersection at Columbus Pkwy. and Rose Drive and improvements that were supposed to have been made by now.
3. Council Member Largaespada - Council Member Largaespada discussed the upcoming virtual Town Hall that Solano County would be hosting.

14) CONSENT CALENDAR

14.A - APPROVAL OF CITY COUNCIL MINUTES FROM JANUARY 5, 2021 REGULAR MEETING & JANUARY 11, 2021 SPECIAL MEETING (City Clerk)

January 5, 2021 City Council Meeting Minutes 

January 11, 2021 Special City Council Meeting Minutes 

14.B - UPDATING THE HUMAN SERVICES BOARD REQUEST FOR FUNDING APPLICATION AND EVALUATION CRITERIA (Finance Director)

DRAFT

- Staff Report - Updating the HSB RFF Application and Evaluation Criteria 
1. Resolution To Approve Updated HSB RFF and Evaluation Criteria 
 2. Proposed HSB RFF Application – FY 2021-23 
 3. Proposed HSB RFF Grant Scoring Sheet – FY 2021-23 
 4. Adopted HSB RFF Application – FY 2019-21 
 5. Adopted HSB RFF Grant Scoring Sheet – FY 2019-21 

RESOLUTION 21-8 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE UPDATED REQUEST FOR FUNDING APPLICATION AND EVALUATION CRITERIA FOR THE HUMAN SERVICES BOARD REQUEST FOR FUNDING PROCESS

Mayor Young pulled this item to discuss support for the recommended changes, as they will make the grantees more focused on services being provided.

Public Comment:

1. Maggie Kolk - Ms. Kolk spoke in support of the proposed changes.
2. Council Member Macenski - Council Member Macenski thanked everyone who took the time to answer his questions he submitted to Staff.

On motion of Council Member Largaespada, seconded by Council Member Strawbridge, Council approved the adoption of Resolution 21-8, as presented, on a roll call by the following vote:

Ayes: Vice Mayor Campbell, Council Member Largaespada, Council Member Macenski, Council Member Strawbridge, Mayor Young

Noes: (None)

14.C - RATIFYING THE CITY MANAGER’S DECLARATION OF A CONTRACTING EMERGENCY AND APPROVING PAYMENT FOR EMERGENCY WASTEWATER SYSTEM REPAIR LOCATED AT 510 WEST I STREET (Public Works Director)

- Staff Report - Emergency Wastewater Collection System Repair 
1. Resolution - Emergency Wastewater Collection System Repair 

RESOLUTION 21-6 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA RATIFYING THE CITY MANAGER’S DECLARATION OF A CONTRACTING EMERGENCY AND APPROVING PAYMENT FOR EMERGENCY WASTEWATER SYSTEM REPAIR LOCATED AT 510 WEST I STREET

14.D - APPROVAL OF AMENDMENT TO AGREEMENT WITH TRB & ASSOCIATES FOR BUILDING INSPECTION SERVICES (Community Development Director)

- Staff Report - Amendment to Agreement with TRB & Associates 

DRAFT

1. Resolution – Amendment to Agreement with TRB & Associates 
2. Amendment to Agreement with TRB & Associates 

RESOLUTION 21-7 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN AMENDMENT TO THE AGREEMENT WITH TRB & ASSOCIATES FOR BUILDING INSPECTION SERVICES AND AUTHORIZING THE INTERIM CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY

14.E - ACCEPT THE COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDED JUNE 30, 2020 (Finance Director)

Staff Report - CAFR for Fiscal Year ended June 30, 2020 

1. Comprehensive Annual Financial Report for Fiscal Year ending June 30, 2020 
2. Memorandum of Internal Control for Fiscal Year ending June 30, 2020 

Mayor Young and Staff discussed the sales tax receipts, whether there is more current sales tax information after June 2020, the update that will be provided to Council in February 2021, funds to be set aside for capital improvements, emergencies that occur that must be dealt with, the possibility of refinancing pension bonds, and how all members of the Solano County Water Authority pay equally regardless of their size.

Council Member Macenski and Staff discussed the St. Catherine's Woods open space park and why it is funded differently than the other parks (subdivision agreement).

Council Member Strawbridge and Staff discussed the Unassigned Fund balance.

Vice Mayor Campbell and Staff discussed the importance of staying on top of developers when things such as parks or an intersection are promised as part of the developer agreement.

Public Comment:

None

On motion of Council Member Largaespada, seconded by Council Member Strawbridge, Council approved by motion, the acceptance of the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2020, on a roll call by the following vote:

Ayes: Vice Mayor Campbell, Council Member Largaespada, Council Member Macenski, Council Member Strawbridge, Mayor Young

Noes: (None)

14.F - APPROVAL TO WAIVE THE READING OF ALL ORDINANCES INTRODUCED OR ADOPTED PURSUANT TO THIS AGENDA (City Attorney)

Council pulled Items 14.B and 14.E for discussion.

DRAFT

On motion of Council Member Largaespada, seconded by Council Member Strawbridge, Council approved the Consent Calendar on a roll call by the following vote:

Ayes: Vice Mayor Campbell, Council Member Largaespada, Council Member Macenski, Council Member Strawbridge, Mayor Young
Noes: (None)

15) BUSINESS ITEMS

15.A - AMENDMENTS TO OBJECTIVE PLANNING STANDARDS FOR HOUSING DEVELOPMENT PROJECTS (Community Development Director)

- Staff Report - Amendments to Objective Planning & Design Standards
- 1. Resolution - Amendment to Objective Planning and Design Standards
- 2. Objective Planning and Design Standards for Mixed-Use and Multi-Family Residential Development

RESOLUTION 21-9 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE OBJECTIVE PLANNING AND DESIGN STANDARDS FOR HOUSING DEVELOPMENT PROJECTS

Brad Misner, Community Development Director, introduced the staff report.

Suzanne Thorsen, Principal Planner, reviewed the staff report.

Mayor Young asked for clarification that if adopted, the changes would be citywide, not just in the Arsenal. He and Staff discussed why they focused on the Arsenal, and the need to update existing policies and standards in the Arsenal.

Council Member Largaespada and Staff discussed support for the amendments in A5 of the staff report, his feeling that A1 through A4 seemed to be excessive, concerns regarding light (A2), the requirement for blinds and a berm/wall, and the requirement for a high efficiency air filtration system.

Mayor Young and Staff discussed the issue of light/blinds and indoor air quality being mostly unique to the Arsenal.

Council Member Macenski discussed the issue of lighting, possible modifications to allow for modern technology (film on windows rather than window coverings), support for the air filtration requirement, concern regarding the view shed as it is currently written, and concern regarding the tree/vegetation and how it could be determined which were able/required to be removed.

Council Member Strawbridge and Staff discussed concern regarding whether the City was ready to develop the property in the Arsenal, and concern we are making demands that might not hold up with the State.

DRAFT

Mayor Young and Staff discussed the property across from the Commandant's Residence, SB35, and how the objective standards would apply.

Council Member Largaespada and Staff discussed the view corridors and the trees, which trees would be protected, the tree replacement ratio and whether it could be amended to accommodate the developer making a donation to the Benicia Tree Foundation so that the trees could be planted where they are needed in the community. Mr. Stock cautioned that might not be possible because you can't have a condition that requires them to go to a third party. He would look into the issue.

Council Member Macenski discussed how Council Member Largaespada's idea could possibly work.

Mayor Young and Staff discussed the City's practice of not enforcing residents views/view sheds. The City does not have a view shed ordinance. The General Plan and Downtown Historic Conservation Plan and the Arsenal all have addressed the issue of protected views.

Vice Mayor Campbell and Staff discussed concern regarding removing trees and the possibility of changing the historic landscape of the Arsenal.

Council Member Macenski discussed the issue of the trees in the Arsenal and removing vegetation and the need to come up with an objective standard so there is not so much discretion in the decision.

Vice Mayor Campbell discussed the St. Catherine's Woods development and how the view corridors no longer exist there.

Public Comment:

1. Dana Dean - Ms. Dean discussed several changes she requested via written comments she submitted (copy on file).

Mayor Young and Staff discussed the issue of noise and where the decibel level is measured from when readings are taken.

Mayor Young stated that he heard concerns from the Council on the issue of trees, views, light permeation, and indoor air quality.

Council Members Largaespada, Macenski, and Mayor Young discussed the need for a strong disclosure requirement that is specific to a particular development.

Staff and Council discussed the issue of SB35.

Council Member Macenski stated he thought Staff needed to come back to Council with better guidance on what the threshold is for a view corridor.

DRAFT

Vice Mayor Campbell and Staff discussed the issue of light and how different sides of a building could have different issues with noise and light.

Council Member Strawbridge and Staff suggested broadening A5 (proximity disclosure) to include A1 through A4 as to disclosing that to the buyer. That way it is back in the hands of the property owner. At least we would be disclosing the elements they would be dealing with. For the trees, go with the 2-1, but there should be a cap on that. The view issue needs to be simplified.

Mayor Young discussed the items that Council had discussed that would need to come back to Council (light, noise, indoor air quality, and views). Beyond that, the intention was to approve the other standards tonight.

Council Member Largaespada asked if Council could amend the amendment using Council Member Strawbridge's proposal, and what is tabled for further staff work would be cleaning up the view corridor.

Mr. Stock stated he heard the suggestion to table A1 through A4 and add wording to A5 (which already has the requirements of noise, light and indoor air). It does not specify vibration, however that could be added into the last sentence. It sounded like Council was ready to move forward with A5 tonight and bring back A1 through A4.

Council Member Strawbridge clarified that noise, dust, etc. was talked about in A5, but it needs to be more specific to include the exposure to specific risks. It is up to the buyer to understand the disclosures and risks.

Mayor Young clarified that what was being proposed is that we significantly make the disclosure more robust and roll in the language about light, air, proximity, etc.

Council Member Macenski stated there were certain disclosures such as air filtration technology that could not be rolled in because it would need to be more specific to the project.

Ms. Thorsen discussed the issue of the standards that apply to certain areas. They don't apply broadly to the entire City.

Mr. Upson stated he understood that A1-A4 would not move forward tonight. They would be examined and brought back, or, they don't get brought back and we make A5 more robust to address those issues.

Mayor Young stated that they would keep all the items in A1 through A4, but they would be rolled into a more robust A5.

Council Member Macenski clarified that the proposed action was to ditch A1 through A4 and strengthening them and throwing them into A5 and Staff would come back with that.

DRAFT

Mr. Upson stated there was one mention of bringing back an option to Council where we roll it into A5 or look at adjusting the language to A1 through A4. He wanted to be clear that was not what Council was asking Staff to do. Council confirmed that was not what they were asking.

Mayor Young discussed the Inclusionary Housing Ordinance. Mr. Stock confirmed if he wanted to discuss that, he would need to follow the two-step process.

Mr. Stock asked if A5 was being brought back to a future meeting. We should not get involved in creating disclosures. That is between the property owner and the tenant or prospective seller. He was confused how we would parcel out A1-A4 and put it into A5, when A5 already requires the concept of the disclosure.

Mayor Young stated the way he read it is that we would require the disclosure to include the following elements: light pollution, noise, vibration, indoor air quality etc. (topics).

Mr. Upson asked Mr. Stock if we made the slight adjustments to A5, and taking out A1 through A4, would we be fine to move forward with adopting it in its entirety?

Mr. Stock confirmed that could be done tonight.

Mr. Misner agreed with Mr. Stock. What he heard was that we would be going with a general disclosure statement where we will make an amendment on a topical level on A5. We would be losing some of the standards that were specified in A1 through A4. The broad brush of the disclosure is better than nothing. We could certainly use some of those standards in the disclosure statements, however it was not ready for prime time yet. We could make the topical changes easily tonight and adopt that. If Council wants Staff to go back and examine the standards one more time, we could come back and amend A5 at a later date.

Mayor Young stated that Council was ready to move forward with the adoption with the changes to A5 as discussed.

Council Member Macenski clarified that Staff needed to come back with more detailed standards on the views.

Mr. Upson asked if Council wanted Staff to come back with an attempt to clean up A5. That could be offered as an option to make changes to A5 to include the view piece.

Council Member Macenski made a motion to approve with the modifications as described by Mayor Young where items A1 through A4 are removed, and add the topical modifications to A5 as listed by Council Member Largaespada, with additional direction to Staff to come back to Council with further clarification to the view corridors.

DRAFT

Mr. Stock asked if Council wanted to add the General Plan Goals 2.84. Mayor Young confirmed that was correct.

Council Member Macenski modified his motion to include the addition of General Plan Goals in 2.84.

Mr. Misner asked about the acknowledgement of the disclosure. Council confirmed that was simply signing off on the disclosure showing you read it.

Mayor Young confirmed the motion was to approve the resolution as prepared with the amendment of removing A1 through A4, making A5 more robust and to return with further discussion on the view issue as well as additional changes or improvements that Staff would like to see on what has been discussed tonight. The changes to A5 included air quality and vibration.

Council Member Strawbridge asked what was being done about the trees.

Council Member Macenski stated the only trees we can save are the ones that are protected, which are the historic trees.

Staff and Council discussed the issue of tree removal, protected trees, and historic trees.

Ms. Thorsen stated she did not think the standards address trees that were identified as historic in the Arsenal Plan. If the intention is to disallow the removal of a historic tree, the standards don't address that.

Council gave additional direction to Staff to bring back the issue of removal of historic or protected trees for more discussion and definition.

Council Members Macenski and Largaespada amended their motion to include the additional direction to Staff.

On motion of Council Member Macenski, seconded by Council Member Largaespada, Council approved the adoption of Resolution 21-9, as amended, with additional direction to Staff, on a roll call by the following vote:

Ayes: Vice Mayor Campbell, Council Member Largaespada, Council Member Macenski, Council Member Strawbridge, Mayor Young

Noes: (None)

15.B - TWO-STEP REQUEST FOR EXTENDING THE POSTPONEMENT OF WATER AND WASTEWATER RATE INCREASES (Interim City Manager)

[Staff Report - Two-Step Request - Extending Postponement of Water and Wastewater Rate Increases](#)

[1. Two-Step Request, Vice Mayor Campbell](#)

DRAFT

Vice Mayor Campbell reviewed his two-step request.

Mayor Young stated that if this is approved and brought back, it should include some discussion about how long it would be extended for and whether it should be citywide or only for specific categories.

Vice Mayor Campbell discussed Prop 218 and its restrictions.

Mr. Stock stated that what Mayor Young was suggesting was that rather than freezing rates, they could provide relief for those affected by Covid 19.

Vice Mayor Campbell stated he thought everyone had been affected by Covid 19. He thought it would be across the board. He knew that we will have to do the rate increase at some point. He wondered if we would be able to do the increase if we waited too long because of Prop 218.

Staff confirmed the rate increase was already implemented. If the City was to do this, it would be a rollback or temporary reduction.

Mayor Young stated Staff would put all the options before Council so they could make an informed decision.

Public Comment:

None

On motion of Council Member Largaespada, seconded by Council Member Macenski, Council approved the first step of Vice Mayor Campbell's two-step request, on a roll call by the following vote:

Ayes: Vice Mayor Campbell, Council Member Largaespada, Council Member Macenski, Mayor Young

Noes: Council Member Strawbridge

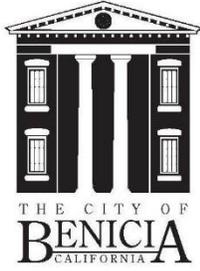
16) **COUNCIL MEMBER COMMITTEE REPORTS:**

16.A - COUNCIL MEMBER COMMITTEE REPORTS

[Committee Reports](#) 

17) **ADJOURNMENT (9:30 P.M.)**

Mayor Young adjourned the meeting at 10:22 p.m.



**AGENDA ITEM
CITY COUNCIL MEETING DATE – FEBRUARY 2, 2021
CONSENT CALENDAR**

TO : City Council

FROM : City Attorney

SUBJECT : **REVIEW RESOLUTION NO. 20-78 REQUIRING THE WEARING OF FACE COVERINGS IN BENICIA**

EXECUTIVE SUMMARY:

In response to the COVID-19 pandemic, on June 16, 2020, the City Council adopted Resolution No. 20-78, that required in certain instances face coverings to be used in certain indoor settings. Shortly thereafter, on June 18, 2020, the State of California issued a face covering order that largely preempted the City’s resolution and has since continued to refine this order. Since the City is not relying on this resolution as its primary means of enforcement, and the State has issued a comprehensive order addressing face coverings, it is staff’s recommendation to continue the review of Resolution No. 20-78 until June of 2021.

RECOMMENDATION:

Direct staff to bring Resolution No. 20-78 (Attachment 1), requiring the wearing of face coverings in certain locations within the City, back for review to rescind in June of 2021.

BUDGET INFORMATION:

There is no budget impact for this item.

BACKGROUND:

In response to the COVID-19 pandemic, on June 16, 2020, the City Council adopted Resolution No. 20-78, that required in certain instances face coverings to be used in certain indoor settings. A copy of this resolution is attached as Attachment 1. Shortly thereafter, on June 18, 2020, the State of California issued a face covering order that largely preempted the City’s resolution. The State has continued to refine its order, and the most recent face covering order was adopted on November 16, 2020 and is attached as Attachment 2. The State’s order requires the use of face coverings at all times when outside of the home, with some limited exceptions.

Cities are allowed to issue emergency orders that are more stringent than the State, but may not issue orders that are less stringent. As the current State order is more restrictive in many respects than the City’s resolution, the City’s resolution is not the primary tool used to gain compliance when the City receives a report relating to the nonuse of a face covering.

The City’s resolution is in effect until, “a vaccine is available”. The resolution states, “In the event a vaccine is not available before December 31, 2020, the Council will review this Resolution to determine whether to further require the mandates stated herein.” As the Council is aware, there are several vaccines that gained emergency approval in November of 2020. Those vaccines are now rolling out to the states, and the hope is that those vaccines will be more readily available to the public in the second quarter of 2021.

The Council can decide to either rescind Resolution No. 20-78, or continue the item to a later date in 2021 to consider further action. Given the existing pace of vaccinations, staff recommends continue this item until June of 2021, and then decide whether to rescind.

NEXT STEPS:

If Council directs staff to return in June of 2021, staff will agendize the matter to rescind Resolution No. 20-78.

ALTERNATIVE ACTIONS:

Council could decide to rescind the Resolution now.

General Plan	Goal 4.1 Make Community Health and Safety a High Priority for Benicia
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Priority Based Budgeting	Strategic City Result Impacted by this Agenda Item
	The City Council and community identified six (6) key “Results” that establish the key goals for which the City of Benicia aspires to achieve with our programs and services. Agenda Items often influence multiple Results, the primary Result impacted by this Agenda Item is (please check one):
	<input checked="" type="checkbox"/> Protect Community Health & Safety <input checked="" type="checkbox"/> Maintain & Enhance A High Quality of Life <input type="checkbox"/> Preserve & Enhance Infrastructure <input type="checkbox"/> Strengthen Economic & Fiscal Conditions <input type="checkbox"/> Protect & Enhance the Environment <input type="checkbox"/> High Performing Government
	City Programs Impacted by This Agenda Item (Top 3):
	<ol style="list-style-type: none"> 1. City Council Policy Development 2. Legal Counsel for City Council 3.

CEQA Analysis	Pursuant to Title 14, the California Code of Regulations, Section 15378(b)(5) of the California Environmental Quality Act (“CEQA”) guidelines, the proposed action is an administrative activity of the City that will not result in direct or indirect physical changes to the environment.
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ATTACHMENTS:

1. Resolution No. 20-78
2. State Order – November 16, 2020

For more information contact: Benjamin Stock, City Attorney

Phone: 707-746-4204

E-mail: bstock@ci.benicia.ca.us

RESOLUTION NO. 20- 78**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA REQUIRING THE USE OF FACE COVERINGS IN INDOOR AND ENCLOSED PUBLIC SPACES**

WHEREAS, California Government Code Section 8630 empowers the City Council to proclaim the existence or threatened existence of a Local Emergency when the City is affected or likely to be affected by a public calamity; and

WHEREAS, Government Code Section 8634 empowers the City to promulgate orders and regulations to provide for the protection of life and property; and

WHEREAS, pursuant to Benicia Municipal Code Section 2.36.050(A)(1), the Director of Emergency Services has declared the existence of a Local Emergency, which Local Emergency has been ratified by the City Council on March 19, 2020; and

WHEREAS, the Director of Emergency Services does hereby find that conditions of extreme peril and a crippling disaster, which severely impairs the safety of persons or property, have arisen within the City, caused by the virus COVID-19 and its rapid transmission, as reported by various local, state and national health organizations; and

WHEREAS, the aforesaid conditions of extreme peril warranted and necessitated the proclamation of the existence of a Local Emergency; and

WHEREAS, on March 18, 2020, the County of Solano Health Officer issued a County-wide shelter-in-place directive that requires individuals to isolate in their places of residence, except as needed for the performance of essential activities; and

WHEREAS, on March 19, 2020, the Governor of the State of California (“Governor”) issued Executive Order N-33-20, which provides that individuals living in the State of California are required to stay at home except as needed to maintain continuity of operations of the critical infrastructure sectors; and

WHEREAS, the novel Coronavirus is highly contagious and poses a threat to the wellbeing of every person; and

WHEREAS, in order to slow the spread of COVID-19, the U.S. Center for Disease Control (CDC) recommends that face coverings be worn in all circumstances when distancing of at least six feet is not possible; and

WHEREAS, the CDC’s recommendation regarding face coverings is based on data showing that the use of face coverings decreases the likelihood of COVID-19 being spread; and

WHEREAS, the County of Solano has not issued any orders requiring the wearing of face coverings; and

WHEREAS, the City has an important governmental interest in protecting the health, safety, and welfare of its citizens and businesses; and

WHEREAS, in order to protect the health and safety of the City and in order to follow the sound guidance and recommendations of the CDC, the City will impose a requirement that face coverings be worn indoors and in enclosed spaces in order to curtail the spread of COVID-19; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the City Council of the City of Benicia finds it necessary to issue and implement this Resolution to protect life, health and safety of its citizens and the community at large.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby order as follows:

SECTION 1. Face Coverings Required.

1. Each person over the age of twelve years old shall wear a mask or cloth face covering which covers both the mouth and nose (“Face Covering”) at all times when in any indoor or enclosed space open to members of the public located in any government building, police station, marina, or fire station; the following businesses open to the public; grocery stores, convenience stores, liquor stores, supermarkets, pharmacies, laundromats, dry cleaners, hardware stores, commercial office buildings, tobacco stores; a restaurant, bar or pub of any kind (except when consuming food and/or any beverage); any medical facility of any kind including, but not limited to, hospitals, clinics, urgent care facilities, long term care facilities, and senior care facilities; and a church, mosque, temple or other religious building.

2. No person shall be required to wear a Face Covering when outdoors unless it is not possible to maintain a distance of six feet from every other person. In the event that a person cannot maintain the aforesaid six feet outdoors, then that person shall be required to wear a Face Covering.

3. In residential buildings consisting of at least two dwelling units (“Residential Buildings”), any person entering without limitation, any lobby, hallway, elevator, stairwell, laundry room, garage or any other enclosed areas which are accessible to more than one dwelling, unit shall wear a Face Covering while in those areas.

4. This Resolution shall only apply to persons over the age of twelve years old. It shall not apply to anyone who has trouble breathing due to a respiratory condition or is unconscious, incapacitated, or otherwise unable to remove the Face Covering without assistance, anyone with a disability or medical condition for whom wearing a Face Covering is not recommended by their healthcare professional, and/or any other person exempted by any federal, state or local law or regulation.

SECTION 2. Effective Date. This Resolution shall take effect immediately upon adoption by the City Council of the City of Benicia and shall remain in effect until a vaccine is available. In the event a vaccine is not available before December 31, 2020, the Council will review this Resolution to determine whether to further require the mandates stated herein.

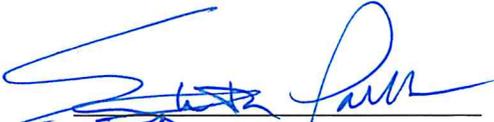
SECTION 3. The City Clerk shall certify the adoption of this Resolution and shall cause a certified Resolution to be filed in the Office of the City Clerk.

On motion of Council Member **Young**, seconded by Council Member **Campbell**, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 16th day of June, 2020 by the following vote:

Ayes: **Council Members Campbell, Largaespada, Strawbridge, Young, and Mayor Patterson**

Noes: **None**

Absent: **None**


Elizabeth Patterson, Mayor

Attest:


Lisa Wolfe, City Clerk


Date



Sandra Shewry
Acting Director
Erica S. Pan, MD, MPH
Acting State Health Officer

State of California—Health and Human
Services Agency
**California Department of
Public Health**



GAVIN NEWSOM
Governor

November 16, 2020

TO: All Californians

SUBJECT: Guidance for the Use of Face Coverings

Note: The following guidance supersedes face coverings guidance released on June 18, 2020. This updated guidance mandates that a face covering is required at all times when outside of the home, with some exceptions.

Background

The risk for COVID-19 exposure and infection remains and will continue to be in our midst for the foreseeable next several months. Since the start of the pandemic, we have learned a lot about COVID-19 transmission, most notably that there are a large proportion of people who are infected but are asymptomatic or pre-symptomatic, and they play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, sneezing, singing, exercising, shouting, or other forms of increased respiration, and they can also reinforce physical distancing by signaling the need to remain apart. In addition, increasing evidence also demonstrates a cloth face covering or mask also offers some protection to the wearer, too.

The purpose of this guidance is to provide information about when face coverings are required. It mandates that face coverings be worn state-wide at all times when outside of the home, unless one or more of the exceptions outlined below apply. It does not substitute for existing guidance about physical distancing and hand hygiene.

Guidance

People in California must wear face coverings when they are outside of the home, unless one of the exemptions below applies.

Individuals are exempt from wearing face coverings in the following specific settings:

- Persons in a car alone or solely with members of their own household.
- Persons who are working in an office or in a room alone.
- Persons who are actively eating or drinking provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.

- Persons who are outdoors and maintaining at least 6 feet of social distancing from others not in their household. Such persons must have a face covering with them at all times and must put it on if they are within 6 feet of others who are not in their household.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Workers who are required to wear respiratory protection.
- Persons who are specifically exempted from wearing face coverings by other CDPH guidance.

The following individuals are exempt from wearing face coverings at all times:

- Persons younger than two years old. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance. Such conditions are rare.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

Note: Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others must wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Additional Information

What is a cloth face covering?

A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.

How should I choose and wear a cloth face covering?

You should select a face covering that covers your nose and mouth, goes under the chin, and does not have significant gaps around the nose or other parts of the face. Look for face coverings that have three layers, if possible, and are still easy to breathe through. Be sure that the ear loops or ties are tight enough to keep the face covering from sliding down the nose. Always wear your face covering over your nose and mouth, not under your nose or under your chin.

How well do cloth face coverings work to prevent spread of COVID-19?

There is increasing scientific evidence demonstrating that use of face masks or cloth face coverings by the public during this COVID-19 pandemic helps reduce disease transmission. Their primary role is to reduce the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19

but feels well, as well as reduce exposure for the wearer. Cloth face coverings are not a substitute for physical distancing, washing hands, and staying home when ill or under quarantine, but they are additive when combined with these primary interventions.

When should I wear a cloth face covering?

You should wear face coverings whenever you are outside of your home, unless one of the exceptions described above applies to you. Individuals who have significant COVID-19 exposure outside of their home, such as in the workplace, should consider wearing a mask at home, especially if vulnerable individuals are part of their household.

How should I care for a cloth face covering?

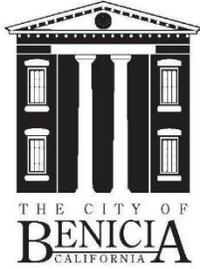
It's a good idea to wash your cloth face covering frequently, ideally after each use, or at least daily. Have a bag or bin to keep cloth face coverings in until they can be laundered with detergent and hot water and dried on a hot cycle. If you must re-wear your cloth face covering before washing, wash your hands immediately after putting it back on and avoid touching your face. Discard cloth face coverings that:

- No longer cover the nose and mouth
- Have stretched out or damaged ties or straps
- Cannot stay on the face
- Have holes or tears in the fabric

For additional information and resources regarding masks and face coverings, including types of recommended and not recommended masks, see the CDC Face Coverings Website.

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)





**AGENDA ITEM
CITY COUNCIL MEETING DATE – FEBRUARY 2, 2021
CONSENT CALENDAR**

TO : City Manager

FROM : Fire Chief

SUBJECT : **APPROVAL OF THE FIRST AMENDMENT TO THE PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR ADVANCED LIFE SUPPORT FIRST RESPONDER EMERGENCY SERVICES**

EXECUTIVE SUMMARY:

Currently, the City of Benicia is a participating member city, along with Fairfield, Dixon, and Vallejo, in a Public Private Partnership (PPP) with Medic Ambulance Service, Inc., under which the Benicia Fire Department provides Advanced Life Support (ALS) first response emergency services to the community in order to improve the quality and level of emergency medical service. This partnership agreement began in 2000, and a new agreement was signed in 2010 (Attachment 4). Demand for service and the cost of delivering quality emergency medical services has changed substantially over the last decade. Both Medic Ambulance Service, Inc. and the participating member cities find it necessary and desirable to implement changes to the agreement that achieve the purposes of the partnership. Additionally, the First Amendment of the PPP will add the City of Suisun City as a participating member city and party to the PPP Agreement.

RECOMMENDATION:

Move to adopt the resolution (Attachment 1) approving the First Amendment to the Public Private Partnership Agreement for Advanced Life Support First Responder Emergency Services (Attachment 2) and authorizing the City Manager to sign the amendment on behalf of the City.

BUDGET INFORMATION:

The City of Benicia currently receives \$185,906 annually for participation in the existing PPP Agreement with Medic Ambulance. The revised agreement will increase revenue over the next 4.25 years by \$635,706 to \$1,379,330 as outlined in Exhibit C to the agreement (Attachment 3).

	FY 21/22	FY 22/23	FY 23/24	FY 24/25	FY 25/26 (Q1)	Total
Current	\$ 185,906	\$ 185,906	\$ 185,906	\$ 185,906	\$ -	\$ 743,624
Proposed	\$ 275,697	\$ 332,493	\$ 375,985	\$ 364,758	\$ 30,397	\$ 1,379,330
Increase	\$ 89,791	\$ 146,587	\$ 190,079	\$ 178,852	\$ 30,397	\$ 635,706

BACKGROUND:

Since 2000, Medic Ambulance Service, Inc. has been an authorized provider of ALS services within the Solano County EMS system under Health and Safety Code section 1797.224, pursuant to a Master Services Agreement entered into with the Solano Emergency Medical Services Cooperative (SEMSC). In connection with entering into the Master Services Agreement, Medic Ambulance Service, Inc. also entered into the PPP Agreement with the participating member cities, under which these cities have provided ALS first response emergency service to their communities in order to improve the quality and level of emergency medical services.

In 2010, Medic Ambulance Service, Inc. commenced a new county-wide exclusive contract for emergency ambulance services and a new PPP agreement to reflect conditions at the time of the contract. The agreement was due to expire on April 30, 2020, but pursuant to an amendment to the Master Agreement, SEMSC granted Medic Ambulance Service, Inc. an extension of the Master Agreement to April 30th, 2025.

Demand for service and the cost of delivering quality emergency medical services has changed substantially over the last decade. The First Amendment to the PPP Agreement will implement changes to the Agreement that both Medic Ambulance Service, Inc. and the participating member cities find necessary and desirable to achieve the purposes of the partnership. Additionally, the First Amendment of the PPP will add the City of Suisun City as a participating member city and party to the PPP Agreement.

NEXT STEPS:

If the resolution is approved, City Manager Erik Upson will execute the amendment on behalf of the City.

ALTERNATIVE ACTIONS:

Reject the proposed resolution. If the City Council does not approve the resolution, the City will lose \$743,625 in revenue from the current PPP Agreement, and will not receive the additional \$635,704 in revenue from the amendment, resulting in a total loss of \$1,379,329.

General Plan	Goal 4.1 Make community health and safety a priority for Benicia
	Goal 4.2 Improve access to medical, mental health, and social services for all Benicians, including the elderly and low-income.

Priority Based Budgeting	Strategic City Result Impacted by this Agenda Item
	<p>The City Council and community identified six (6) key “Results” that establish the key goals for which the City of Benicia aspires to achieve with our programs and services. Agenda Items often influence multiple Results, the primary Result impacted by this Agenda Item is (please check one):</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Protect Community Health & Safety <input type="checkbox"/> Maintain & Enhance A High Quality of Life <input type="checkbox"/> Preserve & Enhance Infrastructure <input checked="" type="checkbox"/> Strengthen Economic & Fiscal Conditions

	<input type="checkbox"/> Protect & Enhance the Environment <input type="checkbox"/> High Performing Government
	City Programs Impacted by This Agenda Item (Top 3): <ol style="list-style-type: none"> 1. Emergency Response – Emergency Medical Services 2. Training: Fire, EMS, Rescue, Haz-Mat, Administrative and Certifications 3. Fire Department Administrative Services

CEQA Analysis	The requested action is exempt from CEQA because it will not result in a direct or indirect physical change in the environment and therefore is not a project as defined in CEQA Guidelines Section 15378.
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ATTACHMENTS:

1. Resolution – Approval of the First Amendment to PPP Agreement for ALS First Responder Emergency Services
2. First Amendment to PPP Agreement for ALS First Responder Emergency Services
3. Exhibit C – Quarterly Payments to Participating Member Cities of the Annual Dollar Allocation
4. PPP Agreement for ALS First Responder Emergency Services – April 30, 2010

For more information contact: Josh Chadwick, Fire Chief

Phone: 707-746-4275

E-mail: jchadwick@ci.benicia.ca.us

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE FIRST AMENDMENT TO THE PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR ADVANCED LIFE SUPPORT FIRST RESPONDER EMERGENCY SERVICES AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY

WHEREAS, the City of Benicia Fire Department provides first response paramedic service in cooperation with Medic Ambulance Service, Inc.; and

WHEREAS, as part of the Master Agreement between the Solano Emergency Medical Services Cooperative and Medic Ambulance Service, Inc. for exclusive ambulance services, Medic Ambulance Service, Inc. is required to enter into a Public Private Partnership Agreement with Participating Member Cities; and

WHEREAS, the City of Benicia and the Cities of Dixon, Fairfield and Vallejo are current Participating Member Cities party to the Public Private Partnership Agreement; and

WHEREAS, there has been a significant increase in the demand for emergency medical services in Solano County in the last ten years; and

WHEREAS, the First Amendment to the Public Private Partnership Agreement for Advanced Life Support First Responder Emergency Services will implement the changes to the agreement that both Medic Ambulance Service, Inc. and the Participating Member Cities find necessary and desirable to achieve the purposes of the partnership, while also adding the City of Suisun City as a Participating Member City.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby approve the First Amendment to the Public Private Partnership Agreement for Advanced Life Support First Responder Emergency Services and authorizes the City Manager to sign the amendment on behalf of the City.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of February, 2021 by the following vote:

Ayes:

Noes:

Absent:

Steve Young, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

FIRST AMENDMENT TO PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR ALS FIRST RESPONDER EMERGENCY SERVICES

This First Amendment to the Public Private Partnership Agreement for ALS First Responder Emergency Services, dated April 30, 2010, and hereafter referred to as the PPP Agreement is entered into on this 1st day of January, 2021 by and among Medic Ambulance Service, Inc., a California corporation (“Medic”) and the Cities of Benicia, Dixon, Fairfield, and Vallejo which are all existing parties to the PPP Agreement and the City of Suisun City which is being added to the PPP Agreement by this amendment (the “Participating Member Cities”).

RECITALS

1. Since 2000, Medic has been an authorized provider of ALS services within the Solano County EMS system under Health and Safety Code section 1797.224 pursuant to a written agreement (the “Master Agreement”), entered into with the Solano Emergency Medical Services Cooperative (“SEMSC”). In connection with entering into the Master Agreement for such services, Medic also entered into a Public Private Partnership Agreement with the Participating Member Cities (except the City of Suisun City) under which these cities have provided ALS first response emergency service to their communities in order to improve the quality and level of emergency medical services.

2. On May 1, 2010, Medic commenced a new county-wide exclusive contract for Emergency Ambulance Services. The 2010 Master Agreement between SEMSC and Medic required Medic to enter into a new, updated Public Private Partnership Agreement with the Participating Member Cities (except the City of Suisun City). The 2010 Public Private Partnership Agreement was entered into on May 1, 2010 to reflect the conditions at that time and to enhance the delivery of emergency medical services in Solano County.

3. The 2010 Master Agreement was set to expire on April 30, 2020. Pursuant to an amendment to the Master Agreement, SEMSC granted Medic an extension of this Master Agreement to April 30, 2025. There have been significant changes in the demands for the delivery of emergency medical services in Solano County in the last 10 years, including a significant increase in the level of medical calls required to be responded to by Medic and the Participating Member Cities.

4. This Amendment No. 1 to the PPP Agreement will implement changes to the Agreement that both Medic and the Participating Member Cities find necessary and desirable to achieve the purposes of the partnership.

5. In addition, this Amendment No. 1 to the PPP Agreement will add the City of Suisun City as a Participating Member City and a party to the PPP Agreement.

AGREEMENT

NOW THEREFORE, the parties agree to amend the PPP Agreement as follows:

1. Section 5(e)(ii) of the PPP Agreement is hereby amended to read:

“ The value of Medic’s annual dollar allocation to the Public Private Partnership shall be calculated according to the formulas below on the corresponding effective dates:

January 1, 2021: $\$91.51$ (Value of Unit Hour) x 23,768 hours (Unit Hour Reduction)=\$2,174,990.00 (Cost Savings)

July 1, 2021: $\$107.58$ (Value of Unit Hour) x 23,768 hours (Unit Hour Reduction)=\$2,556,878.60 (Cost Savings)

January 1, 2022: $\$135.69$ (Value of Unit Hour) x 23,768 hours (Unit Hour Reduction)=\$3,225,183.65 (Cost Savings)

January 1, 2023: $\$160.67$ (Value of Unit Hour) x 23,768 hours (Unit Hour Reduction)=\$3,818,755.20 (Cost Savings)

(“Annual Dollar Allocation”)

2. Section 5(e)(iv) of the PPP Agreement is hereby amended to read:

“As provided in Section 7(a) of this Agreement, the term of this Agreement shall coincide with the term of the Master Agreement, including any extensions thereof.”

3. Section 5(e)(v) of the PPP Agreement is hereby amended to read:

“Medic shall pay the Annual Dollar Allocation in quarterly installments to the Participating Member Cities, pursuant to the above formula and in the manner provided below, by no later than the 15th day of April, July, October and January of each year during the term of this Agreement. Payment shall be made by Medic directly to the City of Fairfield for disbursement to the Participating Member Cities in the amounts set forth in Exhibit C attached hereto. Fairfield shall make the quarterly payments to the Participating Member Cities within fifteen days of receipt of payment from Medic. Any reduction in the Annual Dollar Allocation made with respect to a defaulting city pursuant to Section 4(h) of this Agreement shall be applied by Fairfield to the defaulting city only. Fairfield shall deduct from the total amount of monies paid quarterly by Medic to the Participating Member Cities, an administrative charge to cover the costs of Fairfield being the administering party under this Agreement. The quarterly administrative charge shall be in the sum of \$7,500.

4. Effective January 1, 2021, the City of Suisun City shall become a Participating Member City and Party to this Agreement. By executing this Amendment No. 1, City of Suisun City agrees to be bound by and comply with all of the provisions of the PPP Agreement as amended.

5. If a local or state emergency is declared for a natural disaster or pandemic that results in a material decrease in transport volume and revenues, Medic shall provide written notice to the Participating Member Cities within 45 days of this event occurring. Upon giving such notice, Medic will provide a call and revenue comparison to demonstrate the materiality of the reduction in calls and revenues that would justify an adjustment in the payment obligations of Medic under this Agreement limited to the duration of the emergency. The parties will meet within 10 days of the notice to attempt to address the loss of funding in a mutually satisfactory manner. No payment modification shall be effective unless approved in writing by all of the Parties.

6. This Amendment No. 1 shall become effective January 1, 2021.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the date first written above.

MEDIC AMBULANCE SERVICE, INC., a
California corporation

CITY OF FAIRFIELD, a municipal corporation

By: 
Title: President / COO

By: _____
Title: _____

CITY OF BENICIA, a municipal corporation

CITY OF DIXON, a municipal corporation

By: _____
Title: _____

By: _____
Title: _____

CITY OF VALLEJO, a municipal corporation

City of Suisun City, a municipal corporation

By: _____
Title: _____

By: _____
Title: _____

Exhibit C**Quarterly Payments to the Participating Member Cities of the Annual Dollar Allocation**

Participating Member Cities	Payment Dates			
	4/15/2021	7/15/2021	10/15/2021	1/15/2022
Benicia	\$46,476.55	\$73,725.31	\$60,100.93	\$74,546.31
Dixon	\$32,512.81	\$58,101.02	\$45,306.91	\$58,286.07
Fairfield	\$138,972.66	\$252,505.17	\$195,738.91	\$268,115.50
Vallejo	\$182,577.53	\$235,911.58	\$209,244.55	\$287,057.52
Suisun City	\$0.00	\$66,712.37	\$33,356.19	\$46,686.41
	4/15/2022	7/15/2022	10/15/2022	1/15/2023
Benicia	\$67,323.62	\$92,603.02	\$79,963.32	\$79,963.32
Dixon	\$51,796.49	\$74,510.01	\$63,153.25	\$63,153.25
Fairfield	\$231,927.21	\$358,586.24	\$295,256.72	\$295,256.72
Vallejo	\$248,151.04	\$384,323.72	\$316,237.38	\$316,237.38
Suisun City	\$40,021.30	\$63,349.18	\$51,685.24	\$51,685.24
	4/15/2023	7/15/2023	10/15/2023	1/15/2024
Benicia	\$79,963.32	\$102,415.85	\$91,189.58	\$91,189.58
Dixon	\$63,153.25	\$83,326.82	\$73,240.03	\$73,240.03
Fairfield	\$295,256.72	\$407,752.05	\$351,504.39	\$351,504.39
Vallejo	\$316,237.38	\$437,182.50	\$376,709.94	\$376,709.94
Suisun City	\$51,685.24	\$72,404.47	\$62,044.86	\$62,044.86
	4/15/2024	7/15/2024	10/15/2024	1/15/2025
Benicia	\$91,189.58	\$91,189.58	\$91,189.58	\$91,189.58
Dixon	\$73,240.03	\$73,240.03	\$73,240.03	\$73,240.03
Fairfield	\$351,504.39	\$351,504.39	\$351,504.39	\$351,504.39
Vallejo	\$376,709.94	\$376,709.94	\$376,709.94	\$376,709.94
Suisun City	\$62,044.86	\$62,044.86	\$62,044.86	\$62,044.86
	4/15/2025	7/15/2025		
Benicia	\$91,189.58	\$30,396.53		
Dixon	\$73,240.03	\$24,413.34		
Fairfield	\$351,504.39	\$117,168.13		
Vallejo	\$376,709.94	\$125,569.98		
Suisun City	\$62,044.86	\$20,681.62		

**PUBLIC PRIVATE PARTNERSHIP AGREEMENT
FOR ALS FIRST RESPONDER EMERGENCY SERVICES**

This Public Private Partnership Agreement (“Agreement”) is entered by and between Medic Ambulance Service, Inc., a California corporation (“Medic”), and the Cities of Benicia, Dixon, Fairfield and Vallejo, Members of the Solano Emergency Medical Services Cooperative (“Participating Member Cities”), with reference to the following facts:

RECITALS

1. Since 2000, Medic has been an authorized provider of ALS services within the Solano County EMS system under Health and Safety Code section 1797.224 pursuant to the Agreement for Advanced Life Support Emergency Ambulance and ParaHospital Medical Services (the “Master Agreement”), entered into with the Solano Emergency Medical Services Cooperative (“SEMSC”). In connection with entering into the Master Agreement for such services, Medic also entered into a Public Private Partnership Agreement with the Participating Member Cities under which these cities have provided ALS first response emergency service to their communities in order to improve the quality and level of emergency medical services.

2. On or about _____, by action of the SEMSC Board and following a competitive process to select the provider for emergency ambulance service, advanced life support and Parahospital Medical Services, Medic was awarded the new county-wide exclusive contract for Emergency Ambulance Services as the authorized exclusive provider of all 911 and ALS services within the Solano County EMS system. The Master Agreement between the SEMSC and Medic has therefore been renewed pursuant to the provision set forth as Exhibit “A” hereto.

3. As part of the renewal of the Master Agreement, Medic is required to enter into a Public Private Partnership (PPP) Agreement with those fire jurisdictions desiring to participate in a PPP with Medic by accepting responsibility for providing EMT-P first response. The Participating Member Cities desire to enter into a new Public Private Partnership Agreement based on the experience of the parties under the existing agreement.

4. Medic and the Participating Member Cities are mutually interested in continuing to provide quality prehospital emergency medical care in their communities and pursuant to the protocols and policies of the Solano County Emergency Medical Service Agency and believe that the relationship continued and modified by this Agreement will help them achieve this goal. Pursuant to this Agreement, therefore, Participating Member Cities will continue to provide paramedic first response and Medic will provide ALS transport services within the Participating Member Cities.

AGREEMENT

NOW THEREFORE, the parties thereto agree as follows:

1. Definitions

(a) Advanced Life Support (ALS): Special services designed to provide definitive prehospital emergency medical care as defined in Health and Safety Code section 1797.52.

(b) Basic Life Support (BLS): Emergency first aid and cardiopulmonary procedures defined in Health and Safety Code section 1797.60.

(c) Emergency Medical Technician - One or EMT-I: Personnel as defined in Health and Safety Code section 1797.80.

(d) Emergency Medical Technician-Paramedic or EMT-P or Paramedic:

Personnel as defined in Health and Safety Code section 1797.84.

(e) First Responder - ALS Unit: A unit staffed and equipped with a

minimum of one California State licensed and Solano County accredited Paramedic capable of providing ALS at the scene of medical emergencies.

2. Purpose of this Agreement

The purpose of this Agreement is to continue provide high quality, cost effective prehospital medical services in the communities of Benicia, Dixon, Fairfield and Vallejo pursuant to a relationship between the Participating Member Cities and Medic as described herein. Medic shall provide emergency ambulance service with ALS vehicles staffed by one emergency medical technician (EMT-I) and one EMT-Paramedic and the Participating Member Cities of Benicia, Dixon, Fairfield and Vallejo shall provide paramedic first response within their jurisdictions.

3. Relationship between Medic and the Participating Member Cities

It is understood that this Agreement is by and between independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association. The parties shall have full autonomy and responsibility for conducting their affairs with their work force, including managing personnel and resources fairly and effectively in a manner that assures compliance with this Agreement.

4. Responsibilities of Participating Member Cities for ALS First Responder Program

The Participating Member Cities shall provide ALS emergency response within their jurisdictions 24 hours a day, 365 days a year, subject to the response time

exceptions approved by the SEMSC in the ALS Non-Transport Agreements with the Participating Member Cities, using a currently licensed and locally accredited EMT-Paramedic in each paramedic response vehicle under appropriate clinical supervision. In connection with the ALS First Responder Program, Participating Member Cities also shall have the following duties and responsibilities:

(a) Paramedic Accreditation and Training: Participating Member Cities shall employ appropriately licensed and accredited EMT-Paramedic personnel. Each EMT-Paramedic shall comply with all training requirements established by the State of California EMS Authority, the County of Solano, all applicable provisions of the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (California Health and Safety Code section 1797, et seq.), the regulations of the State EMS Authority and all applicable policies and procedures adopted by the Solano County EMS Agency.

(b) ICS Training: All Medic employees shall receive Incident Command Training at the appropriate levels for their duties as required by the National Incident Management System (NIMS). While the lower level basic courses such as I100 and I200 are available on-line to Medic, the Participating Member Cities agree to provide instructors for the more advanced courses such as ICS 300 and ICS 400, as needed, at no charge to Medic. There shall be a minimum of one ICS 300 and one ICS 400 course offered as needed. The parties will discuss and agree upon the date, location and frequency of these courses.

(c) Patient Information: Participating Member Cities shall record patient information as set forth in the policy and procedures of the Solano County EMS Agency,

including but not necessarily limited to EMS Policy Memorandum 6141, attached hereto as Exhibit F, and as subsequently modified by the Solano County EMS Agency, for each patient response made by the respective Participating Member Cities. Participating Member Cities shall retain such information and forms for at least seven (7) years and shall provide such forms to the Solano County EMS Agency as required by policy and to Medic upon request.

(d) Instructional and Educational Programs: Participating Member Cities shall ensure that their EMT-Paramedics are advised of all ongoing instruction and educational opportunities timely noticed by Medic and provided by Medic and they shall cause their EMT-Paramedics to reasonably participate in those ongoing programs to the extent permitted by law.

(e) Compliance with Master Agreement: The Participating Member Cities shall comply with the applicable requirements of the Master Agreement as necessary to permit Medic to comply with its obligations under the Master Agreement. Medic shall be excused for nonperformance under this Agreement to the extent that such nonperformance is caused by the Participating Member Cities' failure to comply with the Master Agreement, including all pertinent policies and procedures of the Solano County EMS Agency applicable to the Participating Member Cities.

(f) Core Businesses: During the term of this Agreement, the Participating Member Cities shall not utilize the factors of production funded by Medic hereunder (i.e., vehicles, equipment, supplies or personnel), except as specifically provided in this Agreement to render services similar to the core businesses currently engaged in by Medic or which become part of the core businesses engaged in by Medic or any commonly

controlled or successor entity in such jurisdiction; provided, however, that the parties shall explore and consider ways in which they may collaborate and/or establish other agreements where feasible to provide additional health care services to the communities they serve. The core business of Medic is medical transportation.

(g) Supplies and Equipment: Each ALS response vehicle of the Participating Member Cities shall carry such emergency supplies and equipment as may be required by the Solano County EMS Agency in order to render ALS first paramedic response to patients as contemplated by this Agreement. Vehicles, equipment and supplies shall be maintained in a clean, sanitary and safe mechanical condition at all times.

(h) EMS Policies and Procedures: The ALS First Responder Program shall be subject to and shall conform to the requirements of the State EMS Act and Regulations, all applicable medical standards and all Solano County EMS policies, procedures and protocols including response time requirements.

(i) Performance Standards: The SEMSC and the Solano County EMS Agency have established certain performance standards for ALS First Response Providers to be set forth in the Master Agreement and the ALS Non-Transport Agreements with each of the Participating Member Cities (Exhibits "B-1," "B-2", "B-3" and B-4" hereto and incorporated herein by this reference) which shall be in force and effect upon implementation of this Agreement. Any modifications to any of these agreements shall be promptly delivered to the other party. Each of the Participating Member Cities agrees to comply with the applicable Solano County EMS Agency policy memoranda, including but not limited to EMS Policy Memorandum 6141 regarding the transfer of care, as is established in the Master Agreement, all applicable EMS Policy and Procedure directives,

and all applicable State of California and federal laws and regulations. Further, it is understood and agreed that this Agreement shall only become effective upon the execution by each of the Participating Member Cities of the ALS Non-Transport Agreement with SEMSC. The response time for the Participating Member Cities shall be seven minutes, ninety percent of the time (the "Response Time Standard"). In the event that there is a chronic failure by any one or more of the Participating Member Cities to meet its Response Time Standard, Medic shall be entitled to a reduction in the Annual Dollar Allocation as determined by the SEMSC after consultation with Medic only with respect to the defaulting city and only to the extent that the chronic failure results in increased costs to Medic. . Before any reduction is ordered by the SEMSC, the defaulting City shall first be provided written notice of the chronic failure by the SEMSC and given an opportunity to cure the default as provided by the ALS Non-Transport Agreement. In the event that the defaulting city fails to timely cure the chronic default, and the SEMSC requires Medic to shorten its response time standard in the defaulting city, the SEMSC shall determine the amount of the reduction in the Annual Dollar Allocation for such city based on the amount of the increased costs to Medic that the SEMSC finds were caused by the chronic failure, using the value of the Unit Hour (from time to time adjusted) as set forth in this Agreement, and considering Medic's System Status Plan. Chronic failure by any Participating Member City shall be defined as the failure to meet the Response Time Standard in three of five consecutive calendar months or four months in any calendar year within its jurisdiction. The Annual Dollar Allocation for the defaulting city shall be restored to the amount provided by this Agreement when the defaulting city cures the default by demonstrating compliance with the Response Time Standards for three consecutive months and the

SEMSC allows Medic to increase its response time back to twelve (12) minutes within the defaulting city's jurisdiction. Payment to the defaulting city shall then be restored in the following month. The right to obtain a reduction in the Annual Dollar Allocation with respect to the defaulting city shall be the exclusive remedy that Medic shall have against the defaulting city for failing to meet the Response Time Standard other than termination of the Agreement with respect to the defaulting city pursuant to Section 7 of this Agreement.

(j) Supervision: Participating Member Cities shall provide and be responsible for, within their jurisdictions, all supervision to all fire department ALS first response paramedics twenty-four hours (24) per day, 365 days per year under the guidance, directives and policies of the Solano County EMS Agency.

(k) Cooperation: Participating Member Cities agree to cooperate in a timely manner with all reasonable requests for information and assistance as may be necessary in order for Medic to comply with the terms and conditions of the Master Agreement, policy and procedure guidelines of the Solano County EMS Agency and applicable State of California and federal laws and regulations.

(l) Accreditation Records: The Participating Member Cities shall be responsible for maintaining licensing, accreditation and continuing education records certifying course completion for their personnel according to the provisions of relevant State of California and federal laws and regulations and applicable Solano County standards as may be imposed. These records shall be available to Medic upon request.

(m) Access to Participating Member Cities' Records: Participating member Cities agree to provide to authorized representatives of Medic, to the SEMSC and

to any federal or State of California department having monitoring or reviewing authority, upon reasonable notice pursuant to this Agreement, access to and the right to examine and audit all records and documents necessary to determine Participating Member Cities' compliance with the relevant federal, state and local statutes, rules and regulations and this Agreement and to evaluate the quality, appropriateness, and timeliness of the services performed by the Participating Member Cities under this Agreement, provided, however, that Medic shall comply with the applicable laws governing confidentiality.

5. Responsibilities of Medic

Medic shall provide, under the Master Agreement, an Emergency Ambulance Service Program throughout the geographical limits of Solano County, excluding the City of Vacaville and Travis Air Force Base, and the territory of Solano County known generally as Zone C, which will include continuous, uninterrupted emergency ambulance response using vehicles staffed by one paramedic and one Emergency Medical Technician - 1 (EMT-I). In connection with the Emergency Ambulance Services Program, Medic shall have the following additional duties and responsibilities:

(a) Compliance with Master Agreement: Medic shall comply with the Master Agreement in a manner that permits the Participating Member Cities to comply with their obligations under this Agreement.

(b) Training Programs: Medic shall provide at no cost to the Participating Member Cities, ALS and BLS continuing education for all Participating Member Cities' full time, paid paramedics. The level of training shall be sufficient to maintain licensing requirements (currently forty-eight (48) hours every two (2) years) and applicable Solano County accreditation requirements. Although the list of courses is subject to change over

the term of this Agreement, the course offerings shall at a minimum include any courses required by the Solano County EMS or the State of California EMSA. Required certification courses, including but not limited to CPR, ACLS, PALS and PHTLS, shall be taught through an applicable recognized training authority such as the American Heart Association, the American Red Cross, and the National Safety Council. In addition, the courses shall be recognized by the Solano County EMS. The training programs also shall include regular orientation programs for newly purchased equipment. To the extent possible, Medic agrees to incorporate innovative teaching methods into its training programs, including the use of video conferencing when appropriate to the course taught, and as authorized by the course certifying authority and which Participating Member Cities will make available at their fire facilities. Medic shall continue to use on-line advertisement and enrollment for EMS continuing education courses. Paramedics from the Participating Member Cities may utilize this on-line course enrollment system at no cost. Medic shall not be responsible for paying Participating Member Cities' paramedics for their training time.

(c) Emergency Medical Service Supplies: Medic shall exchange all disposable supplies (including backboards) with the Participating Member Cities' first responder paramedics on a one-for-one basis, for those supplies directly used on the patient, when Medic jointly responds to a medical call. Supplies that are consumed through training or shrinkage will be the responsibility of the Participating Member Cities. On the first weekday of each month, Medic will rotate ALS medications with the Participating Member Cities that are within nine (9) months of their expiration date (excluding narcotic medications). Medic and the Participating Member Cities shall stock identical patient

backboards for ease of field exchange and retrieval. A medical supply committee will be formed consisting of representatives from Medic and the Participating Member Cities in order to enhance medical equipment standardization, joint purchasing and field restocking.

(d) Value Added: Medic shall provide required ALS backup as needed on a city-by-city basis pursuant to the requirements, including response times, of the Master Agreement. Medic shall respond with a supervisor certified to the NIMS I400 level to all mass casualty incidents. Within 90 days of the execution of this agreement, Medic and the Participating Member Cities shall meet and confer for the purpose of reaching an agreement regarding Code 3 notification requirements.

(e) Payment to Participating Member Cities:

(i) The amount payable by Medic to the Participating Member Cities reflects the estimated costs savings to Medic under the Master Agreement due to the first response of the Participating Member Cities under this Agreement. The SEMSC has approved the continuation of an increase in the urban response time for Medic, from nine (9) minutes to twelve (12) minutes or less, ninety percent (90%) of the time, with a fifteen (15) minute maximum in the Participating Member Cities. Consistent with the RFP issued by the SEMSC on or about November 2008, Medic developed a System Status Deployment Plan (SSDP) in the jurisdictions of the Participating Member Cities which allows for reduced response times in those jurisdictions. As a result of this reduction in response time requirements in the Participating Member jurisdictions, Medic has determined that fewer ambulances will be required and fewer employees will be necessary to service the Participating Member Cities than would otherwise be required if Medic was the first responder in these jurisdictions, and that those reductions will result in a reduction in the

cost of doing business by Medic in those communities only. Medic has estimated that as a result of those changes to its System Status Deployment Plan in the jurisdictions of the Participating Member Cities, there will be an estimated 17,000 unit hours saved each year. Medic has further estimated that the value of a unit hour is currently approximately \$86.51. The parties recognize that an exact figure is impossible to calculate, but this is the best estimate of the actual numbers which the parties agree will be utilized upon implementation of the Public Private Partnership and during the term of the this Agreement except as otherwise set forth herein.

It is further understood and acknowledged by the parties hereto that adjustments in the System Status Deployment Plan may be necessary from time to time. Medic shall be solely responsible for making those modifications and in making those determinations, the primary concern shall be the health and well-being of the members of the communities and the ability of Medic to reasonably comply with all terms of the Master Agreement, and in particular, the response time requirements of the Master Agreement. However, no adjustments to the Annual Dollar Allocation as set forth herein shall result from any adjustment or modification to the System Status Deployment Plan by Medic except as specifically provided by Section 5(e)(iii).

(ii) The value of Medic's annual dollar allocation to the Public Private Partnership has therefore been calculated according to the following formula:

$$\begin{aligned} \$86.51 \text{ (Value of Unit Hour)} \times 17,000 \text{ hours (Unit Hour Reduction)} &= \$1,470,670 \text{ (Cost} \\ &\text{Savings)} \\ &\text{("Annual Dollar Allocation")} \end{aligned}$$

(iii) The Annual Dollar Allocation shall be distributed to the Participating Member Cities in the manner provided by a written agreement between them

and the SEMSC, attached hereto as Exhibit C. The parties agree that following implementation of this Agreement, the Annual Dollar Allocation to the Participating Member Cities shall be subject to modification upward or downward only under the following circumstances:

(a) Any Participating Member City is removed from participation in the PPP for any reason after implementation of this Agreement. The adjustment shall be based on the allocation previously made to the removed City pursuant to the agreement between the Participating Member Cities and the SEMSC described above;

(b) Medic makes significant modifications to its System Status Deployment Plan within the area(s) serviced by the Member Cities as required to comply with the response time standards of the Master Agreement or any additional requirements imposed by the SEMSC, state, or local government, which changes result in the need to increase the unit hours required in the Participating Member Cities. In that event, Medic shall notify the Participating Member Cities in writing of the proposed adjustment and the parties shall timely meet and confer in good faith to negotiate revised unit hours required to meet Medic's obligations under the Master Agreement. If the parties are unable to mutually agree on the revised unit hours, the matter shall be submitted to the SEMSC for its final determination as to whether the unit hours are required to be adjusted to ensure compliance with the requirements of the Master Agreement. The decision of the SEMSC shall be considered final and conclusive by the parties.

(c) Increases required by subsection (iv) below.

(iv) The Master Agreement has a term of five years and is subject to one five-year extension. As provided in Section 7(a) of this Agreement, the term of this

Agreement shall coincide with the term of the Master Agreement, including any extensions thereof. During the initial five year term of this Agreement and any extension thereof, the Annual Dollar Allocation shall be adjusted in any year in which Medic receives a cost of living increase in compensation under the Master Agreement and on the effective date of that increase, by the increase, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers, for the San Francisco-Oakland-San Jose Metropolitan Statistical Area, All Items (1982-1984=100) measured from the commencement of this Agreement or the time of the last adjustment, whichever is later.

(v) Medic shall pay the Annual Dollar Allocation in quarterly installments to the Participating Member Cities, pursuant to the above formula and in the manner provided below, by no later than the 15th day of April, July, October and January of each year during the term of this Agreement. The first payment made under this Agreement shall be prorated and calculated at the rate set forth in the existing PPP Agreement for that period up to implementation of this Agreement, and at the increased Annual Dollar Allocation under this Agreement for that period beginning only upon the implementation of this Agreement. Payment shall be made directly to the SEMSC for disbursement to the Participating Member Cities in the amounts set forth in the agreement between the SEMSC and the Participating Member Cities, attached hereto as Exhibit C. SEMSC shall make the quarterly payments to the Participating Member Cities within fifteen days of receipt of payment from Medic. Any reduction in the Annual Dollar Allocation made with respect to a defaulting city pursuant to Section 4(h) of this Agreement shall be applied by SEMSC to the defaulting city only.

6. Joint Responsibilities:

(a) The parties hereto shall reasonably cooperate with each other in establishing communication protocols which allow for the success and efficiency of the ALS First Responder Program.

(b) The parties shall actively participate in Solano County EMS Agency committees established by the Solano County EMS Agency or Medic, including but not necessarily limited to, performance improvement, CQI or review committees for the purpose of ensuring that the purposes of this Agreement are met.

(c) The parties shall maintain and preserve all records relating to this Agreement and all records relating to the care and treatment of patients for a period of four (4) years from the termination date of this Agreement or for such longer period as may be required by Section 4(c) of this Agreement, the Master Agreement, the Solano County EMS Agency or applicable law or regulation.

(d) The parties shall observe and comply with all applicable laws, ordinances, codes, and regulations of governmental agencies, including federal, state and municipal and local governing bodies, having jurisdiction over the scope of services or any part hereof, including the provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal and local safety regulations. All services performed by the parties must be in accordance with these laws, ordinances, codes and regulations. The parties shall indemnify and save harmless each other from any and all liabilities, fines, penalties and consequences resulting from their own noncompliance or violations of such laws, ordinances, codes and regulations.

7. Term and Termination

(a) Term: The term of this Agreement shall be coterminous with the Master Agreement between Medic and the SEMSC, including any extensions that may be granted, subject to earlier termination as provided herein.

(b) Termination for Breach: In addition to any other rights and remedies that either party may have at law or in equity, this Agreement may be terminated by either party for material breach by the other party, if such breach is not cured after written notice and an opportunity to cure is given in the manner provided by the terms of this Agreement.

(c) Material Breach: The following conditions and circumstances shall constitute a material breach of this Agreement:

(i) As to the Participating Member Cities: Operation by Participating Member Cities of the First Responder ALS Program in a manner which causes Medic to be in material breach of the Master Agreement.

(ii) As to the Participating Member Cities: Failure to adhere to the Response Time Standard.

(iii) As to Medic: Failure of Medic to make the payments to the SEMSC as described in Section 5(f) of this Agreement for a period of 45 days.

(iv) As to Medic: Termination by SEMSC of the Master Agreement for breach by Medic; provided, however, that Medic shall not be in breach of this Agreement to the extent that such breach of the Master Agreement was caused by the acts or omissions of the Participating Member Cities or any of them.

(v) As to either party: Material failure to comply with any other term or condition of this Agreement.

(d) Notice and the Opportunity to Cure: Prior to terminating this Agreement because of a material breach as defined herein, each party shall be required to provide (1) ninety (90) days' written notice of the intent to terminate this Agreement; and (2) a forty-five (45) day period within which the party receiving the notice has an opportunity to cure the material breach. In the event it shall have promptly and diligently commenced the efforts to cure the breach, upon a written request explaining why the alleged breach cannot be cured within the first forty-five (45) day period, the party receiving notice may request an extension of the forty-five (45) day period. Such request shall not be unreasonably denied.

Notwithstanding the foregoing, if any Member City has been declared to be in breach of this Agreement as a result of its chronic failure to meet its Response Time Standards two or more times in any calendar year, this Agreement shall, at Medic's option, be terminated on the second such notice of termination. The Member City shall not, in that event, have a second opportunity to cure the breach, and no further amounts shall be paid under this Agreement as to that Participating Member City. The parties recognize that in order for Medic to meet its obligations under the Master Agreement with regard to both Response Time Standards and treatment of its workforce, it may as a result of Response Time breach by a member city be required to employ additional personnel and put on extra vehicles and those vehicles and personnel cannot be taken out of or put back into the system on an on-and-off basis.

Notwithstanding the foregoing, or anything in this Agreement to the contrary, in the event that Medic is given notice of material breach or notice of intent to declare Medic in material breach pursuant to the terms of the Master Agreement, due to the acts, omissions

or performances of a Participating Member City, the notice and opportunity to cure period shall be shortened to the extent necessary to permit Medic to timely cure or avoid its breach of the Master Agreement. By way of example, if the SEMSC or Solano County EMS Agency provides Medic with notice of material breach specifying acts or omissions of the Participating Member Cities or any of them as the cause thereof and states that the Master Agreement shall be terminated if such breach is not cured within thirty (30) days, then Medic shall only be required to afford the Participating Member Cities with a twenty (20) day cure period.

(e) Immediate Termination: Notwithstanding subparagraph (d), this Agreement may be terminated immediately, subject to consent by the SEMSC:

(i) By the Participating Member Cities if Medic loses the ability to provide the Emergency Ambulance Program under the Master Agreement;

(ii). By Medic if all the Participating Member Cities lose the ability to provide the ALS First Responder Program under the ALS Non-Transport Agreement or as to any Participating Member City that loses its ability to provide the ALS First Responder Program under the ALS Non-Transport Agreement;

(iii) By either party, upon loss or substantial diminution of the other party's insurance and/or liability coverage as required by this Agreement, effective upon the date of such loss or diminution, or loss of any permit or license required hereunder, effective upon the date of such loss.

(f) Mutual Termination for Legal Invalidity: This Agreement may be terminated by either party, as soon as reasonably possible, if this Agreement or any material term or provision hereof is determined unlawful by any court or governmental

agency or becomes unlawful as a result of subsequently passed legislation; provided, however, that the parties shall first meet and confer in a good faith attempt to amend this Agreement to conform with applicable law.

(g) Effect of Termination:

(i) In the event of termination prior to the scheduled expiration date hereof, each party shall faithfully perform its obligations through the effective date of termination, and shall also perform any additional obligations which are stated herein as extending beyond the termination date hereof.

(ii) In the event of termination by Medic due to Participating Member Cities' breach or failure to perform, Medic shall be entitled to all damages or other relief recoverable under law or equity.

(iii) In the event of termination by the Participating Member Cities due to Medic's breach or failure to perform, Participating Member Cities shall be entitled to all damages or other relief recoverable under law or equity.

8. Extraordinary Changes

(a) During the Term: In the event of an actual or reasonably expected extraordinary change in the cost or revenues available to Medic, including but not limited to a change in reimbursement methodology by Medicare, Medi-Cal or other major private or public reimbursement program which results in a notice of renegotiation of rates by Medic pursuant to the terms of the Master Agreement, then Medic shall also have the option of sending the Participating Member Cities a notice of renegotiation of this Agreement. In such event, the Participating Member Cities and Medic shall renegotiate in good faith in an attempt to reach agreement on amended financial and/or operational terms of this

Agreement necessary for each party to satisfy its reasonable, financial and operational needs in light of the reimbursement or other changes. In the event Participating Member Cities and Medic are unable to reach such agreement within ninety (90) days of the notice by Medic to the Participating Member Cities, this Agreement may be terminated by either party upon ninety (90) days' written notice, without penalty to either party.

9. Indemnity

(a) Mutual Indemnity: The parties agree that the Participating Member Cities shall indemnify, defend and hold Medic harmless, including its officers, employees, and/or agents from any and all acts, claims, omissions, liabilities, and losses resulting in injuries or damages to persons and/or property which result from the negligent or wrongful acts or omissions of Participating Member Cities or their officers, members, agents and/or employees in the performance of their duties under the scope of work set forth herein and under all applicable state, federal and local laws, rules and regulations. The parties further agree that Medic shall indemnify, defend and hold harmless Participating Member Cities, including their officers, members, employees, and/or agents from any and all acts, claims, omissions, liabilities, and losses resulting in injuries or damages to persons and/or property which result from the negligent or wrongful acts or omissions of Medic, or its officers, employees, and/or agents in the performance of its duties under the scope of work set forth by this Agreement and under all applicable federal, state and local laws, rules and regulations.

(b) Comparative Negligence: In the event a third party claim or suit alleges concurrent negligence of Participating Member Cities, their officers, employees, members and/or agents and Medic, its officers, employees and/or agents, then the liability

for any and all claims for injuries and damages to persons and/or property which arise out of this Agreement shall be apportioned under the established California theory of comparative negligence as it may be modified from time to time. The parties shall each immediately notify the other in writing upon receiving notice of a claim or suit which includes, or reasonably may include, the other party. Prior to the separate settlement of any third party court action against both Medic and any or all of the Participating Member Cities, the settling party or parties shall provide written notice to the other parties and the court pursuant to Code of Civil Procedure Section 877.6 of the settlement regardless of whether a confidentiality agreement has been entered into by the settling party or parties.

10. Insurance

The Participating Member Cities and Medic agree to maintain the liability coverage and/or insurance as specified in Exhibit D, which is attached hereto and incorporated by reference herein.

11. Assignments and Subcontracts

Neither party shall assign, nor employ subcontractors for, performance of essential aspects of its duties under this Agreement, without the written consent of the other which shall not be unreasonably withheld; provided, however, that either party may employ such consultants as it deems necessary.

12. Alteration of Agreement

This Agreement, together with the exhibits (which are incorporated herein by this reference), constitute the entire agreement between the parties with respect to the matters herein discussed and contain all the terms and conditions agreed upon by the parties. No alteration or variation shall be valid unless made in writing and signed by the

parties hereto, and no oral understanding or agreement shall be binding on the parties hereto. It is, however, contemplated that a joint operating agreement addressing the day-to-day working of the parties may be required and the parties agree to reasonably work together in adopting such agreement.

13. Alteration of Joint Powers Agreement or Master Agreement

A copy of the Joint Powers Agreement is attached hereto as Exhibit E and incorporated herein by this reference. The Participating Member Cities shall not amend the Joint Powers Agreement in a manner which impairs the rights or legal recourse of Medic under the Master Agreement, or the collective obligations of the Participating Member Cities and its members under this Agreement without the written consent of Medic, which Medic shall not unreasonably withhold. A copy of the Master Agreement has been provided to all Participating Member Cities and is incorporated herein by this reference. Except as hereinbefore set forth, Medic shall not agree to an amendment of the Master Agreement which materially increases the burden of the Participating Member Cities' performance without the written consent of the Participating Member Cities which Participating Member Cities shall not unreasonably withhold.

14. Compliance with Applicable Laws

All services to be performed by either party pursuant to this Agreement shall be performed in accordance with all applicable, federal, state, county and municipal laws, ordinances and regulations, including all policies and procedures of the Solano County EMS Agency.

15. Notice

Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when personally delivered or when deposited in the United States mail, postage prepaid, or when transmitted by facsimile with confirmation of delivery, addressed to Medic or the Participating Member Cities, respectively, at the addresses set forth hereinafter. Any party may change its address for notice by written notice to the others.

Rudy Manfredi, President
Medic Ambulance Services, Inc.
506 Couch Street
Vallejo, CA 94590

Robert F.D. Adams, Interim City
Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

Jim Erickson, City Manager
City of Benicia
250 East L Street
Benicia, CA 94510

Nancy Huston, City Manager
City of Dixon
600 East A
Dixon, CA 94520

Sean Quinn, City Manager
City of Fairfield
1000 Webster Street
Fairfield, CA 94533

16. Controlling Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. Venue, Attorneys Fees

In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Solano. The prevailing party or parties in any such suit shall be entitled to reimbursement of all allowable court costs thereof, including its/their reasonable attorneys fees.

18. Construction

The parties acknowledge that for purposes of construing this Agreement neither party shall be deemed to be the drafter.

19. Binding Effect

This Agreement shall inure to the benefit of and bind the respective parties, their successors, personal representatives and permitted assigns.

20. Headings

The headings in this Agreement are for convenience of reference only and are not to be used in construing or interpreting any provision of this Agreement.

21. Counterparts

This Agreement may be executed in any number of counterparts, all of which shall constitute the agreement between the parties.

22. Invalidity

If any term, provision, covenant or condition of this Agreement, or any application thereof, shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms provisions, covenants and conditions of this Agreement, and all applications thereof, not held invalid, void, or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

23. Force Majeure

Neither party shall be liable for any delay nor failure to perform to the extent that such delay or failure is caused by a force or event beyond the control of such party, including, but not limited to, war, embargoes, riots, fires, floods, earthquakes, strikes, governmental restrictions, natural disasters, or other Acts of God.

24. Waiver

The failure of either party to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement in any one or more instances shall not be construed as a waiver or a relinquishment of any such terms, covenants or conditions and all of the same shall be in full force and effect.

25. Reference to Multiple Parties or Single Party

The plural shall include the singular and the singular shall include the plural throughout the terms of this Agreement.

26. Prior Agreement Terminated and Superseded

That certain Public Private Partnership Agreement for ALS First Responder Emergency Services, dated May 1, 2000, by and between the parties hereto is hereby terminated and superseded in its entirety by this Agreement.

27. Effective Date of this Agreement

The effective date of this Agreement shall be the date of its execution by the last of the undersigned parties or May 1, 2010, whichever is latest. This Agreement shall be considered implemented on this effective date.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized representatives, have executed this Agreement as of the day and year first above written.

[ALL SIGNATURES ARE ON THE FOLLOWING PAGE]

MEDIC AMBULANCE SERVICES,
INC., a California Corporation

By: 
RUDY MANFREDI, President

Dated: 4-22-10, 2010

CITY OF BENICIA, a Municipal
Corporation

By: 
Title: City Manager

Dated: 04/29/10, 2010

CITY OF VALLEJO, a Municipal
Corporation

By: 
Title: Intervenor City Manager

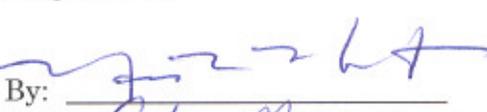
Dated: 04/29, 2010

CITY OF FAIRFIELD, a Municipal
Corporation

By: 
Title: City Manager

Dated: 04/30, 2010

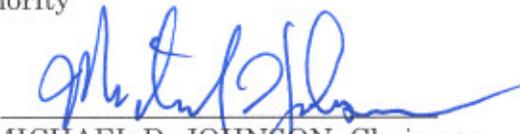
CITY OF DIXON, a Municipal
Corporation

By: 
Title: City Manager

Dated: 4/29, 2010

THE TERMS AND PROVISIONS OF THIS AGREEMENT ARE HEREBY
APPROVED BY THE BOARD OF DIRECTORS OF THE SOLANO EMERGENCY
MEDICAL SERVICES COOPERATIVE.

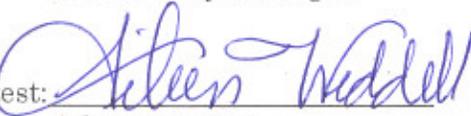
SOLANO EMERGENCY MEDICAL
SERVICES COOPERATIVE, a Joint Powers
Authority

By: 
MICHAEL D. JOHNSON, Chairman
of the SEMSC Board of Directors

Dated: 4.13, 2010

CITY OF VALLEJO, a Municipal Corporation

By: 
Robert F. D. Adams
Interim City Manager

Attest: 
Aileen Weddell
Acting City Clerk

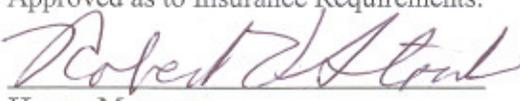


(City Seal)

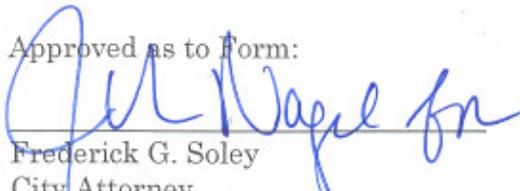
Approved as to Content:

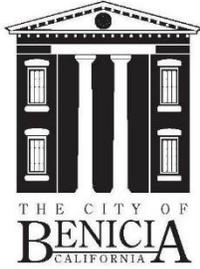

Russell Sherman
Fire Chief

Approved as to Insurance Requirements:

Fin 
Harry Maurer
Risk Manager

Approved as to Form:


Frederick G. Soley
City Attorney



**AGENDA ITEM
CITY COUNCIL MEETING DATE – FEBRUARY 2, 2021
CONSENT CALENDAR**

TO : City Manager

FROM : Public Works Director

SUBJECT : **RATIFYING THE CITY MANAGER’S DECLARATION OF A CONTRACTING EMERGENCY AND APPROVING PAYMENT FOR EMERGENCY WASTEWATER SYSTEM REPAIR LOCATED AT 510 WEST I STREET**

EXECUTIVE SUMMARY:

Benicia Municipal Code (BMC) Section 3.09.050.C. Emergency Contracting provides that the City Council shall review the emergency action “... at least at every regularly scheduled meeting...” following its initial review “... until the action is terminated...” This staff report provides for the current status of the emergency action, which has not yet terminated.

On August 29, 2020, Public Works Wastewater Treatment Plant staff discovered the sanitary sewer (wastewater) transmission line located on West I Street near West 5th Street was “backing up” due to a blockage and engaged Ghilotti Construction (Ghilotti) when it was determined the City’s equipment could not safely perform the repair.

On August 31, 2020, the City Manager, in accordance with BMC Section 3.09.050 Emergency Contracting, declared a contracting emergency. On September 15, 2020, the City Council adopted Resolution No. 20-123, ratifying the City Manager’s Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$150,000, which was based on staff’s estimate at that time.

Since that time, City Council has adopted resolutions at subsequent City Council meetings ratifying the City Manager’s declaration of a contracting emergency and approving payment. The last resolution approved by City Council on January 19, 2020, Resolution No. 21-6, approved payment for an amount not to exceed \$244,317.37.

Ghilotti has completed the installation of the new pipe and restored the public sanitary sewer line to full functionality. Construction of the retaining walls, which will replace the original, private-owned retaining walls that were removed to install the new pipe, and restoration of the work area will be the last item of work to complete the Emergency Wastewater System Repair and will be scheduled following property owner’s sign off of the encroachment agreement.

RECOMMENDATION:

Move to adopt a resolution (Attachment 1) ratifying the City Manager’s declaration of a contracting emergency due to a blockage in a sanitary sewer transmission line located at 510 West I Street, as well as approving payment for an amount not to exceed \$244,313.37.

BUDGET INFORMATION:

Below is the estimated expense for the emergency work.

Contractor	Service	Cost	Account No.
Ghilotti Construction	Remove blockage in sanitary sewer transmission line and associated work to restore service	\$244,313.37	7108031-7088

Sufficient funds are available in Account Number 7108031-7088 (Maintenance Sewer Line Repair).

BACKGROUND:

BMC Section 3.09.050.C. Emergency Contracting provides that the City Council shall review the emergency action “... at least at every regularly scheduled meeting...” following its initial review “... until the action is terminated...” This report provides for the current status of the emergency action, which has not terminated.

On August 29, 2020, Public Works Wastewater Treatment Plant staff, while reviewing treatment plant and lift station trends as part of their normal operations, noticed that the lift station located on the 700 block of West I Street experienced much higher than typical flows. Subsequently, staff conducted a field review and discovered the 24-inch diameter sanitary sewer transmission line located on West I Street near West 5th Street was “backing up” due to a blockage. Staff succeeded in removing enough of the blockage using both its Vactor trucks to eliminate the risk of an SSO and to provide continuous conveyance of sewage.

On August 30, 2020, staff continued to clear the line, determined the blockage was approximately located in front of 500 West I Street and informed the 500 West I Street property owners of the issue. Additionally, staff determined that this portion of the sewer line is approximately 20 to 25 feet deep. Since the City’s staff and equipment are only equipped to safely excavate to a depth of 10-12 feet, staff requested assistance from the City’s on-call utility contractor, Ghilotti Construction (Ghilotti), who arrived at the site at approximately 7:00 p.m., reviewed the situation and engaged United Rentals to set up a sewer bypass that evening, which provided for sewage to be diverted from the blocked pipe in an effort to eliminate an SSO.

On August 31, 2020, the City Manager, in accordance with BMC Section 3.09.050 Emergency Contracting, declared a contracting emergency due to the magnitude of the sanitary sewer transmission line blockage, the potential disruption of sanitary sewer service to residents, and the possibility of an SSO; repair work began immediately.

On September 15, 2020, the City Council adopted Resolution No. 20-123, ratifying the City Manager’s Declaration of a Contracting Emergency and approving payment for an amount not to

exceed \$150,000, which was based on staff's estimate at that time.

Ghilotti subsequently engaged Miksis Services, Inc. (Miksis), who has the specialized equipment to bore through a sewer pipe blockage. Miksis determined the blockage was 9 feet long and was actually located within a section of pipe that is 20 feet deep under the front yard of 510 West I Street and not 500 West I Street. Over the course of several days, Miksis attempted to break up the blockage with a remote control power tool but was only able to remove 21 inches of the 9-foot long blockage. Miksis considered sending a laborer with a jackhammer to descend into a 20-foot deep manhole and crawl approximately 50 feet upstream inside the 24-inch pipe to break up the blockage but the plan was deemed unsafe by their safety officer and, accordingly, Miksis demobilized from the site.

The remaining option, as proposed by Ghilotti and concurred by staff, was to remove the existing and privately-owned retaining walls, excavate above the blockage, which was located in the front yard of 510 West I Street, remove and replace approximately 9 linear feet of pipe, and restore the front yard. A Deed of Easement granted to the City of Benicia, recorded in the Office of the County Recorder of Solano County on January 21, 1959, provides for the purpose of the easement as "clearing, trenching for, laying, constructing, maintaining and repairing a sewer line and related facilities for and as part of a sewer system for said City..." The section of the sewer line to be replaced is located within said easement, which has been acknowledged by the 510 West I Street property owners.

On September 25, 2020, Ghilotti provided a proposal to perform this option for an amount not to exceed \$244,313.37, which was determined by staff to be fair and reasonable and superseded the amount of \$150,000 previously approved by the City Council.

On October 1, 2020, Ghilotti started demolition and excavation work to remove the pipe.

On October 6, 2020 and October 20, 2020, the City Council adopted Resolution Nos. 20-127 and 20-134, respectively, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37.

On October 7, 2020, Ghilotti completed the installation of the new 9-foot section of pipe, backfilled the excavated area, demobilized the bypass system and pumps, removed the temporary traffic control system, and restored the public sanitary sewer main to full functionality.

On October 9, 2020, Ghilotti met with their consulting engineer at 510 West I Street to initiate the design of the retaining walls. The new walls will replace the original and privately-owned retaining walls, which were removed as a necessary step to remove and replace the 9-foot linear section of sanitary sewer pipe.

On October 20, 2020, the City Council adopted Resolution No. 20-134, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37.

On October 29, 2020, Ghilotti submitted retaining wall plans to the Public Works Department for review and approval. The plans were based on input from the property owners whom requested

the new walls replace the original walls in kind, i.e., same number, configuration, material and location.

On November 12, 2020, staff reviewed the retaining walls plans with the property owners and informed them that an encroachment agreement is required to be executed prior to start of construction of the new retaining walls. Said agreement would provide rights to the property owners to have the privately-owned retaining walls constructed within the public easement and assign responsibility to them for the cost to restore the retaining walls in the event the City needs to remove the walls to access its sewer pipe in the future, which is standard of the City's encroachment agreement. The recordation of the easement, January 21, 1959, predates the construction of the residence, which is approximately 1968 based on public records. On November 17, 2020, staff approved the retaining wall plans.

On November 17, 2020, the City Council adopted Resolution No. 20-139, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37.

On December 1, 2020, staff held a pre-construction meeting with Ghilotti and the property owners to discuss construction of the retaining walls and restoration of the front yard impacted by the sewer repair work. At the meeting the property owners informed staff of their concerns of the encroachment agreement and would seek legal counsel.

On December 9, 2020, the property owners submitted comments via email to staff regarding the encroachment agreement.

On December 15, 2020, the City Council adopted Resolution No. 20-145, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37.

On December 27, 2020, staff responded via email to the property owners' December 9th comments.

On December 28, 2020, the property owners responded to staff's December 27th email by stating they "...look forward to reviewing the revised contract [encroachment agreement] when the city offices re-open in the new year."

On January 5, 2021, the City Council adopted Resolution No. 21-5, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37.

On January 19, 2021, staff emailed the revised encroachment agreement to the property owners, which addressed their December 27th comments.

Construction of the retaining walls and restoration of the work area will be the last item of work to complete the Emergency Wastewater System Repair and will be scheduled following the property owner's sign off of the encroachment agreement.

NEXT STEPS:

N/A

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the payment and the emergency repair work would not be completed. Subsequently, staff would effect the repair through a bid and award process that would take approximately 8 weeks to complete. During this time, the City would be at risk of a soil erosion event in the front yard of 510 West I Street if the retaining walls are not constructed prior to a rain event.

General Plan	Goal 2.28: Improve and maintain public facilities and services.
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Priority Based Budgeting	<p align="center">Strategic City Result Impacted by this Agenda Item</p> <p>The City Council and community identified six (6) key “Results” that establish the key goals for which the City of Benicia aspires to achieve with our programs and services. Agenda Items often influence multiple Results, the primary Result impacted by this Agenda Item is (please check one):</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Protect Community Health & Safety <input type="checkbox"/> Maintain & Enhance A High Quality of Life <input checked="" type="checkbox"/> Preserve & Enhance Infrastructure <input type="checkbox"/> Strengthen Economic & Fiscal Conditions <input checked="" type="checkbox"/> Protect & Enhance the Environment <input type="checkbox"/> High Performing Government
	<p align="center">City Programs Impacted by This Agenda Item (Top 3):</p> <ol style="list-style-type: none"> 1. Maintenance operations – water 2. Maintenance operations – wastewater 3. Maintenance operations - roads

CEQA Analysis	This activity is Categorical Exempt per California Environmental Quality Act §15301 which exempts operation, maintenance, and minor alteration of existing facilities and mechanical equipment involving negligible or no expansion of use.
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ATTACHMENT:

1. Resolution – Emergency Wastewater Collection System Repair

For more information contact: Dan Sequeira, PE, Deputy Public Works Director-OPS/City Engineer

Phone: 707.746.4240

E-mail: dsequeira@ci.benicia.ca.us

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA RATIFYING THE CITY MANAGER’S DECLARATION OF A CONTRACTING EMERGENCY AND APPROVING PAYMENT FOR EMERGENCY WASTEWATER SYSTEM REPAIR LOCATED AT 510 WEST I STREET

WHEREAS, Benicia Municipal Code (BMC) Section 3.09.050.C. Emergency Contracting provides that the City Council shall review the emergency action “... at least at every regularly scheduled meeting...” following its initial review “... until the action is terminated...”; and

WHEREAS, on August 29, 2020, Public Works Wastewater Treatment Plant staff noticed that the lift station located on the 700 block of West I Street experienced much higher than typical flows, discovered the sanitary sewer transmission line located at 500 West I Street was “backing up” due to a blockage, removed enough of the blockage to eliminate the risk of a sanitary sewer overflow (SSO), and engaged Ghilotti Construction (Ghilotti) when it was determined the City’s equipment could not safely perform the repair; and

WHEREAS, on August 30, 2020, Ghilotti reviewed the situation and engaged United Rentals to set up a sewer bypass and pumps, which provided for sewage to be diverted from the blocked pipe in an effort to eliminate an SSO; and

WHEREAS, BMC Section 3.09.050, “Emergency Contracting Procedures” “...delegates to the City Manager or, in his/her absence, the Public Works Director, the authority to repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.”; and

WHEREAS, on August 31, 2020, the City Manager declared a contracting emergency and approved the Public Works Department’s request to procure the equipment and services to repair the wastewater collection system, in accordance with BMC Section 3.09.050 Emergency Contracting Procedures; and

WHEREAS, on August 31, 2020, Ghilotti engaged Miksis Services, Inc. who has the specialized equipment to bore through a sewer pipe blockage; and

WHEREAS, over the course of several days, Miksis Services, Inc. (Miksis) attempted to break up the blockage with a remote control power tool but was only able to remove 21 inches of the 9-foot long blockage; and

WHEREAS, on September 10, 2020, Miksis’ plan to send a laborer with a jackhammer to descend into a 20-foot deep manhole and crawl approximately 50 feet upstream inside the 24-inch pipe to break up the blockage but the plan was deemed unsafe by their safety officer and, accordingly, Miksis demobilized from the site; and

WHEREAS, on September 15, 2020, the City Council adopted Resolution No. 20-123, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$150,000, which was based on staff's estimate at that time; and

WHEREAS, on September 25, 2020, Ghilotti provided a proposal to excavate above the blockage, which is located in the front yard of 510 West I Street, remove and replace approximately 9 feet of pipe, and restore the front yard for an amount not to exceed \$244,313.37, and there are sufficient funds in Account No. 7108031-7088 (Maintenance Sewer Line Repair); and

WHEREAS, on October 1, 2020, Ghilotti started demolition and excavation work to remove the pipe; and

WHEREAS, on October 6, 2020, the City Council adopted Resolution No. 20-127, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37; and

WHEREAS, on October 7, 2020, Ghilotti completed the installation of the new 9-foot section of pipe, backfilled the excavated area, demobilized the bypass system and pumps, and restored the public sanitary sewer main to full functionality; and

WHEREAS, on October 9, 2020, Ghilotti met with their consulting engineer at 510 West I Street to initiate the design of the retaining walls that will replace the existing retaining walls, which were removed as a necessary step to remove and replace the 9-foot linear section of sanitary sewer pipe; and

WHEREAS, on October 20, 2020, the City Council adopted Resolution No. 20-134, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37; and

WHEREAS, on October 29, 2020, Ghilotti submitted retaining wall plans to the Public Works Department for review and approval that were based on input from the property owners whom requested the new walls replace the original walls in kind, i.e., same number, configuration, material and location; and

WHEREAS, on November 12, 2020, staff reviewed the retaining walls plans with the property owners and informed them that an encroachment agreement is required to be executed prior to start of construction of the new retaining walls; and

WHEREAS, on November 17, 2020, staff approved the retaining wall plans; and

WHEREAS, on November 17, 2020, the City Council adopted Resolution No. 20-139, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37; and

WHEREAS, on December 1, 2020, staff held a pre-construction meeting with Ghilotti and the property owners to discuss construction of the retaining walls and restoration of the front yard impacted by the sewer repair work and the property owners informed staff of their concerns regarding the encroachment agreement and that they would seek legal counsel; and

WHEREAS, on December 9, 2020, the property owners formally emailed staff comments regarding the encroachment agreement; and

WHEREAS, on December 15, 2020, the City Council adopted Resolution No. 20-145, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37; and

WHEREAS, on December 27, 2020, staff responded via email to the property owners' December 9th comments; and

WHEREAS, on December 28, 2020, the property owners responded to staff's December 27th email by stating they "...look forward to reviewing the revised contract [encroachment agreement] when the city offices re-open in the new year."; and

WHEREAS, on January 5, 2021, the City Council adopted Resolution No. 21-5, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37; and

WHEREAS, on January 19, 2021, the City Council adopted Resolution No. 21-6, ratifying the City Manager's Declaration of a Contracting Emergency and approving payment for an amount not to exceed \$244,313.37; and

WHEREAS, on January 19, 2021, staff emailed the revised encroachment agreement to the property owners, which addressed their December 27th comments; and

WHEREAS, construction of the retaining walls and restoration of the work area will be the last item of work to complete the Emergency Wastewater System Repair.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby ratify the City Manager's emergency declaration and approve the payment for an amount not to exceed \$244,313.37 for emergency repairs related to immediately bring the wastewater collection system located at 510 West I Street to full functionality.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of February, 2021 by the following vote:

Ayes:

Noes:

Abstain:

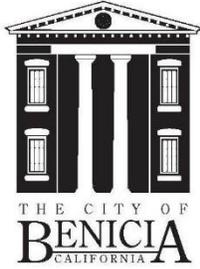
Absent:

Steve Young, Mayor

Attest:

Lisa Wolfe, City Clerk

Date



**AGENDA ITEM
CITY COUNCIL MEETING DATE – FEBRUARY 2, 2021
CONSENT CALENDAR**

TO : City Council

FROM : City Attorney

SUBJECT : **APPROVAL OF AGREEMENT WITH ERIK UPSON AS CITY MANAGER**

EXECUTIVE SUMMARY:

At its January 20, 2021 Council meeting, the City Council appointed Erik Upson as the City Manager contingent on an agreement being executed. This staff report includes the City Manager’s Agreement to be adopted by the Council at a regular meeting in accordance with state law.

RECOMMENDATION:

Move to adopt the resolution (Attachment 1) approving the proposed City Manager Agreement (Attachment 2) with Erik Upson and authorizing the Mayor to execute the agreement on behalf of the City Council.

BUDGET INFORMATION:

Costs associated with the proposed City Manager Agreement will be approximately \$5,600 more than the current budgeted amount for the City Manager position for Fiscal Year (FY) 20-21. There are no anticipated budgetary impacts for FY 20-21 due to the salary savings in the Police Department. The ongoing increase will be approximately \$13,500 per year, which will be included in the next budget cycle.

BACKGROUND:

On September 15, 2020, the City Council appointed Police Chief Erik Upson to serve in an Interim City Manager capacity to keep the organization’s progress moving forward during the transition to a new City Manager. At its January 20, 2021 meeting, the City Council voted 5-0 to appoint Mr. Upson as the permanent City Manager with direction to finalize an agreement between the parties. The attached agreement was prepared by the City Attorney’s office, and Mr. Upson has reviewed the agreement and has indicated that he is in full agreement with its terms.

NEXT STEPS:

If the agreement is approved, staff will make the necessary administrative changes to implement the agreement.

ALTERNATIVE ACTIONS:

If Council does not approve the agreement, Council will direct staff as to an alternative action.

General Plan	N/A
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Priority Based Budgeting	<p align="center">Strategic City Result Impacted by this Agenda Item</p> <p>The City Council and community identified six (6) key “Results” that establish the key goals for which the City of Benicia aspires to achieve with our programs and services. Agenda Items often influence multiple Results, the primary Result impacted by this Agenda Item is (please check one):</p> <p><input type="checkbox"/> Protect Community Health & Safety</p> <p><input type="checkbox"/> Maintain & Enhance A High Quality of Life</p> <p><input type="checkbox"/> Preserve & Enhance Infrastructure</p> <p><input type="checkbox"/> Strengthen Economic & Fiscal Conditions</p> <p><input type="checkbox"/> Protect & Enhance the Environment</p> <p><input checked="" type="checkbox"/> High Performing Government</p>
	<p align="center">City Programs Impacted by This Agenda Item (Top 3):</p> <p>1. Administration</p> <p>2.</p> <p>3.</p>

CEQA Analysis	Pursuant to Title 14, the California Code of Regulations, Section 15378(b)(5) of the California Environmental Quality Act (“CEQA”) guidelines, the proposed action is an administrative activity of the City that will not result in direct or indirect physical changes to the environment.
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ATTACHMENTS:

1. Resolution – Approval of City Manager Agreement
2. Agreement with Erik Upson as City Manager

For more information contact: Benjamin Stock, City Attorney

Phone: 707-746-4204

E-mail: bstock@ci.benicia.ca.us

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE AGREEMENT WITH ERIK UPSON AS CITY MANAGER

WHEREAS, a vacancy in the position of City Manager exists and pursuant to the Benicia Municipal Code, Chapter 2.08, the City Council may appoint and establish the compensation of qualified persons performing the duties of City Manager during any such vacancy; and

WHEREAS, the City Council has determined that Erik Upson is qualified for the position of Benicia City Manager; and

WHEREAS, the City has negotiated an Agreement outlining the terms and conditions under which Erik Upson shall serve as City Manager; and

WHEREAS, costs associated with the City Manager Agreement will be approximately \$5,600 more than the current budgeted amount for the City Manager position for Fiscal Year (FY) 20-21. There are no anticipated budgetary impacts for FY 20-21 due to the salary savings in the Police Department. The ongoing increase will be approximately \$13,500 per year.

NOW, THEREFORE, BE IT RESOLVED THAT Erik Upson was appointed City Manager of the City of Benicia effective January 20, 2021.

BE IT FURTHER RESOLVED that the City Council of the City of Benicia does hereby approve the City Manager Agreement with Erik Upson and authorizes the Mayor to execute the agreement on behalf of the City Council.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of February, 2021 by the following vote:

Ayes:

Noes:

Absent:

Steve Young, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into this ___ day of January, 2021, by and between the City of Benicia (“City”), a California general law city, and Erik Upson (“Upson”), an individual, on the following terms and conditions:

RECITALS

A. The City is in need of an individual to hold the position of City Manager and the City Council is empowered pursuant to the Benicia Municipal Code to appoint a City Manager; and

B. The City must attract and retain management and leadership personnel to insure the health, welfare and safety of its residents, businesses, employees and agency are protected at all times; and

C. The City must hire a City Manager with a high degree of knowledge, integrity, technical ability, professionalism and the qualities and characteristics of leadership necessary to meet City Council objectives and goals; and

D. Erik Upson has been serving as the City’s Interim City Manager/Chief of Police since September 15, 2020, during which time he has demonstrated that he has the administrative and executive abilities and qualifications to serve as City Manager; and

E. As a result of his performance as Interim City Manager/Chief of Police, the City Council wishes to appoint Erik Upson as the City’s City Manager.

F. Upson desires to accept employment as City Manager for the City of Benicia in consideration of and subject to the terms, conditions, and benefits set forth in this Employment Agreement.

EMPLOYMENT AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises, terms and conditions of this Agreement, the City and Upson agree as follows:

Section I. Duties and Authority

A. Duties

The City hereby agrees to employ Erik Upson as City Manager of City effective January 19, 2021. Upson shall be the chief executive officer of the City and be responsible to the City for the proper administration of all affairs of the City and agrees to diligently and faithfully perform the duties of the Benicia City Manager. Specific duties include, but are

not limited to, the functions and duties specified in Chapter 2.08 of the Benicia Municipal Code as well as other legally permissible and proper duties and functions as the City Council may, from time to time, assign. Upson shall provide such additional duties and functions without additional compensation, beyond the salary specified in Section IV.A. Upson shall devote his best efforts and full-time attention to the performance of these duties.

B. Professional and Other Activity

In accordance with Government Code Section 1126, during the period of his employment, Upson shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity to any other person or organization, whether for compensation or otherwise without the prior consent of the City Council, except for occasional teaching, writing, or consulting for compensation, performed on Upson's time off, provided such activities are not in conflict with his duties and this Agreement and not detrimental to the interests of the City.

The City understands and agrees that Upson can continue in his current position as an adjunct professor at Napa Valley College teaching no more than one class per semester during the term of this Agreement. Upson agrees to confer with the Mayor and/or the City Council before undertaking any projects for organizations other than the City which may require a substantial time commitment by Upson.

C. To ensure that Upson is able to effectively carry out his duties in a professional and forthright manner and implement the policies of the City Council impartially and equitably, the City Council and its members agree (1) to spend time each year outside or regular meetings to work with Upson and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting maximal achievement of City goals, (2) to adopt a set of communication protocols to assist in maximizing the effectiveness of City Council member interaction with one another, with Upson, and with City staff, (3), to deal with all subordinate City employees, officers, contractors, and consultants solely through Upson or his designee, except for the purposes of inquiry and to not give orders to any subordinate of Upson, either publically or privately, (4) to not order the appointment or removal of any person to any office or employment under the supervision and control of Upson, (5) that any criticism of City staff member will be done privately through Upson, (6) to not interfere with the execution of the powers and duties of Upson, and (7) that Upson shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

Section II. Term

A. Upson's appointment as City Manager commences on January 19, 2021 ("Commencement Date"). The term of this Agreement shall be for an indeterminate period of time and is subject to termination by City as provided herein. Upson acknowledges that he is employed to an "at-will" position and serves at the pleasure of the City Council subject only to the restrictions imposed by local ordinance and the terms and conditions of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate the services of Upson at any time, subject only to the provisions set forth in Section VI of this Agreement.

C. Nothing in this Employment Agreement shall prevent, limit, or otherwise interfere with the employee right of Upson to resign at any time from his position with the City, subject only to provisions set forth in Section VI of this Agreement.

D. Nothing in this Agreement is intended to, or does, confer upon Upson any right to any property interest in continued employment as the City Manager, or any due process right to a hearing before or after a decision by the City Council to terminate his employment as City Manager, except as is expressly provided by operation of local ordinance, State or federal law. Upson hereby expressly waives the right to bring claims or causes of action seeking contract-based damages relating to his employment with the City.

Section III. Hours of Work

It is recognized that the position of City Manager is an executive management position which often requires more than a conventional forty-hour week to provide the desired level of professional service. It is further recognized that to properly fulfill his duties and responsibilities, Upson shall devote a considerable amount of time outside normal office hours to the business of the City. Therefore, while the City shall spend sufficient hours on site to perform the City Manager's duties, Upson has the discretion over his work schedule and work location and will not be required to maintain a strict forty (40) hour-per-week on-site presence at City Hall, and may be occasionally absent from City Hall during normal business hours as is reasonable and appropriate. The position of City Manager shall be deemed an exempt position under state and federal wage and hour laws. Upson's compensation (whether salary or benefits or other allowances) is not based on hours worked and Upson shall not be entitled to any compensation at an overtime rate.

Section IV. Compensation

A. Base Salary

1. The City agrees to pay Upson for his services rendered, pursuant herein, a monthly base salary of \$19,952.00. Upson shall receive this salary according to the payroll schedule in place for City employees. Upson will not be entitled to receive payment or credit for, and the City shall not pay or credit Upson for overtime, compensated time off in lieu of overtime or other compensation except as expressly provided in this Agreement. Upson acknowledges that the position of City Manager is exempt from the provisions of the FLSA.

2. Notwithstanding Upson's annual base salary as set forth herein, the annual salary of Upson shall never be less than the annual base salary (excluding overtime, other pay or and any incentive compensation) of the City's next highest paid

employee. In the event that a promotion, an adjustment to the salary table, or a general management salary reduction would result in the employee being paid less than the next highest paid employee's annual base salary, Upson's annual base salary will be set at an amount not less than the annual base salary of the City's next highest paid employee by action of the City Council at a public meeting.

B. Deferred Compensation

Upson may elect monthly payroll deductions in an amount permissible under the City plan to be placed in a deferred compensation program administered at no cost to the City. Such monies deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the deferred compensation program. The City will contribute 5.5% per year provided Upson provides a minimum 1% matching share or a maximum amount as defined by federal regulation.

SECTION V. Performance Evaluation

A. The City Council shall annually review and evaluate the performance of Upson. The annual review will normally be scheduled to occur during December of each year.

B. Within sixty (60) days after commencement of employment with the City as City Manager, Upson and the City Council shall create the initial set of evaluation criteria, employee tasks, and outcomes, organizational goals and objectives described herein, which will provide the basis for determining Upson's performance. The City Council shall conduct an initial performance review approximately six (6) months after commencement of employment, and thereafter shall conduct an annual review each December, unless additional performance reviews are deemed necessary as provided in Section V.E below.

C. The review and evaluation shall be in accordance with specific evaluation criteria developed jointly by City and Upson. Such criteria shall serve as a written memorandum of the City Council's expectations for Upson's performance. The criteria shall generally include, but not limited to, such performance categories as initiative, customer service, job knowledge, problem solving, communications, integrity and honesty among others. The criteria shall also include defined employee tasks, and outcomes and measures whether Upson in his words and actions, adequately and properly reflected demonstrated, and promoted the organizational values as established by the City Council.

D. In addition, as part of the performance evaluation process, the City Council and Upson shall jointly define the organizational goals and objectives that are determined necessary for the proper operation of the organization, and in the attainment of the City Council's policy objectives. A relative priority among those various goals and objectives shall also be established. They shall generally be challenging but attainable within the time limitation as specified, and the annual operation budget and capital budget and appropriations provided. Said goals and objectives shall be reduced to writing.

E. The City and Upson agree that additional performance reviews, for the purpose of mid-course corrections, may occur during the year; and the parties may meet from time to time in closed session for the purpose of conducting an informal review of the progress that the City Council and Upson have made in achieving the established performance criteria, and organizational goals and objectives.

F. In the event such performance criteria cannot be established by mutual consent, then the City Council will have the final authority to determine the standards by which Upson's performance will be evaluated. Said performance criteria may also be added to or deleted from by the City Council in consultation with Upson as part of the annual evaluation process.

G. When discussing the performance of Upson, the City Council shall meet in closed session with or without Upson. Upson's performance evaluation may be facilitated by an outside consultant, as mutually determined by Upson and the City Council. Further, the City Council shall provide Upson with a written summary statement of the evaluation and provide Upson an adequate opportunity to discuss his evaluation with the City Council in closed session and provide a written response if so desired by Upson. The completed performance evaluation shall be signed by the City Council and Upson and placed in Upson's personnel file, which shall be maintained in the office of the City's Human Resources Manager.

H. As a component of Upson's annual evaluation, the City Council may require that Upson undergo a 360-degree evaluation by selected members of the City's staff.

Section VI. Termination and Severance

A. It is understood by and between the parties to this Agreement that Upson, in performing City Manager's duties for the City, serves at the pleasure of the City Council. Upson may be terminated only by an affirmative vote of three (3) members of the City Council, convened in a council meeting. The City Council shall furnish Upson with a written notice stating the City Council's intention to terminate his employment with the City at least thirty (30) days before the effective date of his termination. Such action shall not be taken within ninety (90) days after 1) any election at which a council member has been elected or, 2) the appointment of a new council member.

B. Severance

In the event Upson is involuntarily terminated by the City Council during such time that Upson is willing and able to perform his duties under this Agreement, then, in that event, the City agrees to pay Upson a lump sum cash payment of six (6) months base salary, calculated at base salary in effect at the effective date of termination. The City will also provide Upson all compensation earned, but unpaid, for actual work performed, calculated at base pay in effect at the effective date of termination.

C. Also, in such event, and in addition to the lump sum payment, the City shall provide for continuance of Upson's health and other related insurance benefits provided for in this Agreement for six (6) months as provided for base salary in accordance with

Section VI.B above, from and after the effective date of termination or until Upson obtains other employment, whichever first occurs.

D. In the event Upson voluntarily resigns his position with the City, then Upson shall give the City forty-five (45) days written notice, in advance, unless the parties otherwise agree. In such event, the City shall only pay Upson for all compensation earned, but unpaid, for actual work performed, calculated at base pay in effect at the effective date of termination.

E. Termination Obligations.

Upson agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to City and shall be returned promptly to City upon termination of Upson's employment. Upson's obligations under this subsection shall survive the termination of his employment, and the expiration of this Agreement.

F. Other Benefits upon Termination.

All benefits to which Upson is entitled under this Agreement shall cease upon Upson's termination in accordance with this Section VI, unless expressly continued under other provisions in this Agreement, under any specific written policy or benefit plan applicable to Upson, or unless otherwise required by law.

G. In the event this Agreement is terminated by the City or Upson for any reason, either voluntarily or involuntarily, the City and Upson agree that neither party shall make any written or oral statements to members of the public, the press, or any City employee concerning Upson's termination except in the form of a joint press release or statement which is mutually agreeable to both parties. The joint press release or statement shall not contain any text or information that is disparaging to the City or Upson. Either party may orally repeat the substance of the joint press release or statement in response to any inquiry.

Section VII. DISABILITY OR INABILITY TO PERFORM

In the event Upson becomes mentally or physically incapable of performing his functions and duties with reasonable recommendations and it reasonably appears such incapability will last for more than three (3) months, the City Council may terminate employment of Upson; however, in such instance, Upson shall be entitled to severance pay as provided herein, If Upson is terminated because of permanent disability, he shall be compensated in a lump sum for any accrued benefits, to the extent that such benefits are compensable under this Agreement. (See Section VI of this Agreement) However, City shall have no responsibility to make severance payments pursuant to Section VI.B and C of this Agreement if, and only if, as a result of said disability, Upson is eligible for PERS disability retirement. If, notwithstanding said disability, Upson is determined not to be eligible for PERS disability retirement, then the City shall pay

Upson severance pay from the effective date of his termination in accordance with Section VI.B and C of this Agreement.

Section VIII. RETIREMENT

Upson shall be provided retirement benefits through the California Public Employees Retirement System (CalPERS) as a second tier "Classic" member in the 2%@60 Plan. The average of three years' salary is used for final retirement compensation calculation as well as credit for unused sick leave.

Section IX. FRINGE BENEFITS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. Sick Leave

Upson shall accrue sick leave at the rate of one working day (8 hours) of sick leave with pay for each month or major fraction thereof employed by City. There is unlimited sick leave accrual, and it may be applied as a credit to PERS retirement. Unused sick leave may be annually cashed out at the same time unused sick leave is annually cashed out for Senior Management employees covered by the Compensation and Benefits Resolution for Senior Management Employees. Leave of absence due to pregnancy shall be chargeable to sick leave up to the limit of total accrued sick leave. Sick leave with pay shall not be granted for any injury attributable to an occupation, for which workers compensation benefits are available.

Upson may sell back accrued annual sick leave hours at a rate of 100% and all hours sold back will be deducted from Upson's sick leave balance at the time sold consistent with the timing of the sell back for Senior Management employees covered by Compensation and Benefits Resolution for Senior Management Employees. In addition, Upson may sell back 100% of his sick leave upon retirement not to exceed 500 hours. Upson can take steps to have his cash out sick leave paid into his ICMA 457 Deferred Compensation Program, if available, up to the maximum allowed by the IRS.

Upson cannot cash out sick leave if Upson's employment terminates either voluntarily or involuntarily and for reasons other than retirement.

B. Holiday and Personal Leave

City agrees to provide Upson twelve (12) holidays (96 hours) each year in accordance with the City's standard holiday schedule.

Upson shall also receive two (2) personal leave days (16 hours) each year. Personal leave days can be taken at any time during the fiscal year earned and it is paid out in the same manner personal leave days are paid out for Senior Management employees covered by the Compensation and Benefits Resolution for Senior Management Employees. Personal leave days cannot be carried over from year-to-year and cannot be cashed out.

C. Vacation

Upson shall accumulate 240 hours of vacation time per fiscal year (20 hours per month). It is the policy of the City that employees take their normal vacation each fiscal year. However, Upson may take less than his normal vacation each fiscal year and carry over the balance of his earned vacation over to the next fiscal year. Upson's vacation leave accrual is capped at 480 hours of earned vacation. Upson shall not accumulate more than 480 hours of earned vacation.

Upson shall be permitted to cash out up to 120 hours of earned vacation time per fiscal year. Upson can take steps to have that cashed out earned vacation leave paid into his ICMA 457 Deferred Compensation Program, if available, up to the maximum allowed by the IRS.

Upon termination of employment (voluntary or involuntary), 100% of Upson's earned unused vacation shall be converted to cash and paid to Upson. Upson can elect to have this cashed out vacation paid into his ICMA 457 Deferred Compensation Program, if available, up to the maximum allowed by the IRS.

D. Bereavement Leave

Bereavement leave shall be provided to Upson in the same manner and under the same terms as offered to the Senior Management employees.

E. Administrative Leave

Upson shall receive 16 days (128 hours) each fiscal year of administrative leave. Administrative leave may be taken in increments of one hour or more and Upson can elect to cash out up to 64 hours of administrative leave each fiscal year.

F. Use of City Vehicle

During the period of employment, City will provide Upson a City-owned vehicle for his business use, including travel to and from his residence to work, but not including personal use, except for incidental personal use during work hours or during commute times. City shall pay for all fuel and regular maintenance and otherwise keep the vehicle in good working condition. Upson shall obey all traffic laws relating to operation of the vehicle and shall use due care and caution in its operation and report any damage to the vehicle or accident involving the vehicle promptly to City risk management.

G. Moving Allowance

Pursuant to Section 2.08.060 of the Municipal Code, Upson shall not be required to reside within the City. However, if Upson decides to relocate to the City while he serves as City Manager, the City shall reimburse Upson for his actual and reasonable moving expenses to transport household items not to exceed a total cost of \$10,000. To be eligible for reimbursement, the expenses must be submitted to City for reimbursement

along with reasonable documentation within six months after being incurred. All applicable IRS regulations shall apply to this benefit, and this benefit shall not be compensation that is subject to PERS.

H. Longevity Pay

In recognition of the substantial contribution to the community made by Upson as a result of his length of public service, the City shall provide Upson a longevity amount of nine percent (9%) of salary recognizing 23 years of public service. At 24 years of public service, which is the pay period beginning February 21, 2022, Upson's longevity pay shall increase to fourteen percent (14%) of salary. Longevity pay shall not exceed \$2,800 per month. Longevity pay is earnable special compensation within the meaning of Section 20636 of the California Government Code and Section 571(a)(1) of the CalPERS regulations and/or as defined pensionable compensation in the California Government Code and the CalPERS regulations as amended.

I. Health and Other Insurance

The City agrees to make required health insurance coverage premium payments for Upson and his dependents, including insurance policies for accident, sickness, dental, vision, hospitalization, surgical, and comprehensive medical insurance as provided to other Senior Management employees of the City.

J. Life Insurance

The City shall provide Upson a term life insurance policy in the sum of \$100,000 on Upson's life and to pay the required premiums on the policy.

K. General Business and Work-Related Reimbursement

General business and work-related expenses incurred by Upson on a routine basis that are not personal shall be reimbursed to Upson to the extent that they qualify for reimbursement under the adopted policies of the City and California law and do not exceed budgeted amounts. The City shall provide Upson a City credit card to charge appropriate and lawful business expenses.

Section X. Proprietary Information.

"Proprietary Information" is all information and any idea pertaining in any manner to the business of City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of City in the course of his employment or otherwise produced or acquired by or on behalf of City. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of City's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by City, Upson

shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of City and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination of his employment, Upson shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of City. Upson's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

Section XI. Conflict Of Interest.

Upson represents and warrants to City that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

Section XII. City Property.

Upson agrees that all materials, regardless of their form, that he receives, creates or produces in connection with this Agreement and/or his employment as City Manager are and will remain the exclusive property of the City. Upson will immediately deliver all originals and all copies of such materials that are in his possession or control to the City upon termination of this Agreement or upon any request from the Mayor and/or the City.

Section XIII Abuse of Office.

- A. Pursuant to Government Code sections 53243 and 53243.3, in the event City provides paid leave salary to Upson pending an investigation into Upson, Upson shall fully reimburse City for any paid leave salary if Upson is convicted of a crime involving an abuse of his office or position.
- B. Pursuant to Government Code sections 53243.1 and 53243.3, in the event City provides funds for Upson's legal criminal defense, Upson shall fully reimburse City for any such funds if Upson is convicted of a crime involving an abuse of his office or position.
- C. Pursuant to Government Code sections 53243.2 and 53243.3, in the event City provides Upson with a cash settlement related to Upson's termination, Upson shall fully reimburse City for any such cash settlement if he is convicted of a crime involving an abuse of his office or position.
- D. Pursuant to Government Code section 53243.4, an "abuse of office or position" means (a) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority, or (b) a crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

Section XIV. General Provisions.

A. Notices

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective immediately upon delivery by hand to either the City or Upson, or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to City at the address below, and or at the last known address maintained in Upson's personnel file. Upson agrees to notify City in writing of any change in his address during his employment with City. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City: Mayor's Office
City of Benicia
250 East L Street
Benicia, CA 94510

Upson: Erik Upson
City Hall
250 East L Street
Benicia, CA 94510

B. Indemnification.

Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*] City will indemnify, defend, and hold Upson harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Upson's appointment as City Manager.

C. Bonding.

The City shall bear the full cost of any fidelity or other bond required of Upson under any law or ordinance.

D. Integration.

This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Upson and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of City, now or in the future, apply to Upson during the term of this Agreement and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

E. Amendments.

This Agreement may not be amended except in a written document signed by Upson and the Mayor.

F. Waiver.

Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

G. Assignment.

Upson shall not assign any rights or obligations under this Agreement. City may, upon prior written notice to Upson, assign its rights and obligations hereunder.

H. Severability.

If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

I. Attorneys' Fees.

In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

J. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

K. Interpretation.

This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not as a limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

L. Acknowledgment

Upson acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based

on his own judgment and not on any representations or promises other than those contained in this Agreement.

M. This Agreement shall become effective immediately upon the adoption of a resolution authorizing the Mayor to execute this Employment Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and Upson has signed and executed this Employment Agreement, as of the date first indicated above.

CITY OF BENICIA

Erik Upson, City Manager

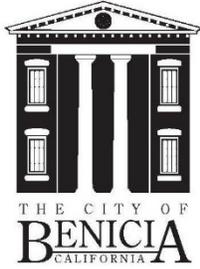
Steve Young, Mayor

ATTEST

APPROVED AS TO FORM

Lisa Wolfe, City Clerk

Benjamin Stock, City Attorney



**AGENDA ITEM
CITY COUNCIL MEETING DATE – FEBRUARY 2, 2021
BUSINESS ITEM**

TO : City Manager

FROM : Public Works Director

SUBJECT : **TWO-STEP CONTINUATION REGARDING WATER AND WASTEWATER RATE INCREASES**

EXECUTIVE SUMMARY:

On January 1, 2021, water and wastewater rates increased pursuant to Resolution 20-52. Vice Mayor Tom Campbell submitted a two-step request for “extending the postponement of water and wastewater rate increases due to hardships caused by COVID-19” pursuant to the “Council Rules of Procedure.” The request was discussed at the January 21, 2021 City Council Meeting agenda where City Council voted 4-1 in favor of scheduling this topic for future discussion at a later City Council Meeting. Rather than changing the entire utilities rate structure for all customers, staff recommends leaving the existing rate structure intact and transferring \$100,000 from Available Unassigned Fund Balance for COVID-19 Contingency to the Family Resource Center where residents can receive assistance paying for water and wastewater utilities.

RECOMMENDATION:

Staff recommends adopting a resolution (Attachment 1) transferring \$100,000 from the Available Unassigned Fund Balance for COVID-19 Contingency to the Family Resource Center to assist residents with paying for water and wastewater utilities.

BUDGET INFORMATION:

Staff recommends transferring \$100,000 from Available Unassigned Fund Balance for COVID-19 Contingency to the Family Resource Center, Account No. 2525020-7315, for water and wastewater utilities.

BACKGROUND:

Current Rate Structure

In 2016, the City of Benicia completed a five-year water and wastewater utility rate study. The purpose of the rate study was to raise enough revenues for both utilities to return to solvency and to begin saving for future capital projects. On August 22, 2016, City Council adopted Resolution No. 16-117 (Attachment 2), which acknowledged that revenues were incapable of covering operating expenses, and that the new water and wastewater rates “do not exceed the reasonable cost of providing services”, and adopted the current rate structure with annual increases each July 1 thereafter.

On April 17, 2018, City Council adopted Resolution No. 18-35 (Attachment 3), which reduced the Fiscal Year (FY) 2018-19 adopted increase from 9% to 0%. On June 2, 2020, City Council adopted Resolution No. 20-52 (Attachment 4), which delayed the approved FY20-21 increase from July 1, 2020 to January 1, 2021. A summary of rate increases is provided in Table 1 below.

Table 1. City Council Approved, and Modified, Five-Year Rate Increases.

	FY16-17	FY17-18	FY18-19	FY19-20	FY20-21
Water	20%	16%	10%	3%	3%**
Wastewater	16%	12%	9% 0% *	7%	5%**

* Resolution 18-35 reduced the FY 18-19 wastewater rate increase from 9% to 0%.

** Resolution 20-52 postponed the water and wastewater increases from July 1, 2020 to January 1, 2021.

Two-Step Proposal and Continuation

City Council Rules of Procedure, Section II.B. describes the Two-Step Process which allows Council Members to request items to be discussed at future Study Sessions or City Council Meetings. The City Manager received a Two-Step request from Vice Mayor Tom Campbell on December 21, 2020, regarding the postponement of water and wastewater rate increases due to COVID-19. During the January 19, 2021 City Council Meeting, Council discussed Vice Mayor Campbell’s request and voted 4-1 to discuss water and wastewater rate increases at a future City Council Meeting. Council requested staff to return with a recommendation on extending the postponement of water and wastewater rate increases.

Impacts of Postponing Rate Increases

The adopted water and wastewater rate increase became effective January 1, 2021, so Vice Mayor Campbell’s request is functionally a repeal (or “roll-back”) of existing water and wastewater rates. If the already approved water and wastewater rates are modified a third time in three years, there will be significant negative consequences to both utilities.

1. **Budgetary Impacts:** A third rate schedule modification will cause negative budgetary impacts to the Water and Wastewater Enterprise Funds. Another postponement would lead to lower cash balances for both Enterprise Funds. Lower cash balances translate to a reduction in services, lower operating reserves, less funds available for capital rehabilitation/replacement projects, less maintenance being conducted, and potential impacts to mandated debt reserves. If the scheduled rate increases are repealed, the Water Enterprise Fund and Wastewater Enterprise Fund will forgo approximately \$200,000 and \$280,371, respectively.
2. **Capital Improvement Project Impacts:** Another postponement would negatively impact the financial viability of the Capital Improvement Program. Elimination of already adopted rate increases will reduce the City’s ability to invest in and maintain critical infrastructure. Since the rate modifications in 2018 and 2020, staff is currently identifying which projects will not move forward due to inadequate funds. Repealing existing rates will increase the number of projects on the list of projects to be delayed or cancelled.

3. Unfunded Services: Each time modifications are made to the revenue structure of the water and/or wastewater utility, staff must also reprioritize operations. When less funds come in, less projects and services can be delivered. To continue critical programs, such as water quality testing, other programs, such as outreach or free water service meter replacements, may be eliminated due to lack of funds.
4. Grants and Loans: Repealing rates is a signal to funding agencies that a water or wastewater system is financially insolvent. Insolvent utilities are not eligible for grants through most state and federal funding programs. Insolvent utilities must pay more in debt service because loans to insolvent utilities are viewed as “risky investments”. The City will need grants and loans in the future to address the \$330 million in unfunded future infrastructure projects identified in the 2020 Water and Wastewater Condition Assessments.
5. Effective Date: The January 1, 2021 increase is the last increase of the adopted 5-year rate study (2016-2021). The January 1, 2021 increase was already postponed six months. The City is already using the new rate structure; residents will see a change on their next utility bills (estimated to be mailed February 11, 2021). Changing rates at this time will consume a significant amount of staff time while the City is starting the process to draft and adopt its next biennial budget.
6. Next Rate Study: The next 5-year utility rate study was authorized in Resolution No. 20-51 (Attachment 5) and is currently under development. Changing the existing rate structure will put pressure on the next rate structure to significantly increase water and wastewater rates due to lost revenue and potential financial insolvency. Staff will consider affordability as part of the next utility rate study.

Funding the Family Resource Center

The Family Resource Center is a local resource sponsored by the City where families can go for information, referrals, parent education, family support and other services. The resources and information are tailored to meet the needs of the Benicia community, and are designed to make families feel welcome and supported. During the COVID-19 pandemic, the Family Resource Center initiated the City of Benicia COVID-19 Citizen Assistance Program to help those most impacted by the ongoing pandemic. In addition to assistance paying utilities, the Family Resource Center can also provide rent/mortgage payment assistance, food, and vouchers for fuel. Family Resource Center staff takes time to confirm there is a legitimate impact to the applicant from COVID-19.

Additionally, a low-income discount is available for customers who qualify for PG&E’s CARE discount program. Contact the Finance Department at 707-746-4225 to request more information on how the City may be able to help customers pay for water and wastewater bills.

NEXT STEPS:

If no action is taken to repeal existing utility rates, the water and wastewater rates will remain effective January 1, 2021. If Council adopts the attached resolution, staff will proceed with the budget transfer from the Available Unassigned Fund Balance for COVID-19 Contingency to the Family Resource Center.

ALTERNATIVE ACTIONS:

Council could repeal the previously adopted rate increases for the water and wastewater enterprise funds. Any delay or elimination of adopted rate increases would deviate from the Council adopted rate study and revenue plan.

General Plan	<p>Goal 2.28: Improve and maintain public facilities and services. Goal 2.36: Ensure an adequate water supply for current and future residents and businesses Goal 2.38: Protect water quality Goal 2.39: Provide safe drinking water and improve its taste and odor Goal 2.40: Ensure adequate wastewater treatment capacity to serve all development shown in the General Plan Goal 2.41: Minimize WWTP operational upsets, potential discharge of inadequately treated wastewater, and the emission of odor and noise Goal 2.42: Enhance the recycling of solid waste Goal 4.1: Make community health and safety a high priority for Benicia Goal 4.9: Ensure clean air for Benicia residents Goal 4.10: Support improved regional air quality Goal 4.13: Prevent property damage caused by flooding Goal 4.14: Prevent ground and surface water contamination Goal 4.22: Update and maintain the City’s Emergency Response Plan</p>
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Priority Based Budgeting	Strategic City Result Impacted by this Agenda Item
	<p>The City Council and community identified six (6) key “Results” that establish the key goals for which the City of Benicia aspires to achieve with our programs and services. Agenda Items often influence multiple Results, the primary Result impacted by this Agenda Item is (please check one):</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Protect Community Health & Safety <input checked="" type="checkbox"/> Maintain & Enhance A High Quality of Life <input checked="" type="checkbox"/> Preserve & Enhance Infrastructure <input checked="" type="checkbox"/> Strengthen Economic & Fiscal Conditions <input checked="" type="checkbox"/> Protect & Enhance the Environment <input checked="" type="checkbox"/> High Performing Government
	City Programs Impacted by This Agenda Item (Top 3):
	<ol style="list-style-type: none"> 1. Administration - Water 2. Administration - Wastewater 3. Capital Improvement Program

CEQA Analysis	Per CEQA Section 15273, CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates.
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ATTACHMENTS:

1. Resolution – Transfer Funds from Available Unassigned Fund Balance for COVID-19 Contingency to Family Resource Center
2. City Council Resolution No. 16-117
3. City Council Resolution No. 18-35
4. City Council Resolution No. 20-52
5. City Council Resolution No. 20-51

For more information contact: Kyle Ochenduszkowski, Deputy Public Works Director

Phone: 707-746-4376

E-mail: KOchenduszkowski@ci.benicia.ca.us

RESOLUTION NO. 21 -

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING THE TRANSFER OF \$100,000 FROM AVAILABLE UNASSIGNED
FUND BALANCE FOR COVID-19 CONTINGENCY TO THE FAMILY RESOURCE
CENTER FOR ITS USE AS PART OF THE CITY OF BENICIA COVID-19 CITIZEN
ASSISTANCE PROGRAM**

WHEREAS, on December 21, 2020, a two-step request for extending the postponement of water and wastewater rate increases due to hardships caused by COVID-19 was submitted by Vice-Mayor Tom Campbell and received by the City Manager; and

WHEREAS, in accordance with the “Council Rules of Procedure”, the two-step request was discussed at the January 19, 2021 City Council Meeting; and

WHEREAS, City Council voted 4-1 to discuss Vice-Mayor Campbell’s request at a future City Council Meeting; and

WHEREAS, on January 1, 2021, water and wastewater rates were increased pursuant to City Council Resolution No. 20-52. Therefore, a request for postponement is in fact a repeal of the existing water and wastewater rates; and

WHEREAS, as an alternative to repealing the water and wastewater rate schedule for the entire City to assist some residents only in paying City utility bills, staff suggests offering temporary utility bill payment relief, through the existing City of Benicia COVID-19 Citizen Assistance Program managed by the Family Resource Center.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby authorizes the transfer of \$100,000 from Available Unassigned Fund Balance for COVID-19 Contingency to the Family Resource Center, Account No. 2525020-7315, for its use as part of the City of Benicia COVID-19 Citizen Assistance Program, specifically for the payment of water and wastewater bills.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of February, 2021 by the following vote:

Ayes:

Noes:

Absent:

Steve Young, Mayor

Attest:

Lisa Wolfe, City Clerk

RESOLUTION NO. 16- 117

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE AMENDMENT OF THE MASTER FEE SCHEDULE TO INCREASE WATER, SEWER RATES AND ADD METER REPLACEMENT FEE

WHEREAS, the City of Benicia hired NBS to do a rate study of its water and sewer services; and

WHEREAS, as a result of the study, the City Council has determined the current rate structure will not adequately support the current and future costs to operate the water and sewer systems; and

WHEREAS, proposed rate increases reflect the cost of providing services to all customers through the apportionment of costs based on customer, capacity and demand characteristics so that each customer does not pay more than the fair share; and

WHEREAS, the proposed rates do not exceed the reasonable cost of providing the services; and

WHEREAS, the City Manager is recommending adding the Water and Sewer rates to the Master Fee schedule for November 1, 2016; and

WHEREAS, the City Manager is recommending adding a water meter replacement fee to the Master Fee schedule for November 1, 2016; and

WHEREAS, notice of public hearing has been provided per Government Code Section 66016, oral and written presentations made and received, and the required public hearing held; and

WHEREAS, the Finance Director has indicated that the proposed fees are in accordance with Article XIII-B of the Constitution of the State of California; and

WHEREAS, the rates set forth in this resolution are intended to meet operating expenses, meet financial reserve requirements, secure funding for capital improvements to maintain service and to recover costs to maintain the current and expected levels of water and sewer services. As such adoption of the rates proposed in the related staff reports and this resolution is not a "project" within the meaning of the California Environmental Quality Act, Public Resources Code Section 21080 (b)(8)(A), (C), and (D);

WHEREAS, a majority protest of the proposed increases was not received; and

WHEREAS, all the rates and all the portions of this resolution are severable and should any of the rates or any portion of this resolution be proven invalid or unenforceable by a court of competent jurisdiction, then the remaining rates and/or portion of this resolution shall continue to be in full force and effect except for those rates and/or portion of the resolution that has been judged to be invalid.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia as follows:

1. The above recitals are incorporated into this resolution by reference.
2. There was no majority protest of the proposed water, sewer and meter fee increases.
3. The water, sewer and meter fee rates as set forth in the attached exhibits are hereby approved and adopted. The FY 16/17 rates will go into effect on November 1, 2016. Subsequent FY rates will go into effect each July 1. The new rates shall supersede and replace any existing conflicting rates. The new rates shall be incorporated into the Master Fee resolution.
4. This resolution will become effected upon the effective date of the ordinances amending Chapters 13.12 and 13.52 which were presented at this same Council meeting.

On motion of Council Member **Schwartzman**, seconded by Council Member **Strawbridge**, 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 16th day of August 2016 and adopted by the following vote:

Ayes: **Council Members Schwartzman, Strawbridge, and Mayor Patterson**

Noes: **Council Members Campbell and Hughes**

Absent: **None**



Elizabeth Patterson, Mayor

Attest:



Lisa Wolfe, City Clerk

8-22-16
Date

RESOLUTION NO. 18 - 35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA MAINTAINING WATER RATE INCREASES AS ADOPTED IN 2016, AND REVISING THE SEWER RATE INCREASES IMPLEMENTED EACH JULY 1 AS FOLLOWS: LOWER THE RATE INCREASE FOR FISCAL YEAR 2018-19 FROM 9% TO 0%; RETAIN UNCHANGED THE FISCAL YEAR 2019-20 INCREASE AT 7%; AND RETAIN UNCHANGED THE FISCAL YEAR 2020-21 INCREASE AT 5%

WHEREAS, In 2016 the City of Benicia adopted water and sewer rate increases to ensure the health and safety of the community and to ensure that Benicia's water and sewer utilities remain financially solvent; and

WHEREAS, revenues from water and sewer charges are meant to cover operations and maintenance costs, debt service obligations, fund reserves, and rate-funded capital improvement projects; and

WHEREAS, City Council asked staff to return in the spring with information about how well actual revenues matched projections, the status of the capital improvement plan, and a review of future rate increases for possible reduction; and

WHEREAS, over the past 6 months or so, the capital improvement project list for both water and sewer have been reconsidered and revised; and

WHEREAS, while the water projects have changed, the total revenue needed to fund them has changed very little and as a result, no water rate increase changes are recommended; and

WHEREAS, significant changes to the sewer project list were made that will require less revenue to fund and as a result, staff feels confident recommending the elimination of the next planned rate increase for Fiscal Year 2018-19 and maintaining the approved rate increases for the two years beyond.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves maintaining water rate increases as adopted in 2016, and revising the sewer rate increases implemented each July 1 as follows: lower the rate increase for FY 2018-19 from 9% to 0%; retain unchanged the FY 2019-20 increase at 7%; and retain unchanged the FY 2020-21 rate increase at 5%.

On motion of Council Member **Campbell**, seconded by Council Member **Schwartzman**, the above Resolution is introduced and passed by the City Council of the City of Benicia at a regular meeting of the Council held on the 17th day of April, 2018 and adopted by the following vote:

Ayes: **Council Members Campbell, Hughes, Schwartzman, Young, and Mayor Patterson**

Noes: **None**

Absent: **None**



Elizabeth Patterson, Mayor

Attest:



Lisa Wolfe, City Clerk

4-23-18
Date

RESOLUTION NO. 20 - 52

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
POSTPONING THE 3% WATER RATE INCREASE AND THE 5% WASTEWATER
RATE INCREASE SCHEDULED FOR JULY 1, 2020 TO JANUARY 1, 2021**

WHEREAS, in 2016, the City adopted water and wastewater rate increases to ensure the health and safety of the community and to ensure that Benicia's water and wastewater utilities remain financially solvent; and

WHEREAS, revenues from water and wastewater charges are meant to cover operations and maintenance costs, debt service obligations, fund reserves, and rate-funded capital improvement projects (CIP); and

WHEREAS, On April 17, 2018, City Council reduced the Fiscal Year 2018/19 wastewater rate increase from 9% to 0% based on a reprioritization and/or removal of CIPs; and

WHEREAS, the City is currently conducting a 20-year infrastructure condition assessment and master plan updates for the water and wastewater utilities that will include CIP updates; and

WHEREAS, upon completion of the above referenced condition assessment and master plan updates, the City will update its rate studies; and

WHEREAS, at the April 21, 2020 meeting, City Council asked staff to consider delaying the water and wastewater rate increases scheduled for July 1, 2020 until the condition assessment and master plan update reports are complete.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves postponing the 3% water rate increase scheduled for July 1, 2020 to January 1, 2021 and postponing the 5% wastewater rate increase scheduled for July 1, 2020 to January 1, 2021.

On motion of Council Member **Largaespada** , seconded by Council Member **Campbell**, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of June, 2020 by the following vote:

Ayes: **Council Members Campbell, Largaespada, Strawbridge, and Young**

Noes: **Mayor Patterson**

Absent: **None**



Elizabeth Patterson, Mayor

Attest:



Lisa Wolfe, City Clerk

Date June 5, 2020

RESOLUTION NO. 20- 51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A CONSULTANT AGREEMENT WITH BARTLE WELLS ASSOCIATES FOR PROFESSIONAL FINANCIAL SERVICES TO PERFORM A WATER AND WASTEWATER RATE STUDY FOR A NOT-TO-EXCEED COST OF \$75,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, a Request for Proposal (RFP) for a water and wastewater rate study was issued on December 12, 2019. Six consulting firms responded with proposals on the due date of January 30, 2020. Four consulting firms were interviewed by staff on February 19, 2020; and

WHEREAS, Bartle Wells Associates was selected as the most qualified firm based on their expertise, proposed methodology, and qualifications. Bartle Wells Associates' bid was \$64,900; and

WHEREAS, City staff does not have the capacity or expertise to perform this work in-house; and

WHEREAS, staff recommends approval of the consultant agreement with Bartle Wells Associates for the water and wastewater rate study.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby approve the consultant agreement with Bartle Wells Associates for professional financial services to perform a water and wastewater rate study for a not-to-exceed cost of \$75,000 (\$64,900 for consultant services and \$10,100 contingency), split evenly between Account Nos. 7508020-7011 and 7108030-7011, and authorizing the City Manager to sign the contract on behalf of the City.

On motion of Council Member **Largaespada** , seconded by Council Member **Strawbridge**, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of June, 2020 by the following vote:

Ayes: **Council Members Campbell, Largaespada, Strawbridge, Young, and Mayor Patterson**

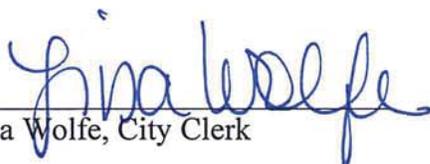
Noes: **None**

Absent: **None**



Elizabeth Patterson, Mayor

Attest:



Lisa Wolfe, City Clerk

Date June 5, 2020