



**BENICIA CITY COUNCIL  
CITY COUNCIL MEETING AGENDA**

**REVISED AGENDA  
Benicia City Hall, 250 East L Street  
December 17, 2019  
7:00 PM**

**Call To Order**

**1. Closed Session (6:00 P.M.)**

**1.A CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

**Property: Commanding Officer's Quarters, 1 Commandant's Lane**

**Agency negotiator: City Manager, Economic Development Manager, City Attorney**

**Negotiating parties: City of Benicia, Terry Scott, Marty Duvall**

**Under negotiation: Price and terms of payment**

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

**Pursuant to Government Code Section 54956.9(d)(1)**

**Name of case: APS West Coast dba Amports v. City of Benicia etal. regarding Yuba or 678 East H Street**

**2. Convene Open Session (7:00 P.M.)**

**3. Roll Call**

**4. Pledge Of Allegiance**

## **5. Reference To The Fundamental Rights Of The Public**

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

## **6. Announcements**

### **6.A - ANNOUNCEMENTS FROM CLOSED SESSION, IF ANY**

### **6.B - MAYOR'S OFFICE HOURS**

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's office of City Hall from 6:00 to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through City Hall by calling 707-746-4200.

### **6.C - OPENINGS ON BOARDS AND COMMISSIONS**

- Community Sustainability Commission  
2 Full Terms, Expiring July 31, 2023
  
- Open Government Commission  
1 Partial Term, Expiring July 31, 2021

## **7. Proclamations**

### **7.A - SUBA MANUFACTURING & JACK BELL**

[Proclamation - SUBA Manufacturing & Jack Bell](#)

## **8. Appointments**

None

## **9. Presentations**

### **9.A - BENICIA PUBLIC LIBRARY ANNUAL REPORT (Director of Library and Cultural Services)**

The Director of Library and Cultural Services prepares an annual report to the Library Board of Trustees, upon completion of the annual report to the State Library. These reports are then brought to the City Council on an annual basis, as mandated by City ordinance.

Recommendation:  
Receive the annual report.

[Staff Report - Annual Report from the Benicia Public Library](#)

[1. Annual Report of the Library to City Council](#)

**10. Adoption Of Agenda**

**11. Opportunity For Public Comments**

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

**12. Written Comment**

**13. Public Comment**

**14. 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.

**14.A - APPROVAL OF CITY COUNCIL MINUTES FROM DECEMBER 3, 2019 (City Clerk)**

Recommendation:  
Approve the minutes.

[December 3, 2019 City Council Meeting Minutes](#)

**14.B - AWARD OF CONTRACT FOR ON-CALL TREE SERVICE WORK (Parks & Community Services Director)**

The proposed two-year contract with A Plus Tree, Inc. for on-call tree service work will streamline contracting for City tree maintenance work, reduce per unit costs for work performed, improve maintenance project planning by providing certainty for project costs, and save staff time that can be redirected from the bid process to other priority work. The contract was previously approved by City Council on October 1, 2019, however, it has been modified to include a not-to-exceed \$150,000 limit.

Recommendation:

Adopt the resolution (Attachment 1), awarding a two-year contract for on-call tree service work (Attachment 2) to A Plus Tree, Inc. of Pleasant Hill, CA, in the amount not-to-exceed \$150,000, and authorizing the City Manager to sign the contract.

[Staff Report - On-Call Tree Service Work](#)

[1. Resolution - On-Call Tree Service Work](#)

[2. Contract - On-Call Tree Service Work](#)

**14.C - APPROVAL OF CONTRACT CHANGE ORDERS AND ACCEPTANCE OF THE WASTEWATER TREATMENT PLANT GRIT BASINS IMPROVEMENT PROJECT (Public Works Director)**

The Wastewater Treatment Plant Grit Basins Improvement Project is complete and consisted of replacing the grit collection machinery and recoating the three concrete grit collector basins.

Recommendation:

Adopt a resolution (Attachment 1) approving Contract Change Order Nos. 1 through 4 and accepting the Wastewater Treatment Plant Grit Basins Improvement Project as complete, authorizing the City Manager to sign the Notice of Completion (Attachment 2), and authorizing the City Clerk to file said notice with the Solano County Recorder.

[Staff Report - Acceptance of WWTP Grit Basins Improvement Project](#)

[1. Resolution - Acceptance of the WWTP Grit Basins Improvement Project](#)

[2. Notice of Completion - Acceptance of the WWTP Grit Basins Improvement Project](#)

**14.D - APPROVAL OF AMENDMENT TO AGREEMENT WITH HENDERSON POWER SERVICES, LLC FOR EMERGENCY GENERATOR UPGRADES AT THE WASTEWATER PLANT (Public Works Director)**

The proposed amendment to the agreement with Henderson Power Services, LLC would allow for the replacement of failing control systems with new control components on the backup electrical generator at the Wastewater Treatment Plant (WWTP).

Recommendation:

Adopt the resolution (Attachment 1) approving the Amendment to Agreement No. 2 (Attachment 2) with Henderson Power Services, LLC, to replace and upgrade control systems components in the emergency generator at the WWTP for an amount not-to-exceed \$79,431, and authorizing the City Manager to sign the amendment on behalf of the City.

[Staff Report - Emergency Generator Upgrades at WWTP](#)

[1. Resolution - Emergency Generator Upgrades at WWTP](#)

[2. Amendment to Agreement No. 2 - Henderson Power Services, LLC](#)

**14.E - APPROVAL OF AMENDMENT TO AGREEMENT NO. 3 WITH TULLY & YOUNG, INC. FOR WATER MANAGEMENT STRATEGIES CONSULTATION (Public Works Director)**

Staff is proposing an amendment to the existing agreement with Tully & Young, Inc. to assist the City with water rights and water conservation analysis.

Recommendation:

Adopt the resolution (Attachment 1) approving the Amendment to Agreement No. 3 (Attachment 2) with Tully & Young, Inc. for additional water management strategies consultation for an amount not-to-exceed \$22,660, and authorizing the City Manager to sign the agreement on behalf of the City.

[Staff Report - Amendment to Tully & Young, Inc. Agreement](#)

[1. Resolution - Amendment to Tully & Young, Inc. Agreement](#)

[2. Amendment to Agreement No. 3 - Tully & Young, Inc.](#)

**14.F - APPROVAL OF AMENDMENT TO AGREEMENT WITH MEAD & HUNT FOR THE LAKE HERMAN DAM EMERGENCY ACTION PLAN (Public Works Director)**

Staff is proposing an amendment to an existing agreement with Mead & Hunt to assist the City in submitting the Lake Herman Dam Emergency Action Plan for final approval from the California Governor's Office of Emergency Services (Cal OES).

Recommendation:

Adopt the resolution (Attachment 1) approving an Amendment to Agreement (Attachment 2) with Mead & Hunt for additional engineering services related to the Lake Herman Dam Emergency Action Plan for an amount not-to-exceed \$14,000, and authorizing the City Manager to sign the amendment on behalf of the City.

[Staff Report - Amendment to Mead & Hunt Agreement](#)

[1. Resolution - Amendment to Mead & Hunt Agreement](#)

[2. Amendment to Agreement - Mead & Hunt](#)

**14.G - APPROVAL OF PURCHASE OF STREAM FLOW GAGES FROM WESTERN HYDROLOGIC SYSTEMS (Public Works Director)**

The lake level indicator at Lake Herman Reservoir is at the end of its useful life and should be replaced with a new lake level indicator and two stream gages on Sulphur Springs Creek. These improvements

will provide accurate, real time data to the Water Treatment Plant so operators can protect public safety. Staff is proposing an agreement to purchase these items from Western Hydrologic Systems.

Recommendation:

Adopt the resolution (Attachment 1) approving the Purchase and Installation Agreement (Attachment 2) with Western Hydrologic Systems for one automated reservoir level indicator, two stream flow gages, and data calibration/logging service for one year in the amount of \$51,920. Also, authorize the City Manager to sign the contract on behalf of the City.

[Staff Report - Purchase of Stream Flow Gages](#)

[1. Resolution - Purchase of Stream Flow Gages](#)

[2. Purchase and Installation Agreement - Western Hydrologic Systems](#)

#### **14.H - APPROVAL OF MAINTENANCE AGREEMENT WITH FERGUSON WATERWORKS RELATED TO WATER METER INFRASTRUCTURE (Public Works Director)**

Staff is proposing to enter into a three-year agreement with Ferguson Waterworks to provide maintenance and modem upgrades to the City's 25 Advanced Metering Infrastructure (AMI) Data Collection Units (DCUs). The DCUs collect and transmit water usage information from the water meters.

Recommendation:

Adopt the resolution (Attachment 1) approving a three-year maintenance agreement (Attachment 2) with Ferguson Waterworks for the 25 Data Collection Units related to the AMI water meters for \$71,250 for the period of November 19, 2019 through November 18, 2022, and authorizing the City Manager to sign the agreement on behalf of the City.

[Staff Report - Ferguson Maintenance Agreement](#)

[1. Resolution - Ferguson Waterworks Maintenance Agreement](#)

[2. Contract - Ferguson Waterworks Maintenance Agreement](#)

#### **14.I - ADOPTION OF THE 2020 CITY COUNCIL REGULAR MEETING CALENDAR (Assistant City Manager)**

The Open Government Ordinance (Section 4.08.040 of Ordinance No. 05-6) states that each body established by ordinance shall establish and publish an annual schedule of regular meetings. The attached calendar lists the City Council's proposed regular meeting dates for 2020.

Recommendation:

Adopt, by motion, the 2020 City Council Regular Meeting Calendar (Attachment 1).

[Staff Report - 2020 City Council Regular Meeting Calendar](#)

[1. 2020 City Council Regular Meeting Calendar](#)

**14.J - APPROVAL OF AGREEMENT WITH MUNICIPAL RESOURCES GROUP FOR TECHNICAL FINANCIAL ASSISTANCE (Finance Director)**

The City's Finance Department has utilized Municipal Resources Group (MRG) for technical financial assistance and consulting related to the preparation of the City's bank reconciliation. The original agreement was approved by the City Manager and is close to reaching the \$50,000 maximum City Manager approval limit, per Benicia Municipal Code 3.10.030. However, the City is still in need of assistance with the technical project support for general ledger entries and timely preparation of the bank reconciliation, and the Finance department does not have the capacity to perform the work in-house.

Recommendation:

Move to adopt a resolution (Attachment 1) approving a Consultant Agreement with MRG (Attachment 2) for technical financial services related to preparation of the City's bank reconciliation, for a total cost of \$80,000, and authorizing the City Manager to sign the agreement.

[Staff Report - MRG Agreement](#)

[1. Resolution - MRG Agreement](#)

[2. Agreement with Municipal Resources Group](#)

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

**15. Business Items**

**15.A - RESOLUTION FOR SOLANO COUNTY TRANSIT TO TRANSITION TO A LEGISLATIVELY RECOGNIZED TRANSIT DISTRICT (City Manager)**

The City of Benicia entered into a Joint Power Agreement (JPA) with Solano County Transit (SoTrans) on November 30, 2010, to provide bus services to residents of Benicia and surrounding cities. SoTrans seeking sponsoring legislation to convert the JPA into a Transit District. This will assist in long-term funding and potential incremental increased services.

Recommendation:

Adopt the resolution (Attachment 1) supporting the Solano County Transit's transition to a legislatively recognized Transit District.

[Staff Report - SoTrans Transition to Transit District](#)

[1. Resolution - SoTrans Transition to Transit District](#)

**15.B - APPROVAL OF CONSULTANT AGREEMENT FOR PUBLIC OUTREACH AND ENGAGEMENT FOR THE UPCOMING WATER AND WASTEWATER RATE STUDY (Public Works Director)**

Staff is preparing for the next water and wastewater rate study and is recommending the use of professional assistance from JM Consultants to develop and conduct robust public outreach related to the utility rate development process.

Recommendation:

Adopt the resolution (Attachment 1) approving the consultant agreement (Attachment 2) with JM Consultants for public outreach and engagement for the next 5-year water and wastewater rate study in the amount not-to-exceed \$100,000 and authorizing the City Manager to sign the agreement on behalf of the City.

[Staff Report - Rate Study Public Engagement](#)

[1. Resolution - Rate Study Public Engagement](#)

[2. Consultant Agreement - Rate Study Public Engagement](#)

**15.C - TWO-STEP REQUEST FOR REPURPOSING AND UPDATING T R A F F I C BICYCLE PEDESTRIAN SAFETY COMMITTEE (TBPSC) (City Manager)**

Mayor Elizabeth Patterson submitted a two-step process request (see Attachment 1) for Council's consideration of repurposing and updating the Traffic Bicycle Pedestrian Safety Committee (TBPSC).

Recommendation:

Discuss the request and provide direction to staff on whether or not to schedule this topic for future Council discussion.

[Staff Report - Two-Step Request - Traffic Bicycle Pedestrian Safety Committee](#)

[1. Two-Step Request, Mayor Elizabeth Patterson](#)

**15.D - TWO-STEP REQUEST FOR ADJUSTING TAX RATE FOR CANNABIS DELIVERY OPERATIONS AND REVIEWING CANNABIS BUSINESS APPLICATION FEES (City Manager)**

Councilmember Young & Vice Mayor Strawbridge submitted a two-step process request (see Attachment 1) for Council's consideration of adjusting the tax rate for cannabis delivery operations and reviewing the cannabis business application fees.

Recommendation:

Discuss the request and provide direction to staff on whether or not to schedule this topic for future Council discussion.

[Staff Report - Two-Step Request - Tax Rate for Cannabis Delivery Operations and Cannabis Business Application Fees](#)

[1. Two-Step Request, Councilmember Young & Vice Mayor Strawbridge](#)

**16. Council Member Committee Reports:**

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

**16.A - COUNCIL MEMBER COMMITTEE REPORTS**

[Committee Reports](#)

**17. Adjournment (10:30 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](http://www.ci.benicia.ca.us) under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the

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

<b>Contact Your Council Members</b>
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If you would like to contact the Mayor or a Council Member, please call the number listed below to leave a voicemail message.

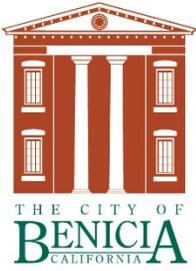
Mayor Patterson: 746-4213

Vice Mayor Strawbridge: 746-4213

Council Member Campbell: 746-4213

Council Member Young: 746-4213

Council Member Largaespada: 746-4213



# PROCLAMATION

## IN RECOGNITION OF

# SUBA Manufacturing & Jack Bell

**WHEREAS**, fifty-three years ago, Jack Bell, owner of SUBA Manufacturing, a laminate countertop manufacturer, relocated his business from the City of Hayward to Benicia; and

**WHEREAS**, SUBA Manufacturing ushered in a new era for Benicia's economy, becoming one of the first businesses to open following the closure of the Benicia Arsenal, helping to establish the Benicia Industrial Park; and

**WHEREAS**, SUBA Manufacturing has employed dozens of employees and processed orders throughout the world; and

**WHEREAS**, SUBA Manufacturing has been an industry leader in environmental sustainability, becoming one of the first recipients of the Eco Award, and the first business to participate in the City's Business Resource Incentive Program; and

**WHEREAS**, the owner of SUBA Manufacturing, Jack Bell, has been a community leader, serving on the Board of Directors of the Benicia Industrial Park Association and a founding member of the Benicia Rotary Club, serving as Club President in 1968; and

**WHEREAS**, Jack Bell has donated his time, money and energy to Habitat for Humanity, Sustainable Solano, Benicia Schools, and many other charitable causes; and

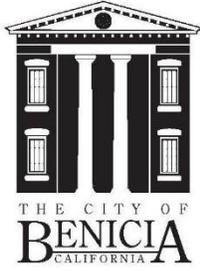
**WHEREAS**, throughout his tenure in Benicia, Jack Bell has exemplified humility, kindness and leadership.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia, and on behalf of the City Council, do hereby proclaim and recognize the excellence and importance Suba Manufacturing and Jack Bell have provided our community.

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Elizabeth Patterson, Mayor  
December 17, 2019





**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
PRESENTATION**

**TO** : City Manager  
**FROM** : Director of Library and Cultural Services  
**SUBJECT** : **ANNUAL REPORT FROM THE BENICIA PUBLIC LIBRARY**

**EXECUTIVE SUMMARY:**

The Director of Library and Cultural Services prepares an annual report to the Library Board of Trustees, upon completion of the annual report to the State Library. These reports are then brought to the City Council on an annual basis, as mandated by City ordinance.

**RECOMMENDATION:**

Receive the annual report.

**ALTERNATIVE ACTIONS:**

None.

**ATTACHMENTS:**

1. Annual Report of the Library to City Council
2. Annual Report to the California State Library for Fiscal Year 2018-2019

*For more information contact: David Dodd, Director of Library and Cultural Services  
Phone: (707) 746-4343  
E-mail: ddodd@ci.benicia.ca.us*

November 4, 2019

TO: Benicia Public Library Board of Trustees

FR: David Dodd, Library Director

RE: Annual Report of the Library to City Council

**EXECUTIVE SUMMARY:**

The Library Director’s Annual Report to City Council summarizes important statistics and activities from the past year for the benefit of the Council and the community as a whole. It includes data from the annual State Library report for FY 18-19, along with other information on trends, challenges, and goals for the coming calendar year.

**RECOMMENDATION:**

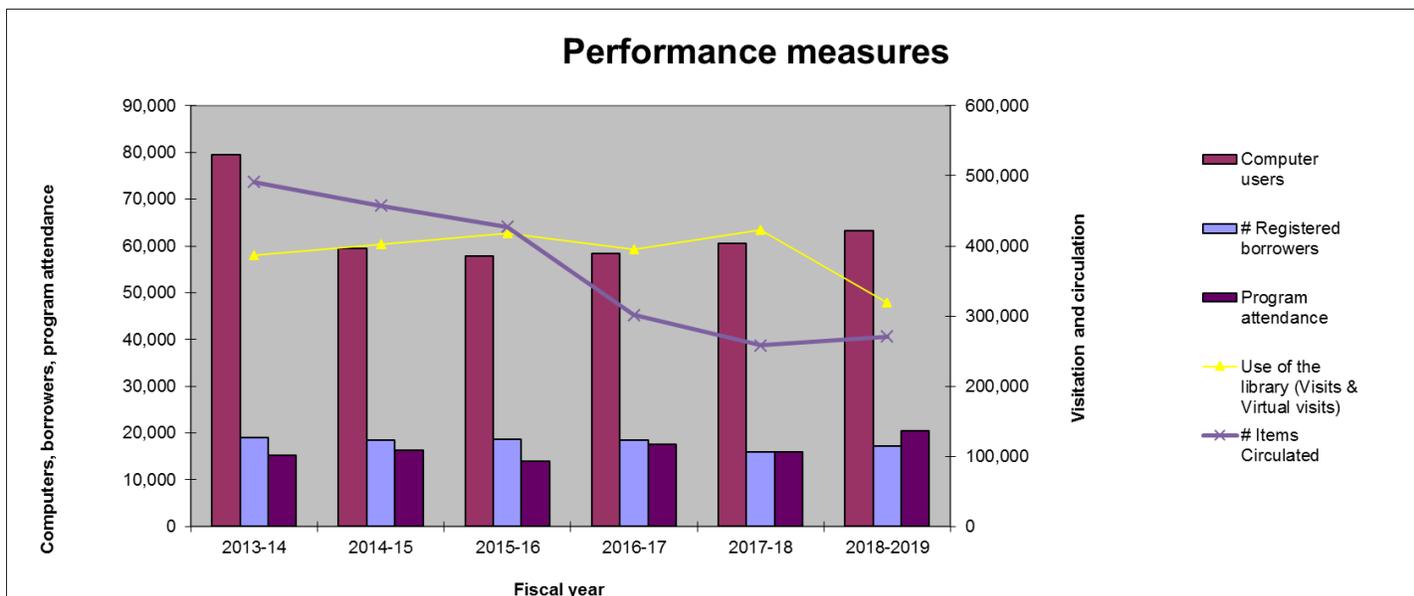
Accept annual report and recommend presentation by the Library Director to the City Council at their December 17, 2019 meeting.

**ANNUAL REPORT:**

The Library’s mission: to contribute to the success of our diverse community by being a vital center of learning, communication, culture and enjoyment.

**Performance Measures**

Fiscal Year 2018-19, by and large, shows some promising trends, as shown on the Performance Measures chart. Performance measures in libraries often are based upon visits, circulation, public access computer use, and program attendance, so data in each of these areas is being provided.



We have shown a notable increase in several key areas over the past year, including in our overall use of library materials, attendance at programs and number of programs offered, use of computers by the public, and, most significantly I believe, in the number of registered borrowers. This increase in registered borrowers pre-dates our addition of all students at Benicia Middle and High School, which occurred in August, so we will see an even larger increase next year.

### **Priorities and Programs**

The past year has seen several milestone efforts, which staff hopes will help to position the Library well as it moves into the future.

We held our second All Staff Day in January. Staff spent the day in a variety of workshops, presentations, and team-building exercises, emerging with a set of brainstormed ideas on how we can realize our vision to become the heart of the community. Several of these ideas have already been incorporated into our work.

Among these ideas:

- the implementation of a series of Community Conversations and another series called Faces of the Community, fostering ongoing dialogue among the diverse members of the Benicia community, in an effort to foster civil discourse and understanding
- the use of outdoor space for several kinds of programming, ranging from our teens meeting on the lawn outside the library, to an outdoor concert held in the natural amphitheater behind the Library

The Library's Precision Book Cart Drill Team marched in the Fourth of July parade this year, garnering much goodwill and a raised profile for the Library, and winning first place in our category!

The building itself continues to receive important and necessary attention. This past year, we saw the completion of a new library roof, funded with Measure C tax money.

Summer Reading accommodated the construction underway on our roof, and implemented entirely staff-designed and presented programming for events throughout the Summer.

### **Changes and transitions**

Fiscal Year 2018-1029 saw the Library fill two very important Library Technician positions, with RobertAnn Smiley and Julia Butler joining the Library team.

### **Attachment:**

Annual Report to the California State Library for Fiscal Year 2018-1029

## California Public Library Survey

THE FIELDS (IN GREEN) BELOW ARE FOR CSL USE ONLY

THE FIELDS (IN RED) BELOW ARE SYSTEM CALCULATED



### Section 1 Directory and Administrative Information

- 1.1 Library ID \_\_\_\_\_
- 1.2 FSCS ID \_\_\_\_\_
- 1.3 Short Name \_\_\_\_\_
- 1.4 Library Name \_\_\_\_\_

Director (If position is not filled, enter "VACANT" in 1.6 and leave 1. 7 & 1.8 blank)

- 1.5 Courtesy Title \_\_\_\_\_
- 1.6 Director First Name \_\_\_\_\_
- 1.7 Director Middle Name \_\_\_\_\_
- 1.8 Director Last Name \_\_\_\_\_
- 1.9 Director Title \_\_\_\_\_
- 1.10 Street Address \_\_\_\_\_
- 1.11 City \_\_\_\_\_
- 1.12 Zip \_\_\_\_\_
- 1.13 Zip +4 \_\_\_\_\_
- 1.14 Mailing Address \_\_\_\_\_
- 1.15 Mailing City \_\_\_\_\_
- 1.16 Mailing Zip \_\_\_\_\_
- 1.17 Mailing Zip +4 \_\_\_\_\_
- 1.18 Public Phone Number - Administration \_\_\_\_\_
- 1.19 Reference Phone Number \_\_\_\_\_
- 1.20 TDD for Deaf \_\_\_\_\_
- 1.21 Library Director's Email address \_\_\_\_\_
- 1.22 Library's Public Email address \_\_\_\_\_
- 1.23 Library's Web Address \_\_\_\_\_
- 1.24 Name of person completing this survey \_\_\_\_\_
- 1.25 Phone # of person completing this survey \_\_\_\_\_
- 1.26 Email address of person completing this survey \_\_\_\_\_

THE FIELDS (IN GREEN) BELOW ARE FOR CSL USE ONLY

- 1.27 Size Square Mile \_\_\_\_\_
- 1.28 Interlibrary Relationship code \_\_\_\_\_
- 1.29 Legal Basis Code \_\_\_\_\_
- 1.30 Administrative Structure Code \_\_\_\_\_
- 1.31 FSCS Public Library Definition \_\_\_\_\_
- 1.32 Geographic Code \_\_\_\_\_
- 1.33 Legal Service Area Boundary Change \_\_\_\_\_
- 1.34 Library Type \_\_\_\_\_
- 1.35 County \_\_\_\_\_
- 1.36 CLSA System Library \_\_\_\_\_
- 1.37 State \_\_\_\_\_
- 1.38 Fiscal Year \_\_\_\_\_
- 1.39 Institute Code \_\_\_\_\_

## Section 2 Population and Outlets

2.1	Population of The Legal Service Area	
2.2	Registered Users as of June 30	
2.3	Children Borrowers	
2.4	# of Central Libraries	
2.5	# of Branch Libraries	
2.6	# of Bookmobiles	
2.7	Total # of Outlets	
2.8	Total Square Footage	

## Section 3 Library Income

### Operating Income

3.1	Local Government (all sources)	
3.2	State Funds (e.g. CLSA, PLF, ELLI, etc.)	
3.3	Federal Funds (e.g. LSTA or other)	
3.4	All Other Operating Income	
3.5	Total Operating Income	
3.6	CA Literacy Services	

### Capital Income

3.7	Local Government (taxes and allocations)	
3.8	State Funds	
3.9	Federal Funds	
3.10	Other Income	
3.11	Total Capital Outlay Income	

## Section 4 Library Expenditures

### Staff Expenditures

4.1	Salary & Wages Expenditures	
4.2	Employee Benefits Expenditures	
4.3	Total Staff Expenditures	

### Collection Expenditures

4.4	Print Materials Expenditures (except Serials)	
4.5	Print Serial Subscription Expenditures	
4.6	Total Print Materials Expenditures	
4.7	Electronic Materials Expenditures	
4.8	Other Materials Expenditures	
4.9	Total Collection Expenditures	

### Other Expenditures

4.10	All Other Operating Expenditures	
4.11	Total Operating Expenditures	

### Capital Expenditures

4.12	Total Capital Expenditures	
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## Section 5 Library Staff

- 5.1 Total count of persons employed - full and part time \_\_\_\_\_
- 5.2 ALA Librarians (FTE) who have accredited ALA Masters \_\_\_\_\_
- 5.3 FTE Total Librarians (ALA or other) \_\_\_\_\_
- 5.4 FTE All other paid staff \_\_\_\_\_
- 5.5 **Staff FTE** \_\_\_\_\_
- 5.6 FTE Volunteers (Average FTE per week - not hours) \_\_\_\_\_

## Section 6 Library Collections

- 6.1 Books Children Held as of June 30 \_\_\_\_\_
- 6.2 Books Young Adult Held as of June 30 \_\_\_\_\_
- 6.3 Total Print Materials Held \_\_\_\_\_
- 6.4 # of Electronic Books in Collection \_\_\_\_\_
- 6.5 # of Physical Audio Materials in Collection \_\_\_\_\_
- 6.6 # of Downloadable Audio Materials in Collection \_\_\_\_\_
- 6.7 # of Physical Video Materials in Collection \_\_\_\_\_
- 6.8 # of Downloadable Video Materials in Collection \_\_\_\_\_
- 6.9 # of Electronic Collections through Local and Other Funding in Collection \_\_\_\_\_
- 6.10 # of Electronic Collections through State Funding in Collection \_\_\_\_\_
- 6.11 **# of Electronic Collections in Collection** \_\_\_\_\_
- 6.12 # of Current Serial Subscriptions \_\_\_\_\_

## Section 7 Library Services

- 7.1 **Hours Open, All Outlets** \_\_\_\_\_
- 7.2 Library Visits \_\_\_\_\_
- 7.3 Reference Questions \_\_\_\_\_

### Circulation

- 7.4 Physical Item Circulation \_\_\_\_\_
- 7.5 Circulation of Children's Materials \_\_\_\_\_
- 7.6 Circulation of Non English Materials \_\_\_\_\_
- 7.7 Circulation of Electronic Materials \_\_\_\_\_
- 7.8 Successful Retrieval of Electronic Information \_\_\_\_\_
- 7.9 **Electronic Content Use** \_\_\_\_\_
- 7.10 **Total Circulation** \_\_\_\_\_
- 7.11 **Total Collection Use** \_\_\_\_\_
- 7.12 ILL loans to others \_\_\_\_\_
- 7.13 ILL loans received \_\_\_\_\_

### Programming

- 7.14 # of Children's Programs \_\_\_\_\_
- 7.15 Children's Program Attendance \_\_\_\_\_
- 7.16 # of Young Adult Programs \_\_\_\_\_
- 7.17 Young Adult Program Attendance \_\_\_\_\_
- 7.18 # of Adult Programs \_\_\_\_\_
- 7.19 Adult Program Attendance \_\_\_\_\_

- 7.20 Offsite Programs - Number \_\_\_\_\_
- 7.21 Offsite Programs - Attendance \_\_\_\_\_
- 7.22 **Total # of Programs** \_\_\_\_\_
- 7.23 **Total Program Attendance** \_\_\_\_\_

**Electronic Services**

- 7.24 CIPA Compliant \_\_\_\_\_
- 7.25 Annual Uses of Public Internet Computers \_\_\_\_\_
- 7.26 Virtual Visits to the library website \_\_\_\_\_
- 7.27 Wireless Sessions Per Year \_\_\_\_\_
- 7.28 **# of Internet Terminals** \_\_\_\_\_

**Library Community Development and Support Information**

Please consider adding your story in the notes section of the data entry form. Share your stories and successes!

- 7.29 Did your library provide support for vulnerable populations in the community? \_\_\_\_\_
- 7.30 Did your library support your users' personal economic development? \_\_\_\_\_
- 7.31 Did your library play a role in responding to, or building resilience after, a crisis in the community? \_\_\_\_\_
- 7.32 Did your library support users' personal learning and knowledge development? \_\_\_\_\_
- 7.33 Did your library help in develop social capital in your community? \_\_\_\_\_

**Referenda**

Please leave blank if no referenda occurred during the report year. Do not report referenda from prior years.

- 8.1 Referenda Election Date \_\_\_\_\_
- 8.2 Referenda Local Agency \_\_\_\_\_
- 8.3 Referenda Funding Purpose \_\_\_\_\_
- 8.4 Referenda Type of Tax \_\_\_\_\_
- 8.5 Referenda Percentage of Yes Votes \_\_\_\_\_
- 8.6 Referenda Vote Require \_\_\_\_\_
- 8.7 Referenda Vote Outcome \_\_\_\_\_
- 8.8 Referenda Notes \_\_\_\_\_

Notes

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## Section 10 Library Outlets

THE FIELDS (IN GREEN) BELOW ARE FOR CSL USE ONLY

- 10.1 FSCSKey
- 10.2 State assigned identification number
- 10.3 Library Code
- 10.4 Short Name
- 10.5 Legal Name
- 10.6 Physical Street Address
- 10.7 City
- 10.8 Zip Code
- 10.9 Zip+4 Code
- 10.10 Mailing Street Address
- 10.11 Mailing City
- 10.12 Mailing Zip Code
- 10.13 Mailing Zip +4
- 10.14 County
- 10.15 Phone
- 10.16 Outlet Type Code
- 10.17 Facility Owned By
- 10.18 Facility Update Needs
- 10.19 Population Served
- 10.20 Total Outlet Staff FTE
- 10.21 Hours Open, Weekly
- 10.22 Hours Open, Annually
- 10.23 Weeks Open, Annually
- 10.24 Volumes Held
- 10.25 Circulation
- 10.26 Total Outlet Operating Expenditures
- 10.27 Year Built
- 10.28 Date Library Opened (mm/yyyy)
- 10.29 Year Library Remodeled
- 10.30 Is this Outlet LEED certified?
- 10.31 Size in Square Feet of outlet
- 10.32 Number of Reader Seats
- 10.33 Days Per Week Library is Open to the Public  
Staffed when open to public by at least 1 paid librarian & 1
- 10.34 paid clerical?
- 10.35 Housed in Seperate Quarters?
- 10.36 Established Scheduled Hours for Public Service?
- 10.37 Degree of Adequacy of this Facility
- 10.38 Number of Internet Terminals - General Public  
What is your library's highest connection speed to the
- 10.39 Internet?
- 10.40 Is Wireless available at this location?
- 10.41 Metropolitan Status Code
- 10.42 FSCS Submission Year

10.43 Outlet Type Sort Code

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Notes

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# DRAFT

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
DECEMBER 3, 2019  
7:00 PM

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

## CALL TO ORDER (7:00 P.M.)

Mayor Patterson called the meeting to order at 7:02 p.m.

### 1) ROLL CALL

All Council Members were present.

### 2) PLEDGE OF ALLEGIANCE

### 3) REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC

### 4) ANNOUNCEMENTS

4.A - MAYOR'S OFFICE HOURS

4.B - OPENINGS ON BOARDS AND COMMISSIONS

### 5) PROCLAMATIONS

5.A - PROCLAMATION - PETER CAGGIANO'S 100TH BIRTHDAY

Proclamation - Peter Caggiano's 100th Birthday 

### 6) APPOINTMENTS

### 7) PRESENTATIONS

### 8) ADOPTION OF AGENDA

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

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

Noes: (None)

# DRAFT

## 9) OPPORTUNITY FOR PUBLIC COMMENTS

Four items received (copies on file).

## 10) WRITTEN COMMENT

## 11) PUBLIC COMMENT

None

## 12) CONSENT CALENDAR

### 15.A - APPROVAL OF CITY COUNCIL MINUTES FROM NOVEMBER 19, 2019 (City Clerk)

[November 19, 2019 City Council Meeting Minutes](#) 

### 12.B - ADOPTION OF VEHICLE MILES TRAVELED (VMT) POLICIES IN COMPLIANCE WITH PROGRAM REQUIREMENTS FOR THE DOWNTOWN PRIORITY DEVELOPMENT AREA (Interim Community Development Director)

[Staff Report - PDA](#) 

- [1. Letter of Confirmation for VMT Reduction Policies](#) 
- [2. Planning Commission Staff Report with Attachments, October 10, 2019](#) 
- [3. Planning Commission Minutes, October 10, 2019](#) 

### 12.C - NOMINATION OF THE BENICIA PRIORITY PRODUCTION AREA (Interim Community Development Director)

[Staff Report - PPA](#) 

- [1. Resolution - Nominating Benicia Priority Production Area](#) 
- [2. Draft Economic Development Board Minutes, October 28, 2019](#) 
- [3. Planning Commission Staff Report with Attachment, November 14, 2019](#) 
- [4. Draft Planning Commission Minutes, November 14, 2019](#) 

## RESOLUTION 19-116 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA NOMINATING THE BENICIA PRIORITY PRODUCTION AREA

### 12.D - AWARD TWO-YEAR CONTRACT FOR CUSTODIAL SERVICES AT BENICIA PUBLIC LIBRARY (Parks and Community Services Director)

[Staff Report - Custodial Services at Benicia Public Library](#) 

- [1. Resolution - Custodial Services at Benicia Public Library](#) 

**DRAFT**

2. Contract - Custodial Services at Benicia Public Library 

**RESOLUTION 19-117 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A CONTRACT WITH TRANSPACIFIC BUILDING MAINTENANCE, INC. FOR CUSTODIAL SERVICES AT BENICIA PUBLIC LIBRARY**

**12.E - AWARD A TWO-YEAR CONTRACT FOR CUSTODIAL SERVICES (Parks and Community Services Director)**

- Staff Report - Custodial Services Contract 
- 1. Resolution - Custodial Services Contract 
- 2. Contract - Custodial Services Contract 

**RESOLUTION 19-118 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A CONTRACT WITH TRANSPACIFIC BUILDING MAINTENANCE, INC. FOR CUSTODIAL SERVICES AT CITY HALL, THE SENIOR CENTER, FRC/IT, AND THE JAMES LEMOS POOL**

**12.F - FOURTH QUARTER FY2017-18 INVESTMENT REPORT (Finance Director)**

- Staff Report - 4th Qtr Investment FY2017-18 
- 1. 4th Quarter FY2017-18 Investment Report 
- 2. PFM Investment Report Presentation 

Council Member Young and Staff discussed what type of investments the City is able to invest in, the \$33,000 loss the City incurred last year, the loss being attributed to market value, the fees the City pays, whether the City needed to have an investment manager, and concern regarding the City's investment in Walmart. Council Member Young wondered if there was support from Council regarding not investing in companies such as Walmart, who pays very low wages, etc.

Council Member Campbell expressed support for moving away from Walmart stocks and investing in something else. Staff discussed the timing issue involved with switching investments away from Walmart stocks in the future.

Mayor Patterson expressed support for moving away from Walmart stocks and investing in something else. She suggested discussing it at Council's brainstorming session in January 2020.

Public Comment:  
None

On motion of Council Member Young, seconded by Vice Mayor Strawbridge, Council approved The Investment Report , on a roll call by the following vote:

## DRAFT

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

**12.G - SECOND READING AND ADOPTION OF TWO TOBACCO CONTROL ORDINANCES: 1) ADDING CHAPTER 5.54 (TOBACCO RETAILERS) TO TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS); 2) REPEALING AND REPLACING B.M.C. 9.06 SMOKING IN PUBLIC PLACES WITH A COMPREHENSIVE SMOKE-FREE PUBLIC PLACES AND MULTIUNIT HOUSING ORDINANCE (Police Chief)**

Staff Report - Tobacco Ordinances - 2nd Reading

1. Red-Lined Ordinance - Tobacco Retailer License Ordinance
2. Ordinance - Tobacco Retailer License Ordinance
3. Red-Lined Ordinance - Smoke-Free Public Places and MUH Ordinance
4. Ordinance - Smoke-Free Public Places and MUH Ordinance

**ORDINANCE 19-12 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE BENICIA MUNICIPAL CODE BY ADDING CHAPTER 5.54 (TOBACCO RETAILERS) TO TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO REQUIRE THE LICENSURE OF TOBACCO RETAILERS AND PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS AND OF ELECTRONIC SMOKING DEVICES AND FLUIDS**

**ORDINANCE 19-113 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA REPEALING AND REPLACING BENICIA MUNICIPAL CODE 9.06 SMOKING IN PUBLIC PLACES WITH A COMPREHENSIVE SMOKE-FREE PUBLIC PLACES AND MULTIUNIT HOUSING ORDINANCE**

Council Member Young requested the votes be separated for the two ordinances.

Tobacco Retail Ordinance:

No discussion

Public Comment:

None

Smoking in Public Places Ordinance:

Council Member Young and Staff discussed how the ordinance applied to someone driving down First Street while driving a car, people riding a motorcycle smoking, whether people could leave a bar and go sit in their cars to smoke a cigarette, concern regarding the rules applying to some cases but not others, and the scenarios being complaint driven.

## DRAFT

Vice Mayor Strawbridge and Staff discussed the ordinance going into effect on various dates, and how the information would be rolled out to citizens and businesses.

Public Comment:

None

On motion of Council Member Largaespada, seconded by Council Member Young, Council approved the adoption of Ordinance 19-12, as presented, on a roll call by the following vote:

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

On motion of Council Member Largaespada, seconded by Vice Mayor Strawbridge, Council approved the adoption of Ordinance 19-13, as presented, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Mayor Patterson  
Noes: Council Member Young

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

Council pulled Items 12.F and 12.G for discussion.

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

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

### 13) BUSINESS ITEMS

**13.A - SECOND READING AND ADOPTION OF THE 2019 CALIFORNIA FIRE CODE AND BUILDING CODE AND CHAPTER AMENDMENTS TO ENSURE COMPLIANCE WITH CALIFORNIA CODE OF REGULATION REQUIREMENTS IN THE HEALTH AND SAFETY CODE (Interim Community Development Director and Fire Chief)**

Staff Report - Building and Fire Code Update   
1. Building and Fire Code Update Ordinance 

## DRAFT

### **ORDINANCE 19-14 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY COUNCIL OF THE CITY OF BENICIA TO REPEAL CHAPTER 8.28 (FIRE PREVENTION AND LIFE SAFETY CODE) OF TITLE 8 (HEALTH AND SAFETY) AND TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE AND REPLACE WITH THE 2019 CALIFORNIA BUILDING AND FIRE CODE**

Josh Chadwick, Fire Chief, reviewed the staff report and a PowerPoint presentation.

Mayor Patterson and Staff discussed the issue of universal standards, growing old in one's home, and the need to address this in the future. Staff confirmed they could look into the issue next year.

Vice Mayor Strawbridge and Staff discussed the gas station at the corner of East 5th Street and Military East and the Paper Tiger building on First Street. They discussed tightening up the loopholes with the codes so the blight of the two buildings can be remedied. Staff confirmed they were already working on the issue and hoped to bring it forward in the first quarter of 2020. Staff is also working on citations for the buildings.

Council Member Young and Staff discussed the California Building Code that addresses the two buildings in discussion.

Mayor Patterson requested Staff consider historic restoration with respect to the changes to the codes.

#### Public Comment:

None

On motion of Council Member Largaespada, seconded by Vice Mayor Strawbridge, Council approved the adoption of Ordinance 19-14, as presented, on a roll call by the following vote:

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

Noes: (None)

### **13.B - TWO-STEP REQUEST FOR RAINBOW CROSSWALK (City Manager)**

Staff Report - Two-Step Request - Rainbow Crosswalk   
1. Two-Step Request, Councilmember Tom Campbell 

Council Member Campbell discussed his request to have a rainbow crosswalk somewhere in Benicia.

## DRAFT

### Public Comment:

1. Terry Scott, Arts & Culture Commission - Mr. Scott spoke in support of having a rainbow crosswalk, as well as having an art corridor, and the issue of pedestrian and bicycle safety, as well as vehicle awareness.
2. Elizabeth - Elizabeth read a prepared statement in support of the City having a rainbow crosswalk (copy on file).

Mayor Patterson discussed the issue of bicycle and pedestrian safety, and the need to bring consideration when this is brought back with the City Engineer, Public Works, Police Department and the STA to ensure it is not disconnected from the public safety aspect.

Lorie Tinfow, City Manager, stated Council would be having a study session in January 2020 and that would be the opportunity for Council to look at all of the two-step requests at one time.

Council Member Campbell stated he wanted the rainbow crosswalk as a standalone project. He is fine with looking at other crosswalk art, but did not want them combined.

Council Member Young supported dealing with the rainbow crosswalk separately from the public art crosswalk issue.

Mayor Patterson asked for clarification that if this passes with a majority vote, that it would be part of the brainstorming session in January 2020 to determine the staff capacity to move forward on anything. Staff confirmed that was correct.

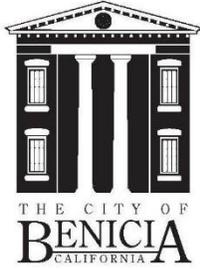
On motion of Council Member Young, seconded by Council Member Largaespada, Council approved bringing this back for future discussion, on a roll call by the following vote:

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

Noes: (None)

### **14) ADJOURNMENT (8:45 P.M.)**

Mayor Patterson adjourned the meeting at 8:18 p.m.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**CONSENT CALENDAR**

**TO** : City Manager

**FROM** : Parks and Community Services Director

**SUBJECT** : **AWARD CONTRACT FOR ON-CALL TREE SERVICE WORK**

**EXECUTIVE SUMMARY:**

The proposed two-year contract with A Plus Tree, Inc. for on-call tree service work will streamline contracting for City tree maintenance work, reduce per unit costs for work performed, improve maintenance project planning by providing certainty for project costs, and save staff time that can be redirected from the bid process to other priority work. The contract was previously approved by City Council on October 1, 2019, however, it has been modified to include a not-to-exceed \$150,000 limit.

**RECOMMENDATION:**

Adopt the resolution (Attachment 1), awarding a two-year contract for on-call tree service work (Attachment 2) to A Plus Tree, Inc. of Pleasant Hill, CA, in the amount not-to-exceed \$150,000, and authorizing the City Manager to sign the contract.

**BUDGET INFORMATION:**

This contract does not obligate any additional City funds. Rather, it provides a contract through which previously allocated funds will be spent on an as-needed basis through a not-to-exceed \$150,000 contract. Contracting on a two-year basis will save substantial staff and contractor time that would otherwise be spent on the bid process. This time savings is reflected in the bid costs, which staff believes will enable the previously allocated tree maintenance funds to be used more effectively and efficiently than if each project were individually bid, as has been the practice to date. This new contracting approach will enable the completion of more tree service work within the existing budget, improving the health of the City's trees and reducing prospective liability. Likewise, staff time that would otherwise be spent on bidding tree maintenance projects will now be reallocated to other priority projects.

**BACKGROUND:**

The City maintains approximately 4,300 trees in parks, on City properties, and along streets. Historically, the City has worked with a variety of contractors to assist with tree removals and tree pruning projects. However, the City Arborist identified an on-call maintenance contract as an opportunity to streamline contracting, provide price certainty to improve maintenance planning, and to reduce per unit costs so that more work could be completed within the existing

budget. Staff released a Request For Proposals (RFP) on June 18, 2019. Five proposals were received by the August 1, 2019 deadline. All five firms were invited to interview on August 22, 2019. The proposals were then scored according to seven criteria that were spelled out in the RFP, with A Plus Tree, Inc. receiving the highest score. City Council previously approved this contract on October 1, 2019. However, we are returning for a fresh approval as the contract has been modified to include the not-to-exceed \$150,000 limit.

**NEXT STEPS:**

If awarded, staff will work with A Plus Tree, Inc. to refine a maintenance strategy for the term of the contract. Contracted work may begin as early as January 2020.

**ALTERNATIVE ACTIONS:**

Council could choose to not award this contract and direct staff to continue to award tree maintenance contracts on a project-by-project basis, or another contractor could be selected.

<b>General Plan</b>	Goal 2.28: Improve and maintain public facilities and services
---------------------	--

<b>Strategic Plan</b>	Strategic Issue #2: Protecting and Enhancing the Environment
	Strategic Issue #4: Preserving and Enhancing Infrastructure

<b>CEQA Analysis</b>	This contract is Categorical Exempt per CEQA Section 15301(h).
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**ATTACHMENTS:**

1. Resolution – On-Call Tree Service Work
2. Contract - On-Call Tree Service Work

*For more information contact: Mike Dotson, Parks & Community Services Director  
 Phone: 707-746-4285  
 E-mail: mdotson@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A NOT-TO-EXCEED \$150,000 CONTRACT WITH A PLUS TREE, INC. FOR ON-CALL TREE SERVICE WORK**

**WHEREAS**, City Council previously allocated funding for tree maintenance work in the Fiscal Year 2019-2021 City budget; and

**WHEREAS**, City staff identified an opportunity to streamline contracting and more efficiently utilize budgeted funds through an on-call tree service work contract; and

**WHEREAS**, on June 18, 2019, staff released a Request For Proposals from tree maintenance firms for a two-year on-call tree service work contract; and

**WHEREAS**, five firms submitted proposals prior to the August 1, 2019 deadline; and

**WHEREAS**, A Plus Tree, Inc's proposal was scored the highest of the five proposals according to a seven point scoring matrix; and

**WHEREAS**, this project is categorically exempt per CEQA Section 15301, which applies to the maintenance of existing landscaping; and

**WHEREAS**, the contract was previously approved by City Council on October 1, 2019, however, it has been modified to include a not-to-exceed \$150,000 limit.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia does hereby award the on-call tree service work contract in an amount not-to-exceed \$150,000 to A Plus Tree, Inc. of Pleasant Hill, CA.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to sign the contract.

\*\*\*\*\*

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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

CONTRACT # \_\_\_ - \_\_\_ - \_\_\_

**AGREEMENT FOR CONTRACT SERVICES**

**[\$50,000 and above (BMC 3.10.030 A)]**

**THIS AGREEMENT** (“Agreement”) is made and entered into this 1st day of October 2019 between the City of Benicia, a municipal corporation in Solano County, California, (hereinafter "CITY") and A Plus Tree, Inc. a California corporation, with its primary office located at 3490 Buskirk Ave. Pleasant Hill, CA 94523 (hereinafter "CONTRACTOR") (collectively, "the Parties").

**RECITALS**

**WHEREAS**, CITY and CONTRACTOR each desire to enter into an Agreement whereby CONTRACTOR will perform contracting services for CITY; and

**WHEREAS**, CITY staff do not have the expertise or capacity to perform this work in-house.

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

1. DESCRIPTION OF SERVICES TO BE PROVIDED

CONTRACTOR shall provide services to CITY in accordance with the Request for Proposal (“RFP”) dated June 18, 2019 and Proposal dated July 31, 2019 for the **On Call Tree Service Work, Two Year Contract**. The RFP and Proposal are incorporated herein by reference and are attached as Exhibit “A” and Exhibit “B”, respectively. CONTRACTOR shall perform the services contemplated hereunder in a competent and professional manner and to the satisfaction of the CITY's Department Head or his/her designee.

2. PAYMENT

CONTRACTOR shall be paid for the above described services per the unit rates included in the Bid Schedule included in Exhibit B, in an amount not to exceed \$150,000 for the duration of this Agreement. The compensation agreed to be paid to CONTRACTOR shall be the sole and exclusive consideration paid or provided to the CONTRACTOR by the CITY.

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

- within 30 days after receipt of any invoice therefore.
- within 30 days after the completion of the work.
- on a monthly basis, beginning on \_\_\_\_\_, in equal installments of \$\_\_\_\_\_ each.

3. CONTRACT TERMINATION

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

(a) by failure of the CONTRACTOR to substantially perform the above described services; and/or

(b) the CITY reserves the right to cancel the work or services before the work or service begins, even though advertised and requested for.

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

4. INDEMNIFICATION

(a) CONTRACTOR agrees to indemnify, release, defend and hold harmless the CITY, its officers, agents and employees ("indemnitees") from and against any and all claims, demands, losses, defense costs or liability of any kind or nature which indemnitees may sustain or incur or which may be imposed upon them for injuries to or death of persons, or damage or injury to property as a result of, arising out of, or in any manner connected with CONTRACTOR's performance under the terms of this Agreement. CONTRACTOR or any approved Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of the Agreement are undertaken in addition to, and shall not be in any limited by, the insurance obligations contained in this Agreement.

(b) Further, CONTRACTOR will indemnify CITY, and hold it harmless, from an assertion that as a result of providing services to CITY, CONTRACTOR or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, CONTRACTOR's obligations for any payments to such claimant shall be limited to those payments which CITY may be required to pay.

5. INSURANCE

(a) Required Coverage. Without limiting CONTRACTOR's indemnification, it is agreed that CONTRACTOR shall maintain in force at all times during the term of this Agreement the following types of insurance providing coverage on an "occurrence" basis. Said insurance, with the exception of Worker's Compensation and Errors & Omissions Liability, shall name the CITY as additional insureds and evidence of said insurance shall be delivered to CITY in certificate and endorsement forms acceptable to the CITY prior to execution of this Agreement.

- Automobile insurance for the vehicle(s) CONTRACTOR uses in connection with the performance of this Agreement. Coverage: at least \$1,000,000 per occurrence for bodily injury and property damage.
- Commercial general liability and property damage insurance. Coverage: at least \$1,000,000 per occurrence. The general aggregate limit shall be at least twice the required occurrence limit.
- Worker's Compensation insurance to cover its employees as required by the Labor Code of the State of California. CONTRACTOR's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment." In the event any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation Statutes, the CONTRACTOR shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.
- Pollution and/or Asbestos Pollution Liability and/or Errors and Omissions insurance. Coverage: at least \$1,000,000 each occurrence, at least \$2,000,000 policy aggregate.

(b) General Provisions.

(i) CONTRACTOR shall obtain insurance acceptable to the CITY in a company or companies admitted in California and with a Best rating of no less than A VII or as acceptable to the CITY. The endorsements, naming the CITY as an additional insured, are to be signed by a person authorized by CONTRACTOR's insurer to bind coverage on its behalf.

(ii) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in the Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the CITY (if agreed to in a written contract) before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

(iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.

(v) The insurance provided by these policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the CITY.

(c) Additional Insured. The CITY will be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(i) Each such policy shall be endorsed with the following language:  
*The City, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, including the insured's general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.*

(ii) This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

(iii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iv) The Additional Insured coverage under the CONTRACTOR's policy shall be primary and non-contributory and will not seek contribution from the CITY's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(d) Worker's Compensation. CONTRACTOR and CONTRACTOR's insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONTRACTOR's workers' compensation insurance policy which arise from the work performed by CONTRACTOR for CITY.

(e) Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the City, its officers, officials, agents, employees and volunteers; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY. The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

(f) Subcontractors. In the event CONTRACTOR desires to hire or employ any other company or person to perform any part of the services contemplated herein, the written approval therefore must be first obtained from the CITY. The CITY may withhold such approval for any reason.

(i) If approval is given by the CITY, CONTRACTOR agrees to include with all Subcontractors in the subcontract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by the CONTRACTOR agree to be bound to CONTRACTOR and CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Agreement Contract Documents. Subcontractor further agrees to include these same provisions with any Subcontractor. A copy of the CITY's Agreement Contract Document indemnity and insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to the commencement of any work and will provide proof of compliance to the CITY.

(ii) CONTRACTOR shall secure and provide CITY with evidence securing said Worker's Compensation insurance covering said approved employee(s) in statutory amounts and providing 30 days' advance notice to CITY in the event said policy is canceled.

When box is checked the following Section 6 ("PREVAILING WAGE") will apply:

#### 6. PREVAILING WAGE

(a) CONTRACTOR will comply with all applicable laws, rules & regulations including, but not limited to, the requirements of Labor Code §3800 regarding workers' compensation insurance and shall, prior to CITY's execution of this Agreement, provide CITY with either a Certificate of Insurance documenting CONTRACTOR's workers' compensation insurance coverage from a company acceptable to City or a letter stating CONTRACTOR has no employees.

(b) For services deemed public works, CONTRACTOR, by signing this Agreement, CONTRACTOR is certifying pursuant to Labor Code section 1861, "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(c) CONTRACTOR shall comply with the requirements of the California Labor Code including, but not limited to, hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages.

(d) Not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to workers, laborers, and mechanics employed in the execution of the work by CONTRACTOR or any Subcontractor doing or contracting any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed with, and available for inspection, at the City offices. CONTRACTOR shall post, at each job site, a copy of the general prevailing rate of per diem wages. The CONTRACTOR shall forfeit two hundred dollars (\$200.00) per day for each calendar day or portion thereof, for each worker paid less than the stipulated prevailing wage rates for any public work done under this Agreement by the CONTRACTOR or any Subcontractor under the CONTRACTOR.

(e) CONTRACTOR shall also comply with Labor Code Sections 1776, 1777.5, 1777.6, 1777.7 and 1810.

When box is checked the following Section 7 ("LIQUIDATED DAMAGES") will apply:

7. LIQUIDATED DAMAGES

It is agreed that CONTRACTOR's failure to complete the work within the time allowed will result in damages being sustained by the CITY. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified, as adjusted in accordance with standard specifications, for completion of the work the CONTRACTOR shall pay to the CITY, or have withheld from moneys due it, the sum of \$100 per day. Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

8. CONTRACTOR RELATIONSHIP

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

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

9. COMPLIANCE WITH THE LAW

CONTRACTOR, in the conduct of the services contemplated hereunder, shall comply with all statutes, state or federal, and all ordinances, rules and regulations of the City Council, and City of Benicia. Prior to commencement of work, CONTRACTOR shall procure a City business license.

10. SUPPLIES

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

11. ASSIGNMENT

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

12. NOTICES

(a) Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the CITY: Theron Jones  
Interim Superintendent of Parks & Community Services  
City of Benicia  
250 East L Street  
Benicia, CA 94510

To CONTRACTOR: Cyrus DeVere  
A Plus Tree, Inc.  
3490 Buskirk Ave.  
Pleasant Hill, CA 94523

(b) Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

13. GOVERNING LAW AND VENUE

This Agreement shall be administered and interpreted under California law as if written by both parties. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force. **If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state court situated in the County of Solano, State of California or, if necessary, in a federal court situated in the City and County of Sacramento, California.**

14. ENTIRE AGREEMENT

(a) This Agreement supersedes any and all other agreements, either oral or written, between the CITY and CONTRACTOR with respect to the subject matter of this Agreement.

(b) This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

(c) No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

15. WAIVER

(a) No waiver shall be binding, unless executed in writing by the party making the waiver.

(b) No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

(c) Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

16. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

17. AUTHORITY TO ENTER AGREEMENT

CONTRACTOR has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

18. PROHIBITED INTERESTS

CONTRACTOR maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

19. NONDISCRIMINATION

(a) CONTRACTOR shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis.

(b) Consistent with CITY's policy that harassment and discrimination are unacceptable employer/employee conduct, CONTRACTOR agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONTRACTOR or CONTRACTOR's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONTRACTOR agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

20. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the undersigned execute this Agreement on the date first written above.

CONTRACTOR

CITY OF BENICIA  
A Municipal Corporation

BY: 

Title: Chief Executive Officer.

\_\_\_\_\_  
Lorie Tinfow  
CITY MANAGER

RECOMMENDED BY:

\_\_\_\_\_  
Mike Dotson  
DEPARTMENT HEAD

APPROVED AS TO FORM:

\_\_\_\_\_  
Benjamin L. Stock  
CITY ATTORNEY

Attachments: Exhibit A – RFP  
Exhibit B – Proposal  
Exhibit C – Labor and Materials Bond

EXHIBIT A  
RFP



## **REQUEST FOR PROPOSAL**

### **ON CALL TREE SERVICE WORK, TWO YEAR CONTRACT**

**June 18, 2019**

Important Dates:

Proposal Due Date: August 1, 2019  
Selection Interviews: August 22, 2019  
Award of Agreement: September 17, 2019  
Project Agreement Start Date: October 1, 2019

Contact:

Theron Jones, Parks Supervisor  
Parks & Community Services Department  
250 East L Street  
Benicia, CA 94510  
Phone: (707) 746-4285  
Fax: (707) 747-8118  
Email: [tjones@ci.benicia.ca.us](mailto:tjones@ci.benicia.ca.us)

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## I. INTRODUCTION

The City of Benicia (“City”) is requesting proposals from qualified organizations to assist the City in the **management of City trees through a two year contract for on call Tree Service Work, beginning October 1, 2019 and ending on September 30, 2021.**

### BACKGROUND.

The City of Benicia is a general law city located in Solano County. The City is requesting contract support from a California licensed tree service contractor with a minimum of five years’ experience. All work is to be performed under the direct supervision of an arborist certified by the International Society of Arboriculture (ISA) and completed in compliance with ANSI A300 and Z133.1 standards.

### PURPOSE OF THE REQUEST.

The City desires to obtain the services of an outside organization to help the City by performing as needed on call tree maintenance, removal, and planting services.

The selected organization will provide the full range of services including tree maintenance, removal, and planting services along roadsides, in street medians, in parks, and in building landscapes within the City of Benicia.

## II. SCOPE OF SERVICES

Attached, as Appendix A, is a list of major work tasks that should be accomplished as part of the scope of work. The proposer is asked to define the approach and the specific scope of work and methodology to achieve the objectives presented in this Request for Proposal (“RFP”). The proposer should include a refined scope of work by developing a detailed description of all project tasks, both those suggested in this RFP and any changes, additions or recommendations proposed.

### Deliverables.

**Two** copies of administrative draft reports are required upon completion of each major part of the project. Following approval by the staff, **two** copies of each final report are required.

One unbound copy of each final document and a computer disk containing all final documents and all information are to be provided. At the outset of the agreement, the consultant will submit a description of the software to be used in preparation of the reports and graphics. The City currently uses Word for word processing and Excel for spreadsheets and graphs. Unless pre-approved by City, the final documents shall be provided in Microsoft Word and Microsoft Excel at a minimum.

### III. PROPOSAL FORMAT

All proposals shall include the following minimum information:

#### APPROACH.

A short discussion of the intended approach to the project that demonstrates the proposer's understanding of the issues and tasks and the proposer's ability to address them.

#### DESCRIPTION OF ORGANIZATION, MANAGEMENT AND TEAM MEMBERS.

A description of the team/consultant organization, and a work plan that identifies the personnel to be assigned to each task. The organization description should clearly identify who will be the project manager and the day-to-day contact person for the job.

#### ORGANIZATION QUALIFICATIONS.

Provide an outline of the organization qualifications indicating relevant background experience and capabilities for this work. A list of major projects, both ongoing and planned, to which the organization is committed during the time frame of this project should also be provided. Include the staff resources devoted to those projects and the status of the projects.

#### SCOPE OF WORK.

The proposal should contain a description of each work task with an explanation of how the proposer plans to approach the tasks and the steps that will be taken to complete the task including analytical methods and tools. Proposers must demonstrate that they understand the magnitude and importance of each individual task. Tasks should be organized into phases constituting measurable deliverables.

#### PROPOSED PROJECT SCHEDULE.

Time is of the essence for this agreement. The proposal shall include a schedule to undertake the work program. The project is anticipated to start by **October 1, 2019** and be completed by **September 30, 2021**. The City, upon mutual agreement, may extend the agreement by one-year up to three times following completion of the initial two-year contract term.

#### PROPOSED BUDGET.

Indicate the costs and hours for the total project, on a task-by-task basis per the bid schedule included in Appendix D. Prices quoted must be binding for a minimum of the life of contract.

## REFERENCES, RELATED EXPERIENCE AND EXAMPLES OF WORK.

Provide at least three (3) client references with phone numbers for relevant work. Specify the client, location, consultant firm members and participating individuals and their roles on team (principal, project director, etc.), type of work, implementation results or status, examples of work, and other relevant information as needed.

## IV. SELECTION PROCESS

### QUALIFICATIONS.

All proposals received by the due date will be evaluated by the City. Only information which is received in response to the RFP or any subsequent interview will be evaluated. The City will judge the responses of each proposing firm in several critical areas. Selected proposers may be invited to an oral interview.

### SELECTION CRITERIA.

The City will select the most qualified proposal based on the following factors. Responses to the RFP should address the qualities and indicators that are listed below:

1. *Ability of the Lead Consultant to Design an Approach and Work Plan to Meet the Project Requirements.*

An assessment of the overall quality of the proposal. Qualities and indicators that will receive consideration include the proposer's performance in converting the Scope of Services into a work plan; the detail and clarity of the discussion as to the proposer's approach to undertaking the project; the proposer's performance in identifying any special problems or concerns which may be associated with the project and preliminary ideas about how these obstacles should be addressed; the inclusion of any unique approaches which are designed to save time and money or increase the benefits or effectiveness of the proposed work; the demonstrated ability to work with governmental bodies; and a full understanding of applicable laws or regulations that relate to the project.

2. *Ability of the Proposer to Carry Out and Manage the Proposed Project.*

An assessment of the past experience of the organization in general. Qualities and indicators that will receive consideration include the number and types of projects the organization or its employees have completed; the variety of projects completed and a demonstration of the organization's ability to undertake this project; the general level of experience in the areas of supervision, observing and monitoring projects; the organization's ability to realize timetables and quality control objectives; and the demonstrated general ability to bring about a successful completion of the projects under the proposer's direction.

3. *Capabilities of the Consultant Organization and/or Team.*

Assessment of the capabilities of the organization and individuals that will be engaged in the project. Qualities and indicators that will receive consideration include the individual professionals who will be working on each task; the various professional, technical, and educational achievements and registration/licenses of each organization and individuals involved; the applicable experience of the proposed assigned staff; and the specific experience gained on similar projects.

4. *Current Workload of the Consultant Organization and/or Team.*

An assessment of the perceived ability of each organization to devote the necessary human resources and management attention to the project. Qualities and indicators that will receive consideration include the number and size of the projects presently being performed by each organization and the assigned staff; the status of existing projects; the past ability of the organization to deliver projects on a timely basis; and the nature of the existing projects that are behind schedule or past the completion date.

5. *The Proposer and/or Team's Proximity to the Project.*

An assessment of the geographic proximity to the project; the location of the office from which the proposed project will be administered; the perceived response time and general availability of the proposer's management to be on site; the perceived effect that project management location will have on price and the ability of the project to be completed on a timely basis; and the availability of special travel or communication plans which would effectively mitigate difficulties associated with location.

6. *Willingness to Comply with the Proposed Agreement Terms.*

A sample agreement is attached. Proposals will be rated based on the exceptions taken to the proposed agreement.

7. *Cost of Proposal.*

Cost, while not determinative, may be considered in the selection process.

## V. SELECTION SCORING.

The City anticipates scoring the proposals on the following scale:

<b><u>No.</u></b>	<b><u>ITEM</u></b>	<b><u>MAXIMUM POINTS</u></b>
1.	ABILITY OF THE LEAD CONSULTANT TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE PROJECT REQUIREMENTS	10
2.	ABILITY OF THE PROPOSER TO CARRY OUT AND MANAGE THE PROPOSED PROJECT	15
3.	CAPABILITIES OF THE CONSULTANT ORGANIZATION AND/OR TEAM	15
4.	CURRENT WORKLOAD OF THE CONSULTANT ORGANIZATION AND/OR TEAM	10
5.	THE PROPOSER AND/OR TEAM'S PROXIMITY TO THE PROJECT	10
6.	WILLINGNESS TO COMPLY WITH THE PROPOSED AGREEMENT TERMS	10
7.	COST OF PROPOSAL	30
	<b>TOTAL</b>	<b>100</b>

The top-ranked proposer in each category will receive 100% of the points for that category. All other proposers will receive fewer points, as determined by the City.

## VI. PROPOSAL DUE DATE, DELIVERY AND AWARD

### PROPOSED SELECTION AND PROJECT SCHEDULE.

Tentative Selection Interviews Date: August 22, 2019

Agreement Approval Date: September 17, 2019

Project Completion: September 30, 2021

DELIVERY.

*Three (3)* sealed copies of the proposal, clearly marked with the project description, should be submitted no later than:

**3:00 p.m. on Thursday, August 1, 2019**

to the address below. All copies received by that time will be date and time stamped. Proposals will not be accepted after this time. Proposals should be addressed to:

Theron Jones, Parks Supervisor  
Parks & Community Services Department  
250 East L Street  
Benicia, CA 94510

Faxed, PDF/scanned, Emailed proposals **will** be accepted. Hand carried proposals will be accepted at the above address.

AWARD OF CONTRACT.

It is anticipated that any award of an agreement for services will be made by the City Council at their September 17, 2019 meeting.

## VII. CONDITIONS OF REQUEST

GENERAL CONDITIONS.

The City reserves the right to cancel or reject all or a portion or portions of the Request for Proposal without notice. Further, the City makes no representations that any agreement will be awarded to any organization submitting a proposal. The City reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto.

The City also reserves the right to reject any sub consultant or individual working on a consultant team and to replace the sub consultant or individual with a mutually acceptable replacement.

Any changes to the proposal requirements will be made by written addendum.

## LIABILITY OF COSTS AND RESPONSIBILITY.

The City shall not be liable for any costs incurred in response to this Request for Proposal. All costs shall be borne by the person or organization responding to the request. The person or organization responding to the request shall hold the City harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of the City of Benicia.

The selected lead consultant will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected lead consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

## PUBLIC NATURE OF PROPOSAL MATERIAL.

Responses to this Request for Proposal become the exclusive property of the City. At such times as a formal recommendation to award an agreement to one proposer is made to the awarding authority, all submittals received in response to this Request for Proposal become a matter of public record and shall be regarded as public records, with the exception of those elements in each submittal which are defined by the proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the California Public Records Act. Any submittal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary," shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City will provide the proposer who submitted the information with reasonable notice to allow the proposer to seek protection from disclosure by a court of competent jurisdiction.

## VALIDITY.

The proposer agrees to be bound by its proposal for a period of ninety (90) days commencing from the date proposals are due, during which time the City may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only the portion so amended or clarified.

## STANDARD AGREEMENT.

A sample agreement has been provided as Appendix B for the proposer's review and comment. If a proposer wishes to take exception to any of the terms and conditions contained in the consultant agreement, these should be identified specifically; otherwise, it will be assumed that the proposer is willing to enter into the agreement as it is written. Failure to identify contractual issues of dispute can later be the basis for the City disqualifying a proposer. Any exceptions to terms, conditions, or other requirements must be clearly stated. Otherwise, the City will consider that all items offered are in strict compliance with the RFP, and the successful proposer will be responsible for compliance. The City will consider such exceptions as part of the evaluation process, which may constitute grounds for rejection of the proposal. The agreement will not be executed by the City without first being signed by the proposer.

## PERMITS AND LICENSES.

Proposer, and all of proposer's sub consultants, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, which will be required in connection with the performance of services hereunder.

## ORAL AND WRITTEN EXPLANATIONS.

The City will not be bound by oral explanations or instructions given at any time during the review process or after the award. Oral explanations given during the review process and after award become binding only when confirmed in writing by an authorized City official. Written responses to question(s) asked by one proposer will be provided to all proposers who received this Request for Proposal.

## PROPOSER'S REPRESENTATIVE.

The person signing the proposal must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

## RESTRICTIONS OR CONDITIONS BASED ON FUNDING OF PROJECT.

N/A

## INSURANCE.

General liability, automobile, professional liability, and worker's compensation insurance are required in the amount set forth in Appendix C "Summary of Indemnity and Insurance Requirements".

### VIII. AVAILABILITY OF DOCUMENTS

Copies of the City's Tree Inventory are available for review at the Parks & Community Services office located at 370 E. L Street. Benicia, CA.

Appendices:

- A. Major Work Tasks
- B. Standard Contract
- C. Summary of Indemnity and Insurance Requirements
- D. Bid Schedule
- E. Tree Pruning Standard Specifications

## APPENDIX A: SCOPE OF WORK

The scope of work required by the City includes performing as needed on call tree maintenance, removal, and planting services along roadsides, in street medians, in parks, and in building landscapes. The contractor will provide all labor, materials, and equipment for the following tree service work:

### **Task 1 – Emergency Response Tree and Limb Removal**

The Contractor shall be available to respond on an emergency basis twenty-four (24) hours a day, including weekends and holidays, to remove or trim City trees that pose a hazard to public or private property. Upon notification by the City of Benicia, the Contractor will respond within six (6) hours with appropriate staff and equipment to the location of the hazard.

### **Task 2 – Non-Emergency Tree Maintenance and Removal:**

On call tree maintenance and removal services may include:

1. Tree Removal
2. Stump grinding and removal
3. As needed tree pruning
4. Limited annual grid pruning
5. Tree planting
6. Root barrier installation

Contractor will provide all necessary labor, equipment, and supplies needed to complete the contracted work and to properly dispose of all materials generated in the course of the work.

All non-emergency work must be approved by the Parks & Community Services Director or designee.

Work will consist of tree trimming, preventative and general tree removal, and tree stump removal in various locations throughout the City of Benicia as directed by the Parks & Community Services Director or designee.

Upon notification by the Parks & Community Services Director or his designee, the Contractor will schedule and perform the requested services within two weeks, or at a time mutually agreed upon by the City of Benicia and the Contractor.

All work orders will be invoiced separately.

### **Specifications:**

- A. All work is to be performed according to Section F and Section I of the City of Benicia Tree Pruning Standard Specifications (Appendix E) unless authorized in writing by the Director of Parks and Community Services or designee.

- B. All traffic control is to be provided by the contractor and coordinated with Director of Parks and Community Services or designee.
- C. Disposal of clean chipped material may be available at the City Cemetery located at 100 Riverhill Drive. All loads must be free of paper, plastic, and other trash. If space is not available at the City Cemetery, chipped material will need to be disposed of offsite. Offsite disposal costs must be verifiable as evidenced by a receipt from the disposal facility.
- D. Disposal of palm fronds and palm tree debris will not be permitted at the City Cemetery. All palm fronds and palm tree debris must be disposed of offsite. Offsite disposal costs must be verifiable as evidenced by a receipt from the disposal facility.
- E. Other than emergency work, all work shall be completed Monday through Friday within the hours established by Chapter 8.20 (Noise Regulations) of the Benicia Municipal Code, which currently limits the use of sound-amplifying equipment to between the hours of 7:00 a.m. and 8:00 p.m.
- F. All tree work will be recorded in the City's Tree Inventory Database.

CONTRACT # \_\_\_ - \_\_\_ - \_\_\_

**AGREEMENT FOR CONTRACT SERVICES**

**[\$50,000 and above (BMC 3.10.030 A)]**

**THIS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_ between the City of Benicia, a municipal corporation in Solano County, California, (hereinafter "CITY") and \_\_\_\_\_, a California corporation, with its primary office located at [street, city, state, zip] (hereinafter "CONTRACTOR") (collectively, "the Parties").

**RECITALS**

**WHEREAS**, CITY and CONTRACTOR each desire to enter into an Agreement whereby CONTRACTOR will perform contracting services for CITY; and

**WHEREAS**, [CITY staff does not have the [expertise or capacity] to perform this work in-house.] OR [This work is for a limited time period and the hiring of an employee would be inefficient].

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

1. DESCRIPTION OF SERVICES TO BE PROVIDED

CONTRACTOR shall provide services to CITY in accordance with the Request for Proposal (“RFP”) dated \_\_\_\_\_ and Proposal dated \_\_\_\_\_ for the **On Call Tree Service Work, Two Year Contract**. The RFP and Proposal are incorporated herein by reference and are attached as Exhibit “A” and Exhibit “B”, respectively. CONTRACTOR shall perform the services contemplated hereunder in a competent and professional manner and to the satisfaction of the CITY’s Department Head or his/her designee.

2. PAYMENT

CONTRACTOR shall be paid for the above described services in the amount of \$\_\_\_\_\_. The compensation agreed to be paid to CONTRACTOR shall be the sole and exclusive consideration paid or provided to the CONTRACTOR by the CITY.

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

- within 30 days after receipt of any invoice therefore.
- within 30 days after the completion of the work.
- on a monthly basis, beginning on \_\_\_\_\_, in equal installments of \$\_\_\_\_\_ each.

3. CONTRACT TERMINATION

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

(a) by failure of the CONTRACTOR to substantially perform the above described services; and/or

(b) the CITY reserves the right to cancel the work or services before the work or service begins, even though advertised and requested for.

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

4. INDEMNIFICATION

(a) CONTRACTOR agrees to indemnify, release, defend and hold harmless the CITY, its officers, agents and employees ("indemnitees") from and against any and all claims, demands, losses, defense costs or liability of any kind or nature which indemnitees may sustain or incur or which may be imposed upon them for injuries to or death of persons, or damage or injury to property as a result of, arising out of, or in any manner connected with CONTRACTOR's performance under the terms of this Agreement. CONTRACTOR or any approved Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of the Agreement are undertaken in addition to, and shall not be in any limited by, the insurance obligations contained in this Agreement.

(b) Further, CONTRACTOR will indemnify CITY, and hold it harmless, from an assertion that as a result of providing services to CITY, CONTRACTOR or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, CONTRACTOR's obligations for any payments to such claimant shall be limited to those payments which CITY may be required to pay.

5. INSURANCE

(a) Required Coverage. Without limiting CONTRACTOR's indemnification, it is agreed that CONTRACTOR shall maintain in force at all times during the term of this Agreement the following types of insurance providing coverage on an "occurrence" basis. Said insurance, with the exception of Worker's Compensation and Errors & Omissions Liability, shall name the CITY as additional insureds and evidence of said insurance shall be delivered to CITY in certificate and endorsement forms acceptable to the CITY prior to execution of this Agreement.

- ☒ Automobile insurance for the vehicle(s) CONTRACTOR uses in connection with the performance of this Agreement. Coverage: at least \$1,000,000 per occurrence for bodily injury and property damage.
- ☒ Commercial general liability and property damage insurance. Coverage: at least \$1,000,000 per occurrence. The general aggregate limit shall be at least twice the required occurrence limit.
- ☒ Worker's Compensation insurance to cover its employees as required by the Labor Code of the State of California. CONTRACTOR's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment." In the event any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation Statutes, the CONTRACTOR shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.
- ☒ Pollution and/or Asbestos Pollution Liability and/or Errors and Omissions insurance. Coverage: at least \$1,000,000 each occurrence, at least \$2,000,000 policy aggregate.

(b) General Provisions.

(i) CONTRACTOR shall obtain insurance acceptable to the CITY in a company or companies admitted in California and with a Best rating of no less than A VII or as acceptable to the CITY. The endorsements, naming the CITY as an additional insured, are to be signed by a person authorized by CONTRACTOR's insurer to bind coverage on its behalf.

(ii) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in the Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the CITY (if agreed to in a written contract) before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

(iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.

(v) The insurance provided by these policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the CITY.

(c) Additional Insured. The CITY will be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(i) Each such policy shall be endorsed with the following language:  
*The City, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, including the insured's general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.*

(ii) This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

(iii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iv) The Additional Insured coverage under the CONTRACTOR's policy shall be primary and non-contributory and will not seek contribution from the CITY's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(d) Worker's Compensation. CONTRACTOR and CONTRACTOR's insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONTRACTOR's workers' compensation insurance policy which arise from the work performed by CONTRACTOR for CITY.

(e) Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the City, its officers, officials, agents, employees and volunteers; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY. The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

(f) Subcontractors. In the event CONTRACTOR desires to hire or employ any other company or person to perform any part of the services contemplated herein, the written approval therefore must be first obtained from the CITY. The CITY may withhold such approval for any reason.

(i) If approval is given by the CITY, CONTRACTOR agrees to include with all Subcontractors in the subcontract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by the CONTRACTOR agree to be bound to CONTRACTOR and CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Agreement Contract Documents. Subcontractor further agrees to include these same provisions with any Subcontractor. A copy of the CITY's Agreement Contract Document indemnity and insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to the commencement of any work and will provide proof of compliance to the CITY.

(ii) CONTRACTOR shall secure and provide CITY with evidence securing said Worker's Compensation insurance covering said approved employee(s) in statutory amounts and providing 30 days' advance notice to CITY in the event said policy is canceled.

When box is checked the following Section 6 ("PREVAILING WAGE") will apply:

#### 6. PREVAILING WAGE

(a) CONTRACTOR will comply with all applicable laws, rules & regulations including, but not limited to, the requirements of Labor Code §3800 regarding workers' compensation insurance and shall, prior to CITY's execution of this Agreement, provide CITY with either a Certificate of Insurance documenting CONTRACTOR's workers' compensation insurance coverage from a company acceptable to City or a letter stating CONTRACTOR has no employees.

(b) For services deemed public works, CONTRACTOR, by signing this Agreement, CONTRACTOR is certifying pursuant to Labor Code section 1861, "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(c) CONTRACTOR shall comply with the requirements of the California Labor Code including, but not limited to, hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages.

(d) Not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to workers, laborers, and mechanics employed in the execution of the work by CONTRACTOR or any Subcontractor doing or contracting any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed with, and available for inspection, at the City offices. CONTRACTOR shall post, at each job site, a copy of the general prevailing rate of per diem wages. The CONTRACTOR shall forfeit two hundred dollars (\$200.00) per day for each calendar day or portion thereof, for each worker paid less than the stipulated prevailing wage rates for any public work done under this Agreement by the CONTRACTOR or any Subcontractor under the CONTRACTOR.

(e) CONTRACTOR shall also comply with Labor Code Sections 1776, 1777.5, 1777.6, 1777.7 and 1810.

When box is checked the following Section 7 ("LIQUIDATED DAMAGES") will apply:

7. LIQUIDATED DAMAGES

It is agreed that CONTRACTOR's failure to complete the work within the time allowed will result in damages being sustained by the CITY. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified, as adjusted in accordance with standard specifications, for completion of the work the CONTRACTOR shall pay to the CITY, or have withheld from moneys due it, the sum of \$100 per day. Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

8. CONTRACTOR RELATIONSHIP

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

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

9. COMPLIANCE WITH THE LAW

CONTRACTOR, in the conduct of the services contemplated hereunder, shall comply with all statutes, state or federal, and all ordinances, rules and regulations of the City Council, and City of Benicia. Prior to commencement of work, CONTRACTOR shall procure a City business license.

10. SUPPLIES

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

11. ASSIGNMENT

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

12. NOTICES

(a) Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the CITY:

\_\_\_\_\_  
\_\_\_\_\_  
City of Benicia  
250 East L Street  
Benicia, CA 94510

To CONTRACTOR:

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

(b) Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

13. GOVERNING LAW AND VENUE

This Agreement shall be administered and interpreted under California law as if written by both parties. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force. **If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state court situated in the County of Solano, State of California or, if necessary, in a federal court situated in the City and County of Sacramento, California.**

14. ENTIRE AGREEMENT

(a) This Agreement supersedes any and all other agreements, either oral or written, between the CITY and CONTRACTOR with respect to the subject matter of this Agreement.

(b) This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

(c) No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

15. WAIVER

(a) No waiver shall be binding, unless executed in writing by the party making the waiver.

(b) No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

(c) Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

16. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

17. AUTHORITY TO ENTER AGREEMENT

CONTRACTOR has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

18. PROHIBITED INTERESTS

CONTRACTOR maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

19. NONDISCRIMINATION

(a) CONTRACTOR shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis.

(b) Consistent with CITY's policy that harassment and discrimination are unacceptable employer/employee conduct, CONTRACTOR agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONTRACTOR or CONTRACTOR's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONTRACTOR agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

20. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the undersigned execute this Agreement on the date first written above.

CONTRACTOR

CITY OF BENICIA  
A Municipal Corporation

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Lorie Tinfow  
CITY MANAGER

RECOMMENDED BY:

\_\_\_\_\_  
Name  
DEPARTMENT HEAD

APPROVED AS TO FORM:

\_\_\_\_\_  
Benjamin L. Stock  
CITY ATTORNEY

Attachments: Exhibit A – RFP  
Exhibit B – Proposal  
Exhibit C – Labor and Materials Bond

EXHIBIT A  
RFP

EXHIBIT B  
Proposal

**LABOR AND MATERIALS BOND  
(CONSTRUCTION)**

**KNOW ALL PERSONS BY THESE PRESENTS**, that the City of Benicia (hereinafter designated as "City"), a municipal corporation located in the County of Solano, State of California, by Resolution No. \_\_\_\_\_, has awarded a contract to and has entered into an agreement with \_\_\_\_\_, (hereinafter designated as "Principal") whereby Principal agrees to complete the improvements more particularly described in all documents forming the complete contract entitled "[PROJECT TITLE]", which said agreement is hereby referred to and made a part hereof; and

**WHEREAS**, said Principal is required to furnish a bond in connection and with said contract, provided that if said Principal, or any of his/her/its contractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth.

**NOW, THEREFORE**, we the Principal and \_\_\_\_\_, as Surety, which is a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, are held and firmly bound unto the City in the penal sum of \$ \_\_\_\_\_, lawful money of the United States, **being not less than one hundred percent (100%) of the estimated contract cost of the work**, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that if the above bonded Principal, his/her/its heirs, executors, administrators, successors or assigns, or its subcontractors, shall fail to pay any of the persons named in the applicable section of the Civil Code, or to pay for any materials, provisions, provender, or other supplies or teams used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then said Surety will pay the same in, or to an amount not exceeding, the amount hereinabove set forth, and also will pay in case suit is brought upon this bond a reasonable attorney's fee in such suit, which fee shall be fixed by the Court.

**AS FURTHER TERMS OF THIS BOND, IT IS UNDERSTOOD AS FOLLOWS:**

1. This bond and all its provisions shall inure to the benefit of all persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

2. This bond is given to comply with the provisions of Division 4, Part 6 of the Civil Code. The liability of the Principal and Surety hereunder is governed by the provisions of said Chapter, all acts amendatory thereof, and all other statutes referred to therein.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract, to the work, or to the specifications.

\* \* \*

**IN WITNESS WHEREOF**, the above bounded parties have executed this instrument under their seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

NOTE: To be signed by Principal and Surety and acknowledgement and notarial seal attached.

(SEAL)

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

Title: \_\_\_\_\_

The above bond accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
CITY ATTORNEY

## APPENDIX C

### SUMMARY OF INDEMNITY AND INSURANCE REQUIREMENTS FOR NON-DESIGN PROFESSIONALS

Please provide a copy of these indemnity and insurance requirements to your insurance broker or insurer to confirm compliance

#### INDEMNIFICATION

(a) CONTRACTOR agrees to indemnify, release, defend and hold harmless the CITY, its officers, agents and employees ("indemnitees") from and against any and all claims, demands, losses, defense costs or liability of any kind or nature which indemnitees may sustain or incur or which may be imposed upon them for injuries to or death of persons, or damage or injury to property as a result of, arising out of, or in any manner connected with CONTRACTOR'S performance under the terms of this Agreement. CONTRACTOR or any approved Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of the Agreement are undertaken in addition to, and shall not be in any limited by, the insurance obligations contained in this Agreement.

(b) Further, CONTRACTOR will indemnify CITY, and hold it harmless, from an assertion that as a result of providing services to CITY, CONTRACTOR or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, CONTRACTOR's obligations for any payments to such claimant shall be limited to those payments which CITY may be required to pay.

#### INSURANCE

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

Commercial general liability and property damage insurance. Coverage: at least \$1,000,000 per occurrence. If commercial general liability insurance or other form with a general aggregate limit shall apply separately to this Project/location, the general aggregate limit shall be at least twice the required occurrence limit.

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

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

Pollution and/or Asbestos Pollution Liability and/or Errors and Omissions insurance. Coverage: at least \$1,000,000 each occurrence, at least \$2,000,000 policy aggregate. This limit should be raised dependent on risk involved. You may want to check with your risk manager rep.

(1) The limits of insurance required in the contract may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City ( if agreed to in a written contract) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(2) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(3) The insurer waives all rights of subrogation against the City, its elected or appointed officials, officers, employees or agents.

(4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

(5) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the City.

(b) Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

(1) The City of Benicia, its elected or appointed officers, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations.

(2) This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it. The Additional Insured coverage shall be at least as broad as CG 20 01 04 13.

(3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

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

(1) Should the City approve the hiring or employment of another company or person as a Subcontractor, CONTRACTOR agrees to include with all subcontractors in the subcontract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by the CONTRACTOR agree to be bound to CONTRACTOR and the City in the same manner and to the same extent as CONTRACTOR is bound to the City under the Contract Documents. Subcontractor further agrees to include these same provisions with any subcontractor. A copy of the City's Contract Document indemnity and insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to the commencement of any work and will provide proof of compliance to the City. Any approved Subcontractor

(2) Any approved Subcontractor agrees to be bound to the CONTRACTOR and City in the same manner and the same extent as CONTRACTOR is bound to the City under the Contract Documents. Subcontractor further agrees to include the same requirements and provisions of this Contract, including the indemnity and insurance requirements, with any City approved subcontractor to the extent they apply to the scope of subcontractor's work.

(d) Deductibles and Self Insured Retentions. All self-insured retentions (SIR) must be disclosed to the City's Risk Management for approval and shall not reduce the limits of liability. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the City, its officers, officials, agents, employees and volunteers; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City. The City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

## CITY OF BENICIA'S INSURANCE REQUIREMENTS FOR SERVICES P.O.

Without limiting CONTRACTOR'S indemnification provided hereunder, CONTRACTOR shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance:

- (a) Worker's Compensation insurance to cover its employees and the CONTRACTOR shall require all SUBCONTRACTORS similarly to provide Worker's Compensation insurance as required by the Labor Code of the State of California for all of the SUBCONTRACTOR'S employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be cancelled without first giving thirty (30) days prior notice to the CITY.
- (i) In the event any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation Statutes, the CONTRACTOR shall provide, and shall cause all SUBCONTRACTORS to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to the CITY and shall provide that it will not be cancelled without first giving thirty (30) days' notice to CITY.
- (ii) CONTRACTOR'S worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY of BENICIA, its officers and employees when acting within the scope of their appointment or employment."
- (b) General Liability insurance including bodily injury and property damage insurance for all activities of the CONTRACTOR and its SUBCONTRACTORS arising out of or in connection with this contract, written on a comprehensive general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than 2 million dollars combined, single limit personal injury and property damage for each occurrence. The general aggregate shall be twice the single limit.
- (i) The limits of insurance required in the contract may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City ( if agreed to in a written contract) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
- (ii) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
- (c) Automobile Liability insurance for the vehicle(s) CONTRACTOR uses in connection with the performance of this Agreement. Coverage: at least \$1,000,000 per occurrence for bodily injury and property damage.
- (d) Verification of Coverage. CONTRACTOR shall obtain insurance acceptable to the CITY in a company or companies admitted in California and with a Best rating of no less than A or as acceptable to the CITY. The required documentation of such insurance shall be furnished to the CITY at the time CONTRACTOR returns the executed contract. The proper insurance shall be provided within ten (10) days of the date of mailing of the notice that the contract has been awarded and prior to the CITY executing the contract and issuing a notice to proceed. The CONTRACTOR shall not commence work nor shall s/he allow his employees or SUBCONTRACTORS or anyone to commence work until all insurance required hereunder has been submitted and approved and a notice to proceed has been issued.

(e) Additional Insured.

Each such policy shall be endorsed with the following language:

*The CITY of BENICIA is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the ongoing performance and completed work of the contract.*

- (i) The Additional Insured coverage under the Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
- (ii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iii) The insurance provided herein is primary and non-contributory and no insurance held or owned by the City of Benicia shall be called upon to contribute to a loss.

(iv) The coverage provided by this policy shall not be cancelled without thirty (30) days prior written notice given to the CITY.

(v) This policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.

(f) To the extent the following described damage is not covered by insurance, the CONTRACTOR shall be responsible for the cost of repairing or restoring damage to the work ("the costs"), which damage occurs prior to acceptance of the work by the CITY and the damage is determined to be proximately caused by an act of God.

(i) Notwithstanding anything to the contrary stated herein, if said act of God constitutes an earthquake in excess of a magnitude of 3.5 on the Richter scale and/or tidal waves, the CONTRACTOR shall be responsible for the costs in the amount of 5% of the amount paid to the CONTRACTOR hereunder.

(ii) Subparagraph e (i) shall not be applicable if the work paid for by this Contract is financed by revenue bonds.

(g) In the event the work involves the construction of a building, bridge or other structure, Builder's Risk "All Risk" completed value insurance coverage (including flood but unless otherwise specified in the bid documents excluding earthquake and tidal wave) upon the entire project and including completed work and work in progress. The CITY of BENICIA shall be named as an additional insured. The policy shall be endorsed to provide that it will not be cancelled without giving thirty (30) days prior written notice to CITY by mail.

(h) All Self-insured Retentions (SIR) must be disclosed to the City's Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City. The City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later. At the option of CITY, insurer shall reduce or eliminate such deductible or self-insured retention as respects CITY, its officers and employees or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.

(i) Subcontractors. Contractor agrees to include with all subcontractors in the subcontract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by the Contractor agree to be bound to Contractor and the City in the same manner and to the same extent as Contractor is bound to the City under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the City's Contract Document indemnity and insurance provisions will be furnished to the Subcontractor upon request. The Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to the commencement of any work and will provide proof of compliance to the City.

Subcontractor agrees to be bound to the Contractor and City in the same manner and the same extent as Contractor is bound to the City under the Contract Documents. Subcontractor further agrees to include the same requirements and provisions of this Contract, including the indemnity and insurance requirements, with any Sub-subcontractor to the extent they apply to the scope of Sub-subcontractor's work.

Terms Accepted:

  
\_\_\_\_\_  
Contractor Signature  
Cyrus DeVere, A PLUS TREE  
\_\_\_\_\_  
Printed Name & Company

**Appendix D  
Bid Schedule**

Unit prices should include materials, supervision, labor, and equipment needed for the satisfactory completion of each project.

**Tree and Stump Removal**

Diameter at Breast Height (DBH)	Cost per Tree	Cost per Stump Removal
Up to 8" DBH	\$	\$
8"-16" DBH	\$	\$
16"-24" DBH	\$	\$
24"-36" DBH	\$	\$
Over 36" DBH	\$	\$

**Tree Pruning**

Diameter at Breast Height (DBH)	Cost per Tree
Up to 8" DBH	\$
8"-16" DBH	\$
16"-24" DBH	\$
24"-36" DBH	\$
Over 36" DBH	\$

**Tree Planting**

Size	Cost per Tree	Root Barrier (minimum 18" deep)
5 Gallon Trees	\$	\$
15 Gallon Trees	\$	\$
24" Box Trees	\$	\$
36" Box Trees	\$	\$
Over 36" DBH	\$	\$

**Emergency Call Outs**

In addition to the charges listed above, state the additional flat fee or charge, if any, for an emergency service response within two (2) hours	\$
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## Appendix E



**City of Benicia**  
**Parks & Community Services**  
250 East L Street  
Benicia, CA 94510  
(707) 746-4285

# TREE PRUNING STANDARD SPECIFICATIONS

THE FOLLOWING STANDARD SPECIFICATIONS DEFINE THE MINIMUM REQUIREMENTS FOR TREE PRUNING WITHIN THE CITY OF BENICIA.

*ALL WORK TO BE PERFORMED BY CALIFORNIA LICENSED TREE SERVICE CONTRACTOR WITH MINIMUM FIVE YEARS EXPERIENCE.*

*ALL WORK TO BE PERFORMED UNDER THE DIRECT SUPERVISION OF AN ARBORIST CERTIFIED BY THE INTERNATIONAL SOCIETY OF ARBORICULTURE AND COMPLETED IN COMPLIANCE WITH ANSI A300 AND Z133.1 STANDARDS.*

The Director of Parks and Community Services or designee can clarify any questions regarding these standard specifications.

### **A. INTRODUCTION:**

- a. The purpose of these specifications is to best preserve and enhance the beauty, structural integrity, and functional values of trees.
- b. These specifications are presented as working guidelines, recognizing that trees are individually unique in form and structure and that their pruning needs may not always fit strict rules.

### **B. OVERVIEW OF SPECIFICATIONS:**

- a. Note that all specifications are based on International Society of Arboriculture, National Arborist Association and American National Standards Institute criteria.
- b. Perform all tree work according to these specifications.
- c. Note that there are different criteria for pruning depending on the purpose for the pruning.
  - i. **Complete Prune Specifications** are used when circumstances deem the entire tree needs to be fully pruned.

- ii. **Safety Prune Specifications** require less pruning and are used when specific, possibly hazardous (dead/dying) limbs need removal to eliminate all safety concerns. Safety pruning may be recommended in some circumstances instead of a complete prune. Safety pruning specifications are used for "as needed" pruning as outlined above and address only safety concerns. Safety pruning includes only the basic requirements and does not include the fine pruning detail work outlined in a complete prune.
- iii. **Power Line Clearance Prune (PLC) Specifications** are used for private tree power line clearance work and for street tree (PLC) pruning when the tree is pruned between its periodic complete pruning cycles.
- iv. **Palm Pruning Specifications** are used when pruning any type of palm.

**C. GENERAL REQUIREMENTS:**

- a. The following requirements shall be used during any pruning work to be performed on City trees:
  - i. Dispose of all tree debris generated.
  - ii. Ensure that good traffic control measures are utilized at all times.
  - iii. Minimize disruption of the public.
  - iv. Ensure that adequate safety measures are utilized at all times for employees and the public.
- b. Contact the Director of Parks and Community Services or designee prior to starting any tree work.

**D. CERTIFIED ARBORIST:**

- a. The Contractor shall ensure that a certified arborist, as accredited by the International Society of Arboriculture oversees the tree work according to these specifications.

**E. SPECIFIC TREE PRUNING SPECIFICATIONS:**

- a. All persons performing tree work on City trees must be trained according to tree care standards accepted by the International Society of Arboriculture.
- b. All persons performing tree work on City trees in or around primary electrical lines must be trained to do so according to the "Electrical Safety Orders" of the State of California, including all amendments and revisions.
- c. When tree pruning cuts are made to a side limb, such remaining limb must possess a basal thickness of at least one third (1/3) of the diameter of the wound so affected. Such cuts shall be considered proper only when such remaining limb is vigorous enough to maintain adequate foliage to

produce wood growth capable of callusing the pruning cut so affected within a reasonable amount of time.

- d. All final tree pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Flush cuts, which produce large wounds or weaken the tree at the cut, shall not be made. The branch collar shall not be removed.
- e. Tree limbs shall be removed and controlled in such a manner as to cause no damage to other parts of the tree, or to other plants or property.
- f. All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on such tree. All major diseases and/or pest problems shall be promptly reported to the Director of Parks and Community Services or designee.
- g. All cutting tools and saws used in tree pruning shall be kept sharpened to result in final cuts with smooth wood surface and secure bark remaining intact. All trees six (6) inches in diameter or less shall be pruned with hand tools only. Chain saws will not be permitted on any trees six (6) inches in diameter or less. This is to prevent any unnecessary abrasions to cambial tissue that may predispose a tree to insect and/or disease problems.
- h. Whenever pruning cuts are to be made, while removing limbs too large to hold securely in one hand during the cutting operation, the limbs shall be cut off first, one (1) to two (2) feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent unnecessary tearing back of the bark and wood. Such cutting back shall not include the removal of any live, healthy limbs in excess of six (6) inches in diameter without prior approval from the Director of Parks and Community Services or designee.
- i. No more than twenty five (25) percent of the live wood may be removed from the crown of any tree, without approval of the Director of Parks and Community Services or designee, excepting live oaks, which are limited to no more than ten (10) percent. Resulting in keeping as much of the crown of the tree as possible.
- j. Any extraneous metal, wire, rubber or other material (i.e. stakes, ties) interfering with tree growth shall be removed immediately.
- k. Any defective or weakened trees shall be reported to the Director of Parks and Community Services or designee. Specifically, any structural weakness of a tree, decayed trunk or branches, shall be reported in writing, noting the location of the tree by street address and a description of the hazard found in the tree.
- l. The use of climbing spurs or spike shoes in the act of pruning trees is prohibited unless specifically authorized by the Director of Parks and Community Services or designee.
- m. Beneficial animal, bird nests, or other nesting cavities shall be preserved and protected whenever feasible, unless doing so would create a hazard.

**F. COMPLETE TREE PRUNING SPECIFICATIONS:**

- a. Complete tree pruning shall consist of the total removal of those dead or living branches as may threaten the future health, strength and attractiveness of trees. Specifically, trees shall be pruned in such a manner as to:
  - i. Prevent branch and foliage interference with requirements of safe public passage. Over street clearance shall be kept to a minimum of sixteen (16) feet above the paved surface of the street, fifteen (15) feet above the curb and eight (8) feet above the surface of a public sidewalk or pedestrian way. Exceptions are allowed for young trees, which would be irreparably damaged by such pruning action.
  - ii. Remove all dead and dying branches and branch stubs that are two (2) inches in diameter or larger.
  - iii. Remove all broken or loose branches.
  - iv. Remove any live branches, which interfere with the tree's structural strength, and healthful development, which will include the following:
    - 1. Branches, which rub and abrade a more important branch.
    - 2. Branches of weak structure, which are not important to the framework of the tree.
    - 3. Branches, which if allowed to grow, would wedge apart the junction of more important branches.
    - 4. Branches forming multiple leaders in a single leader type tree.
    - 5. Branches near the end of a limb, which will produce more weight or offer more resistance to wind than the limbs are likely to support.
    - 6. Selective removal of undesirable sucker and sprout growth paying specific attention not to nick or damage the sprout "burl".
    - 7. Selective removal of one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
    - 8. Selective removal of limbs obstructing buildings or other structures or traffic signs. Generally, limbs closer than five (5) feet to a building or other structure should be removed unless doing so would severely damage a tree.
    - 9. Removal of branches, which project too far outward beyond an otherwise symmetrical form.

- v. Cut back ends of branches and reduce weight where excessive overburden appears likely to result in breakage of supporting limbs.
- vi. Clear trees of sprout or sucker growth to a minimum height of eight (8) feet above ground level. Exceptions are allowed for young trees, which would be irreparably damaged by such pruning action.
- vii. Obtain a balanced appearance when viewed from the opposite side of the street immediately opposite the tree, unless authorized by the Director of Parks and Community Services or designee to do otherwise.
- viii. Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to said trees.
- ix. Clear all branches and foliage within ten (10) feet of primary electrical lines and three (3) to five (5) feet of secondary electrical lines.
- x. Clear all branches that interfere with telephone, cable and other utility lines within one (1) foot of lines, wherever feasible.

**G. SAFETY TREE PRUNING SPECIFICATIONS:**

- a. Safety tree pruning shall consist of the total removal of those dead or living branches as may menace the future health, strength and attractiveness of trees.
- b. Specifically, trees shall be pruned in such a manner as to:
  - i. Prevent branch and foliage interference with requirements of safe public passage. Over street clearance shall be kept to a minimum of sixteen (16) feet above the paved surface of the street, fifteen (15) feet above the curb and eight (8) feet above the surface of a public sidewalk or pedestrian way. Exceptions are allowed for young trees, which would be irreparably damaged by such pruning action.
  - ii. Remove dead and dying branches and branch stubs that are two (2) inches in diameter or more.
  - iii. Remove all broken or loose branches.
  - iv. Removing any live branches, which interfere with the tree's structural strength and healthful development, will include the following:
    - 1. Limbs of weak structure or otherwise hazardous.
    - 2. Selective removal of limbs obstructing buildings or other structures or traffic signs. Generally, limbs closer than five

(5) feet to a building or other structure should be removed unless doing so would severely damage a tree.

3. Clear trees of sprout or sucker growth to a minimum height of eight (8) feet above ground level. Exceptions are allowed for young trees, which would be irreparably damaged by such pruning action.

#### **H. POWER LINE CLEARANCE (PLC) PRUNING SPECIFICATIONS:**

- a. When trees are in the proximity of overhead energized lines and equipment, reliability of service, safety, and governmental standards require a reasonable amount of tree pruning to avoid conductor contacts and grounding of circuits through the trees. Power line clearance pruning, therefore, shall consist of the removal of tree branches for proper electric line clearance in order to minimize the likelihood of power outages and improve safety.
- b. Specifically, trees shall be pruned in such a manner as to:
  - i. Clear all branches and foliage within ten (10) feet of primary electrical lines.
  - ii. Clear all branches that interfere with secondary electric lines within three (3) to five (5) feet.
  - iii. Protect current tree health, condition and symmetry using Dr. Alex Shigo's book, *Pruning Trees Near Electric Utility Lines* as a guide.
- c. During the tree pruning process, all safe minimum working distances for energized conductors shall be observed. These clearances are defined under ANSI Z133.1-2006, *Tree Care Safety Standards*. Current ANSI specifications will supersede these requirements when they take effect. Any contact with energized lines shall be promptly reported to the Director of Parks and Community Services or designee.
- d. Access backyards must be closely coordinated with the property owner, whenever feasible.

#### **I. PALM PRUNING SPECIFICATIONS:**

- a. Palm trees shall be pruned according as follows:
  - i. The removal of all dead fronds and other dead plant parts from the trunk. All loose frond sheaths shall be removed along the entire length of the palm trunk.
  - ii. The removal of all flower and fruit parts whether dead or alive.
  - iii. The use of climbing spurs or spike shoes in the act of pruning trees is only allowed on palm trees that are too high to reach with a bucket truck and are prohibited below 30' feet.

- iv. Canary Island date palm (*Phoenix Canariensis*) trunks shall be cleaned of any weed species. The immediate area below the green fronds shall be trimmed to a symmetrical (pineapple) appearance. The shape shall not exceed a minimum of forty-eight (48) inches or a maximum of sixty- (60) inches length below the green fronds. The trunk when pruning operations are complete shall be left in a clean, unscathed appearance throughout the entire length of the palm trunk. Canary Island date palms shall be pruned using a sterilized handsaw. The handsaw must be cleaned and sterilized before and after pruning each tree.
- v. Inspect the entire length of trunk on all *Phoenix canariensis* and *Phoenix dactylifera* Palm Trees, especially the upper zone just below the crown, by tapping with a mallet (sounding) in conjunction with pruning; report any damage, decay, or deterioration.

#### **J. UNACCEPTABLE PRUNING:**

- a. The procedures including but not limited to those listed below will result in tree decline and are not allowed (storm damage and other extenuating circumstances exempted):
  - i. Severe cutting back of all growing tips usually referred to as topping, pollarding, or hat racking.
  - ii. Flush cutting where a cut is made even with the surface of the trunk or limb, removing the branch collar and branch bark ridge.
  - iii. Stub cutting where branch removal results in the base of branch removed protruding more than approximately one fourth (1/4) inch beyond the zone of branch collar and branch bark ridge.
  - iv. Removal of a healthy main leader, for reasons other than power line clearance.
  - v. Excessive cutting or lifting that exceeds the International Society of Arboriculture or these specifications.
- b. Contractor shall replace at contractor's sole expense any trees that have declined in health due to use of improper pruning procedures.

#### **K. PUBLIC SAFETY AND COOPERATION:**

- a. All tree work shall be conducted in a manner as to cause the least possible interference with, or annoyance to others.
- b. Pedestrian and vehicular traffic shall be allowed to pass through the work areas only under conditions of safety and with as little inconvenience and delay as possible. Unless the work area is totally barricaded or otherwise kept safe, at least one worker shall serve to coordinate safe operations on the ground at all times when work operations are in progress.

- i. Whenever larger tree sections are being cut in a treetop, which may endanger persons or property, such sections shall be secured by ropes and lowered safely to the ground in a controlled manner.
- ii. All fire hydrants, meter vaults, water and gas shut off valves and similar facilities must remain accessible during the course of work.
- iii. All tree work must comply with all tree related safety requirements as stated in the safety standards ANSI Z133.1-2006 of the American National Standards Institute, Inc. 1430 Broadway, New York, NY 10018.
- iv. Noise levels, resulting from tree work operations, must be kept to a minimum at all times. All tree work operations are subject to compliance with all local Noise Restrictions. Operation of tree work equipment shall not take place between the hours of 7:00 p.m. and 7:00 a.m. weekdays, or between 5:00 p.m. and 10:00 a.m. on weekends (Saturday and Sunday). Emergencies are exempt from any time restrictions.

**L. SITE CLEANUP:**

- a. Cleanup of any debris resulting from any tree pruning operations shall be promptly and properly accomplished. The work area shall be kept safe at all times until all operations are completed. Under no circumstances shall the accumulation of debris be allowed in such a manner as to result in a hazard to the public. All debris from tree operations shall be cleaned up each day before the work crew leaves the site, unless permission is given by the Director of Parks and Community Services or designee to do otherwise. All lawn areas, parkways, streets and sidewalks shall be raked and/or blown clean, and all brush, branches, or other debris shall be removed from the site. Areas are to be left in a condition equal to or better than that which existed prior to the commencement of tree pruning operations.
- b. All cuttings, branches, wood chips and other debris shall be cleared from the site and disposed of by the Contractor. The Contractor shall obtain any permits that may be required for this purpose. Disposal expenses will be the Contractor's responsibility. Debris, such as wood chips, shall be left on property only at the direct and specific request of the Director of Parks and Community Services or designee.

**M. INSPECTIONS:**

- a. The Director of Parks and Community Services or designee will inspect the work performed by the contractor to ensure completion of the pruning in accordance with these specifications.
- b. Should more than two inspections be required on trees needing additional work, the contractor will be billed for City staff time.

**EXHIBIT B**  
**Proposal**



City of Benicia  
Attn: Theron Jones  
Parks & Community Services Department  
250 East L Street  
Benicia, CA 94510

Regarding: Request for Proposal On Call Tree Service Work, Two Year Contract

*Contractor:*

**A Plus Tree, Inc**  
3490 Buskirk Ave  
Pleasant Hill, CA 94523  
Phone: (707) 644-1672  
Fax: (510) 740-3961

*Prepared By:*

Tabitha Huston | Sales Operations Manager  
tabitha@aplustree.com | (859) 806-1990

Submission Date: July 31st, 2019



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## ACKNOWLEDGEMENT & APPROACH

Having duly examined the requirements laid out in the City of Benicia's proposal request, we are confident that we have the experience and qualifications to fulfill all the responsibilities within the scope of services and requirements outlined the RFQ including but not limited to all tree maintenance, removals and any planting services.

A Plus meets all specific requirements and vendor qualifications, has a Certified Arborist on every crew, and maintains both safety and pruning practices according to industry standards as outlined in the most current ANSI A300 Standards.

## DESCRIPTION OF ORGANIZATION, MANAGEMENT, AND TEAM MEMBERS

A Plus Tree has been established in the San Francisco Bay Area since 2001. In the past 5 years we have extended our services from the Pacific North West down to San Diego. We are primarily Commercial (approx. 90-95%) and take pride in our professional quality of service and safety practices that are in accordance with industry standards. We are dedicated to the integrity of our business practices and are proud to say that we are a TCIA Accredited company.

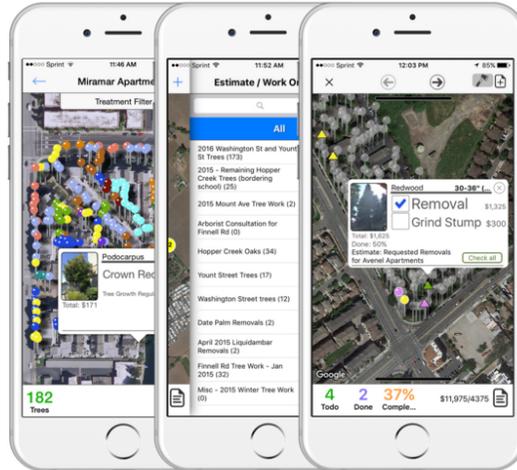
## OUR STORY

Back in 2002 when the yellow pages was actually a thing, late founder Jeremy Tibbets wanted to have his company seen before any other. Hence, "A+" was born. Thirteen years later, A Plus has evolved into a cutting-edge, professional tree care destination. Instead of A+ putting us first in the books, A Plus now signifies our level of commitment to perfection, excellence and awesomeness.

A Plus is built on one vision: "To inspire Urban Forest Management throughout the industry and America's urban communities by leveraging technology to improve tree care and maximize urban recycling." This is the mantra that fuels our connection to our environment and clients unlike any other. From the initial point of contact, to our crews in the field, to the ridiculously forward-thinking solutions we provide, it will be obvious to you that you are more than a tree owner...you own an Urban Forest!

Evident in our comprehensive in-house training programs to our client events and relationships, A Plus is dedicated to safety and its people. We thrive on pushing the limits in our industry to inspire a higher standard of tree care using innovative technology while keeping close attention to our client's needs.

In 2011, we created and developed our own tree inventory and management program called ArborPlus in which every employee is required and trained to use. It is a cloud-based, mobile platform that inventories, builds estimates and multiple years plans, tracks job production in the field, clocks crew hours, and provides a birds-eye overview to the financial health of our company. (Learn more at [www.arborplus.com](http://www.arborplus.com)). Example screen shots below:



**Figure 1 - Mobile Views of ArborPlus**

In addition to the key personnel noted on page 5, Nicholas Nociforo is our Urban Forest Manager who will be overseeing this project from a management standpoint. Nicholas is an ISA Certified Arborist and TRAQ certified and also holds his QAL. He comes with a wealth of knowledge in this industry and shows great passion.

On page 6, jobs similar in scope to the City of Benicia are noted that we have completed and continue to hold the contract to. Those include City of San Jose, City of Brentwood and Town of Yountville. We will designate a crew to this project out of Vallejo, we will have Nicholas our Urban Forest Manager as the main project manager and certified arborist, Rob Powell another one of our certified arborist and our Field Operations Manager, our dream team of a crew, with a crew lead at all times on the job site and 4 other crew members including climbers, senior climbers and groundsmen. This individuals are highly skilled and educated within the tree industry and are held to high standards by A Plus Tree, Inc. These workers will be available as a 24 hours a day response team for any emergency services required by the City of Benicia and respond within 6 hours of the requested services.

**ENVIRONMENTAL STEWARDSHIP**

It is part of A Plus Tree’s mission to use sustainable business practices and to leverage technology to maximize recycling. We recognize the huge amount of waste that pruning and removals can generate and have developed new departments within our company to re-use the waste efficiently and effectively.

**afterPLUS: Giving a 2nd life to urban trees**

For every usable piece of wood that we remove from the Urban Forest, we transport it back to our Mare Island Lumber Factory to be milled and re-lived as purchasable furniture and boards. The site is a 25,000 sq. ft. warehouse complete with a built-in kiln and a full-



time wood artisan. We also believe that the story of the wood is as important and the product itself. Thanks to ArborPlus, our tree-management app, we know where the wood came from, why it was removed and whom it belonged to.

#### Mulching Program

We offer every one of our clients the opportunity to recycle the wood ship waste we generate on-site. We don't just leave a pile of mulch and expect the client to spread it, we use our tow-behind mulch blower and re-install the wood chips right back on site. We also offer the additional service of re-grinding and coloring the mulch with our unique on-site horizontal grinder and coloring system.

#### Environmentally Friendly Fleet

Every single company car used by our sales team and upper management is a hybrid Prius. Our entire fleet is environmentally friendly where all of our trucks and equipment are 2016 and Tier 4 emission standard rated.

#### Fully Paperless

Our entire system from office, to sales, to crew is entirely paperless. With very employee outfitted with an iPhone or iPad and trained in our program ArborPlus, we are able to achieve a fully digital systematic process without printing a single map or work order. In our office, documents are scanned and stored digitally.



**ORGANIZATIONAL QUALIFICATIONS**

**KEY PERSONNEL**

Cyrus DeVere, **CEO**

- Doctorate, Business Administration, Walden University
- M.S, Business Administration and Management, University of San Diego

Chad Brey, *Director of Safety & Training*

- ISA Certified Arborist
- ISA Certified Tree Worker
- Certified Tree Risk Assessor
- North-American Climbing Champ

Steve Land, **VP of Operations**

Rob Powell, *Field Ops Manager*

- ISA Certified Arborist
- ISA Certified Tree Worker
- EHAP Certified

Lance Anderson, **Director of Operations**

Paul Tibbets, *Director Special Projects –*

- ISA Certified Arborist
- ISA Municipal Specialist

Chris Mazzer, *Field Ops Manager*

- ISA Certified Arborist
- ISA Certified Tree Worker
- Certified Tree Safety Professional

Michael Hawkins, **Director of HR**

Kristine Davis, **Director of Finance**

Peter Green, *Field Ops Manager*

- ISA Master Certified Arborist
- Certified Tree Worker
- Cert. Utility Arborist
- Qualified Tree Risk Assessor (TRAQ)
- Qualified Applicators License (QAL)

Jamie Roberts, **(Scheduling & Dispatch)**

Sarah Hon Gaskin, *Director of Marketing*

- ISA Certified Arborist
- B.S. Environmental Science, UC Berkeley
- CA Urban Forests Council Board Member

Nicholas Nociforo, *Urban Forest Manager*

- ISA Certified Arborist
- Project Manager for City of Benicia

**Total Company Certifications:**

Certified Arborist	19
Certified Tree Worker	10
Certified Utility Arborist	2
Municipal Specialist	1
Certified Tree Risk Assessor	3
Qualified Applicators License	2
Certified Training and Safety Professional (CTSP)	4
Electrical Hazard Awareness Program (EHAP)	3
North-American Climbing Champion	1
Arborists in Training (Becoming Arborists this year)	12



### QUALIFICATIONS (continued)

We currently manage over 900 commercial properties annually, with a combined total of over 185,000 trees (not including Government Agency contracts) that we have both inventoried and placed on 3-5 year management plans, complete with approximate budgets. To A Plus Tree, “manage” means that we effectively treat each client’s property as a mini urban forest, providing a greater view of their trees than strictly hazard pruning and building clearance. We like to educate our clients and provide a partnership rather than just be another vendor who can provide the lowest bid. Instead, we are advocates for one of their most valuable property assets.

Our ability to successfully and efficiently manage such large populations of trees is made possible by a program we developed called ArborPlus. It is a cloud-based program with both a mobile and web app.

#### *Current and Past Government Agency Contracts*

Town of Yountville - GIS, Pruning, Removal and Annual Management Plan; 2012 - Current

City of Vallejo - Tree Pruning and Maintenance Plan; 2008 - Current

City of Alameda - GIS Inventory, Tree Trimming and Removal Service; 2008-2012

City of San Jose - Special Districts: Tree Management and Maintenance Services – 2014-Current

City of Brentwood - Tree Trimming and Removal Services; 2019 - Current



## SCOPE OF WORK

Nicholas Nociforo will be our main project manager for the City of Benicia. Nicholas will work closely with our Field Ops Manager, Robert Powell who will help manage this project closely from an operational standpoint. The main crew leader, Patrick Salas will assess the site daily with the crew, including Climber(s) and Groundsperson(s), and complete a site-specific job site safety analysis. Hazard mitigations will be put in place before commencement of work. Emergency response plan will be noted on the JSA and reported to the point of contact at the City of Benicia accordingly. Work outside of emergency work will be completed Monday through Friday, 7:00am to 8:00pm.

Jobs requiring traffic control will be coordinated accordingly by A Plus Tree, Inc. and the Director of Parks and Community Services at the City of Benicia or the designee. Trees removals will be dismantled by either manual felling or by aerial lift truck and cut down with stumps left to 4' above grade. The material will be processed with a Vermeer CTX100 mini skid steer if needed and either a BC1500 chipper, BC1800 chipper, or AX19 whole tree chipper, depending on job needs. Chipped material debris will be hauled off site and disposed of with 30 Yd Freightliner M2 at the provided location at the City Cemetary located at 100 Riverhill Drive; any disposal of palm fronds and palm tree debris will be hauled offsite to be disposed of – receipts will be provided as evidence from the disposal facility being utilized. All equipment to be implemented is 2016 or newer and meets the Tier 4 Final standard for emissions. Adequate spill containment will be on site at all times should a hydraulic leak occur.

Trees will be field marked according to inventory provided in PDF from our ArborPlus app. Upon arrival, crews will have a safety meeting and review job plan for the day before any cutting or removals happen. Safety protection worn will consist of head, eye and ear protection, hi-vis vests, and appropriate footwear. Fall arrest harnesses will be worn in lift trucks.

Trees will be pruned by use of the following techniques

- By use of chainsaws, hand saws, pole pruners, and power pole saws dependent on situation
- Use of climbing or aerial lift to access trees if not accessible by the ground
- Trees will be pruned by ISA and ANSI A300 Standards
- Trees will not be reduced more than 25% and for oaks, no more than 10%
- Any young tree will be exempted from pruning if the pruning will cause damage to health

Trees will be removed by use of the below techniques:

- Manual felling
- By use of aerial lift device (bucket truck)
- By use of ropes and rigging equipment if felling and aerial lift are not applicable

Trees will be installed using following techniques:

- Hole dug to accommodate size of root ball



- Use of stakes to support the tree using rubber ties
- Tree well around base to allow for adequate watering
- Trees will be watered with 5 gallons of water at times planting
- Any trees with metal, rubber, or other materials impeding on growth will be removed

Material will be handled by use of below equipment:

- Vermeer CTX100
- Freightliner M2 Log Loader

Material will be processed and hauled off site by use of below equipment:

- Vermeer AX19 Whole Tree Chipper
- Freightliner M2 30 YD Chip truck
- Altec LR70 Bucket truck

All tree work conducted by A Plus Tree, Inc. will be recorded in ArborPlus which allows A Plus Tree to allow automatic uploads in the City of Benicia's Tree Inventory Database. These two applications can be synced which provides real time data as jobs are completed.

#### PROPOSED PROJECT SCHEDULE

As soon as this contract is awarded, A Plus Tree, Inc. will begin work accordingly. Work will be completed in a timely manner and held to the City of Benicia's quality standards. Work outside of emergency work will be completed Monday through Friday, 7:00am to 8:00pm to be in compliance with the City's noise ordinance standards.

**Appendix D  
Bid Schedule**

Unit prices should include materials, supervision, labor, and equipment needed for the satisfactory completion of each project.

**Tree and Stump Removal**

Diameter at Breast Height (DBH)	Cost per Tree	Cost per Stump Removal
Up to 8" DBH	\$ 95.00	\$ 80.00
8"-16" DBH	\$ 200.00	\$ 150.00
16"-24" DBH	\$ 375.00	\$ 200.00
24"-36" DBH	\$ 650.00	\$ 300.00
Over 36" DBH	\$ 1000.00	\$ 400.00

**Tree Pruning**

Diameter at Breast Height (DBH)	Cost per Tree
Up to 8" DBH	\$ 43.00
8"-16" DBH	\$ 85.00
16"-24" DBH	\$ 215.00
24"-36" DBH	\$ 285.00
Over 36" DBH	\$ 395.00

**Tree Planting**

Size	Cost per Tree	Root Barrier (minimum 18" deep)
5 Gallon Trees	\$ 100.00	\$ 100.00
15 Gallon Trees	\$ 275.00	\$ 200.00
24" Box Trees	\$ 550.00	\$ 300.00
36" Box Trees	\$ 1700.00	\$ 400.00
Over 36" DBH	\$ 2500.00	\$ 500.00

**Emergency Call Outs**

In addition to the charges listed above, state the additional flat fee or charge, if any, for an emergency service response within two (2) hours	\$ 200 per man per hour
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## REFERENCES

- 1) Town of Yountville  
6550 Yount Street  
Contact: Larry Handcock | lhandcock@yville.com

Length of Contract: 2012-Current

Services:

Pruning

Removal

Tree Installation

Plant Health Care (PHC)

Annual Maintenance Plan and Budget

Consulting Arborist

Tree Inventory and Management

- 2) City of San Jose - Special Districts  
200 E. Santa Clara Street  
Contact: Jean Micah, Special Districts Arborist Technician | 408-202-5415

Length of Contract: 2014-Current

Services:

Pruning

Removal

Tree Installation

- 3) City of Brentwood  
150 City Park Way  
Contact: Aaron Wanden, Parks Maintenance Manager | awanden@brentwoodca.gov

Length of Contract: 2019-Current

Services:

Pruning

Removal

Tree Installation

Plant Health Care (PHC)



**AGENDA ITEM  
CITY COUNCIL MEETING - DECEMBER 17, 2019  
CONSENT CALENDAR**

**TO :** City Council

**FROM :** Public Works Director

**SUBJECT :** **APPROVAL OF CONTRACT CHANGE ORDERS AND ACCEPTANCE OF THE WASTEWATER TREATMENT PLANT GRIT BASINS IMPROVEMENT PROJECT**

**EXECUTIVE SUMMARY:**

The Wastewater Treatment Plant Grit Basins Improvement Project is complete and consisted of replacing the grit collection machinery and recoating the three concrete grit collector basins.

**RECOMMENDATION:**

Adopt a resolution (Attachment 1) approving Contract Change Order Nos. 1 through 4 and accepting the Wastewater Treatment Plant Grit Basins Improvement Project as complete, authorizing the City Manager to sign the Notice of Completion (Attachment 2), and authorizing the City Clerk to file said notice with the Solano County Recorder.

**BUDGET INFORMATION:**

The budget of the Wastewater Treatment Plant Grit Basins Improvement Project was \$453,200, which included construction (\$412,000) and contingency (10% or \$41,200).

Expenditures for the project are outlined below:

<b>Description</b>	<b>Amount</b>	<b>Reason for Change Order/ Inspection:</b>
Original Construction Contract Amount	\$412,000	
Change Order No. 1	\$2,925	Concrete core-drilling for electrical conduit installation.
Change Order No. 2	\$3,213	Approximately 30 sq. ft. of deep concrete repairs.
Change Order No. 3	\$4,036	Corroded rebar repair.
Change Order No. 4	\$6,142	Mortar lining of 3 grit basins due to deteriorated condition of existing concrete.
<i>Total Construction Cost for Notice of Completion</i>	\$428,316	

There were other project related expenditures, which included inspection and equipment. West Coast Coating Consultants was retained to provide onsite inspection during coating application for a cost of \$6,800, and temporary sewage bypassing equipment was provided by Rain For Rent for a cost of \$21,353.33. These activities had separate contracts. Sufficient funds for this project were available in Account No. 7108030-7087 (Wastewater Preventative Maintenance Fund).

**BACKGROUND:**

On March 19, 2019, City Council adopted Resolution No. 19-15, awarding the Wastewater Treatment Plant Grit Basins Improvement Project to W.M. Lyles Company. The work consisted of the removal and replacement of three rotary grit collection machines and the epoxy recoating of the interior of three concrete grit-settling basins. Staff received training from the manufacturer of the system on November 6, 2019, and construction was completed on November 15, 2019.

**NEXT STEPS:**

The City Engineer found the work to be acceptable and recommends that the City Council accept the work and release the 5% retention 35 days after the Notice of Completion is filed with Solano County.

**ALTERNATIVE ACTIONS:**

None.

<b>General Plan</b>	Overarching Goal of the General Plan: Sustainability
	Goal 2.28: Improve and maintain public facilities and services

<b>Strategic Plan</b>	Strategic Issue #1: Protecting Community Health and Safety
	Strategic Issue #4: Preserve and Enhance City Assets and Infrastructure

<b>CEQA Analysis</b>	This project is Categorical Exempt per CEQA Section 15301, Existing Facilities, which exempts operation, maintenance, and minor alteration of existing facilities and mechanical equipment involving negligible or no expansion of use.
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**ATTACHMENTS:**

1. Resolution – Acceptance of WWTP Grit Basins Improvement Project
2. Notice of Completion – WWTP Grit Basins Improvement Project

*For more information contact: Laura Pate, Project Manager - Utilities  
 Phone: (707) 746-4386  
 E-mail: LPate@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING CONTRACT CHANGE ORDER NOS. 1 THROUGH 4 AND ACCEPTING THE WASTEWATER TREATMENT PLANT GRIT BASINS IMPROVEMENT PROJECT AS COMPLETE, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, by Resolution No. 19-15, City Council awarded the construction contract for the Wastewater Treatment Plant Grit Basins Improvement Project to W.M. Lyles Company in the amount of \$412,000; and

**WHEREAS**, there were four Contract Change Orders in the net amount of \$16,316; therefore the final construction cost was \$428,316; and

**WHEREAS**, an Agreement for Contract Services was executed for coating inspection with West Coast Coating Consultants, Inc. and the total cost was \$6,800; and

**WHEREAS**, a Master Rental Agreement was executed for bypass pumping with Rain For Rent and the total cost was \$21,353.33; and

**WHEREAS**, W.M. Lyles Company has completed the work in accordance with the plans and specifications and to the satisfaction of the City Engineer for a final construction cost of \$428,316.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the Wastewater Treatment Plant Grit Basins Improvement Project as complete for a final construction cost of \$428,316, funded by the Wastewater Preventative Maintenance Account.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to sign the Notice of Completion, release any retention held for the project, and the City Clerk is authorized to file said Notice with the Solano County Recorder.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

Recorded at the request of:  
CITY OF BENICIA

After recording return to:  
CITY OF BENICIA  
ATTN: PUBLIC WORKS DIRECTOR  
250 EAST L STREET  
BENICIA, CA 94510

**NOTICE OF COMPLETION**

NOTICE IS HEREBY GIVEN THAT:

1. The City of Benicia, 250 East L Street, Benicia, CA, 94510, is the owner of the property described as:  
  
**Wastewater Treatment Plant, 614 East 5<sup>th</sup> Street, Benicia, CA, APN 080-180-040**
2. The nature of the City's ownership of the above listed properties is: Fee Simple.
3. A Capital Improvement Project known as the **Wastewater Treatment Plant Grit Basins Improvement Project** PW#18-10 was completed in the amount of \$428,316, which included four contract change orders, and accepted by the City Council of the City of Benicia on December 17, 2019.
4. The name of the contractor for the improvements was **W.M. Lyles Company.**

CITY OF BENICIA

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

By: \_\_\_\_\_  
Lorie Tinfow, City Manager

Attest:

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

The undersigned, being duly sworn, says: that she is the person signing the above document; that she has read the same and knows the contents thereof, and that the facts stated therein are true, under penalty of perjury.

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



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
CONSENT CALENDAR**

**TO :** City Manager

**FROM :** Public Works Director

**SUBJECT :** **APPROVAL OF AMENDMENT TO AGREEMENT WITH HENDERSON POWER SERVICES, LLC FOR EMERGENCY GENERATOR UPGRADES AT THE WASTEWATER PLANT**

**EXECUTIVE SUMMARY:**

The proposed amendment to the agreement with Henderson Power Services, LLC would allow for the replacement of failing control systems with new control components on the backup electrical generator at the Wastewater Treatment Plant (WWTP).

**RECOMMENDATION:**

Adopt the resolution (Attachment 1) approving the Amendment to Agreement No. 2 (Attachment 2) with Henderson Power Services, LLC, to replace and upgrade control systems components in the emergency generator at the WWTP for an amount not-to-exceed \$79,431, and authorizing the City Manager to sign the amendment on behalf of the City.

**BUDGET INFORMATION:**

A budget adjustment of \$79,431 is requested to cover the cost of this work. Enough funds are available in Wastewater Enterprise Reserves. The cost will be paid from Wastewater Treatment “Capitalized Equipment” Account No. 7108030-7410. If approved, the upgrades will be rate-payer funded.

**BACKGROUND:**

Backup emergency power is required to ensure wastewater treatment during a power outage. The WWTP emergency generator was installed in 2003. This year, after routine testing, the generator control components failed inspection. The failing controller is no longer supported by the manufacturer. The upgraded system will enable direct interface with the control unit to identify faults, failures, and optimize system operations. Henderson Power Services, LLC will partner with Martin Energy for this project.

After conducting a Request For Proposal process in September 2016, Henderson Power Services, LLC was awarded a Generator Maintenance Services Agreement to test, service, and perform minor repairs to the WWTP generator. An amendment was subsequently approved to extend the agreement term through Fiscal Year 2020-21. Staff recommends approving a second amendment with Henderson Power Services, LLC for the replacement and upgrade of the control system

components of the emergency generator. This upgrade is not covered under the existing contract.

**NEXT STEPS:**

If the resolution is adopted, staff will continue processing the amendment. After the contract requirements are met, the purchase and subsequent installation can commence.

**ALTERNATIVE ACTIONS:**

The Council could choose to not approve this contract, which would delay or possibly prevent the purchase of this important replacement equipment for the emergency generator at the WWTP.

<b>General Plan</b>	Goal 2.28: Improve and maintain public facilities and services
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<b>Strategic Plan</b>	Strategic Issue #1: Protecting Community Health and Safety
	Strategic Issue #4: Preserving and Enhancing Infrastructure

<b>CEQA Analysis</b>	This project is Categorical Exempt per CEQA Section 15301.
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**ATTACHMENTS:**

1. Resolution – Emergency Generator Upgrades at WWTP
2. Amendment to Agreement No. 2 – Henderson Power Services, LLC

*For more information contact: Kyle Ochendusko, Deputy Public Works Director*

*Phone: 707.746.4376*

*E-mail: KOchendusko@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AMENDMENT TO AGREEMENT NO. 2 WITH HENDERSON POWER SERVICES, LLC TO REPLACE AND UPGRADE CONTROL SYSTEM COMPONENTS IN THE EMERGENCY GENERATOR AT THE WASTEWATER TREATMENT PLANT FOR AN AMOUNT NOT-TO-EXCEED \$79,431, AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY**

**WHEREAS**, after conducting a Request For Proposal process, the City entered into an agreement with Henderson Power Services, LLC in 2016 for generator maintenance services and an amendment was subsequently approved to extend the term through Fiscal Year 2020-21; and

**WHEREAS**, staff recommends approval of a second amendment to replace and upgrade control system components in the generator, which is not covered under the current agreement.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves Amendment to Agreement No. 2 with Henderson Power Services, LLC to replace and upgrade control system components in the emergency generator at the Wastewater Treatment Plant for an amount not-to-exceed \$79,431, and authorizes the City Manager to sign the amendment on behalf of the City.

**BE IT FURTHER RESOLVED** that a budget adjustment in the amount of \$79,431 is approved from Wastewater Enterprise Reserves to Wastewater Treatment “Capitalized Equipment” Account No. 7108030-7410.

\*\*\*\*\*

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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

CONTRACT # \_\_\_ - \_\_\_

**AMENDMENT TO AGREEMENT NO. 2**

This Amendment of the Agreement, entered into this 17th day of December, 2019, by and between the City of Benicia, a municipal corporation (hereinafter "CITY") and Henderson Power Services, LLC, with its primary office located at 753 East Street, Woodland, CA 95776, (hereinafter "CONTRACTOR"), is made with reference to the following:

**RECITALS**

A. On November 3, 2016, an Agreement for Consulting Services (Contract #16-249) was entered into by and between CITY and CONTRACTOR, ("Agreement"); and

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

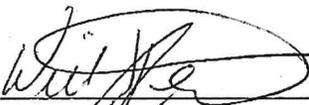
**NOW, THEREFORE**, it is mutually agreed by and between and undersigned parties as follows:

1. Paragraph 2 (Scope of Work) of the Agreement is modified to include the additional services described in the attached Proposal dated November 15, 2019 for Guascor Generator Controls Upgrade Project.
2. Paragraph 3 (Compensation) of the Agreement is modified to include an additional \$79,431.
3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

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

[SIGNATURES ON THE FOLLOWING PAGE]

CONTRACTOR

BY: 

Title: President  
WILL HENDERSON

CITY OF BENICIA  
A Municipal Corporation

\_\_\_\_\_  
Lorie Tinfow  
CITY MANAGER

RECOMMENDED BY:

\_\_\_\_\_  
William Tarbox  
DEPARTMENT HEAD

APPROVED AS TO FORM:

\_\_\_\_\_  
Benjamin L. Stock  
CITY ATTORNEY



## Henderson Power Services, LLC

753 East Street  
Woodland, CA 95776  
530-383-5527  
License Number- 990960

November 15, 2019

Jeff Gregory  
City of Benicia WWTP  
614 East 5<sup>th</sup> Street  
Benicia, CA 94510

Subject: Guascor Generator Controls Upgrade Project

Dear Jeff,

Thank you for the opportunity to provide you with a proposal for the Guascor generator controls upgrade project. This proposal is an upgrade of the generator controls, generator governor system and the generator air/fuel ratio control system.

Martin Energy and Henderson Power Services will work together on this project. Martin Energy will be the lead on the upgrade project with Henderson Power Services supplying support, scheduling, logistics and assistance where needed.

### **About Martin Energy**

Martin Energy is a complete solutions provider for Generator Packages, Combined Heat and Power (CHP) Systems, MicroGrids, and Anaerobic Digester Design & Construction.

Martin Energy has the capacity to supply and service the full range of power generation products, including generator sets, switchgear, gas handling skids, waste heat recovery systems, absorption chilling systems, carbon credit monitoring systems, and much more.

Their services include in-house electrical and mechanical engineering solutions.

Their experience covers a wide variety of applications: greenhouses, hospitals, universities, landfills, wastewater treatment plants, agricultural establishments, mining operations, oil fields, and more.

### **Generator Controls Upgrade Project Scope of Work**

- Remove the existing generator control cabinet / enclosure
- Install new prewired generator control cabinet / enclosure
- Install a new ComAp 12" color touch screen display
- Install a new ComAp IntelliSys base box controller
- Drain cooling system to allow installation of new temperature transmitters
- Install new temperature (2) and pressure (1) transmitters

- Fill cooling system with new 50/50 premix coolant
- Install new ProAct governor system
- Install new VariFuel air/fuel ratio mixer
- Install new fuel regulator
- Install new NOx sensor
- Install and connect all necessary wiring
- Program new control to match the old Gencon logic
- Test and verify engine and generator safeties
- Load bank test and verify proper generator operation
- Train WWTP staff on new control operation

**Generator Control Upgrade pricing- \$79,431.00**

**Terms and Conditions**

- This quotation is firm for a period of 60 days.
- Quote is based on straight-time rate, Monday through Friday, with a start time from 6:00 to 8:00 a.m. excluding Holidays.

**Payment Terms:**

- 50% down payment at the start of the project
- 50% upon completion and WWTP staff training.

Let us know if you have any questions and thank you for the opportunity.

Best Regards,

*Will Henderson*

Will Henderson  
Henderson Power Services, LLC

\_\_\_\_\_  
Approval Signature

\_\_\_\_\_  
Date



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
CONSENT CALENDAR**

**TO** : City Manager

**FROM** : Public Works Director

**SUBJECT** : **APPROVAL OF AMENDMENT TO AGREEMENT NO. 3 WITH TULLY & YOUNG, INC. FOR WATER MANAGEMENT STRATEGIES CONSULTATION**

**EXECUTIVE SUMMARY:**

Staff is proposing an amendment to the existing agreement with Tully & Young, Inc. to assist the City with water rights and water conservation analysis.

**RECOMMENDATION:**

Adopt the resolution (Attachment 1) approving the Amendment to Agreement No. 3 (Attachment 2) with Tully & Young, Inc. for additional water management strategies consultation for an amount not-to-exceed \$22,660, and authorizing the City Manager to sign the agreement on behalf of the City.

**BUDGET INFORMATION:**

A budget adjustment of \$22,660 is requested to cover the cost of the amendment. Enough funds are available in Water Enterprise Reserves. The cost will be paid from Water Treatment “Professional Services” Account No. 7508020-7011. If approved, this work will be rate-payer funded.

**BACKGROUND:**

The City entered into an Agreement with Tully & Young, Inc. on September 14, 2019 for long-term water management strategies for \$24,900. The first amendment to this agreement was to augment water management strategies and reliability work for \$24,900. The second amendment was for initial historical water rights investigation for \$10,000. Staff recommends a third amendment in the amount of \$22,660. This amendment will conclude the historical research and confirm the City’s water rights with the State Water Resources Control Board. Also, Tully & Young, Inc. will provide water conservation analysis and recommendations to help the City maintain its water conservation targets (20% reduction per capita by 2020).

**NEXT STEPS:**

If the resolution is adopted, staff will continue processing the amendment to the agreement.

**ALTERNATIVE ACTIONS:**

The Council could choose to not approve this agreement which would delay or prevent staff from completing the water rights filing process.

<b>General Plan</b>	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

<b>Strategic Plan</b>	Strategic Issue #1: Protecting Community Health and Safety
	Strategic Issue #3: Strengthening Economic and Fiscal Conditions Strategy #4: Manage City finances prudently
	Strategic Issue #4: Preserving and Enhancing Infrastructure

<b>CEQA Analysis</b>	This project is Categorically Exempt per CEQA Section 15301.
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**ATTACHMENTS:**

1. Resolution – Amendment to Tully & Young, Inc. Agreement
2. Amendment to Agreement No. 3 – Tully & Young, Inc.

*For more information contact: Kyle Ochenduszko, Deputy Public Works Director*

*Phone: 707.746.4376*

*E-mail: KOchenduszko@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE AMENDMENT TO AGREEMENT NO. 3 WITH TULLY AND YOUNG, INC. FOR ADDITIONAL WATER MANAGEMENT STRATEGIES CONSULTATION FOR AN AMOUNT NOT-TO-EXCEED \$22,660 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY**

**WHEREAS**, the City entered into an agreement with Tully & Young, Inc. on September 14, 2019, for long-term water management strategies; and

**WHEREAS**, two amendments to the agreement have been approved by staff; and

**WHEREAS**, staff recommends approval of a third amendment in order to continue with water rights and water conservation analysis.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia does hereby approve the Amendment to Agreement No. 3 with Tully & Young, Inc. for additional water management strategies consultation for an amount not-to-exceed \$22,660, and authorizes the City Manager to sign the amendment on behalf of the City.

**BE IT FURTHER RESOLVED** that a budget adjustment in the amount of \$22,660 is approved from Water Enterprise Reserves to Water Treatment “Professional Services” Account No. 7508020-7011.

\*\*\*\*\*

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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

CONTRACT # \_\_\_ - \_\_\_

**AMENDMENT TO AGREEMENT NO. 3**

This Amendment of the Agreement, entered into this 17th day of December, 2019, by and between the City of Benicia, a municipal corporation (hereinafter "CITY") and Tully & Young, Inc., with its primary office located at 965 University Ave, Suite 222, Sacramento CA 95825, (hereinafter "CONTRACTOR"), is made with reference to the following:

**RECITALS**

A. On September 14, 2018, an agreement was entered into by and between CITY and CONTRACTOR, ("Agreement"); and

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

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

1. Paragraph 2 (Scope of Services) of the Agreement is modified to include Water Rights Filing and Water Conservation and Integration Analysis tasks as outlined in the attached proposed scope of work dated November 21, 2019.
2. Paragraph 3 (Compensation) of the Agreement is modified to include an additional \$22,660.
3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

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

[SIGNATURES ON THE FOLLOWING PAGE]

CONTRACTOR

CITY OF BENICIA  
A Municipal Corporation

BY: 

\_\_\_\_\_  
Lorie Tinfow  
CITY MANAGER

Title: CEO

RECOMMENDED BY:

\_\_\_\_\_  
William Tarbox  
DEPARTMENT HEAD

APPROVED AS TO FORM:

\_\_\_\_\_  
Benjamin L. Stock  
CITY ATTORNEY



## SCOPE OF WORK

To: Carrie Wenslawski and Kyle Ochenduszko  
City of Benicia

Date: November 21, 2019

From: Tully & Young, Inc.

Subject: Proposed Scope of Work: Water Rights Filing

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Tully & Young (T&Y) will complete the following tasks in furtherance of its ongoing work with the City of Benicia to support its water supply preservation, development and management efforts.

### **Task 1 – SWRCB Pre-1914 Appropriative Water Rights Filing**

Tully & Young will use the information developed by JRP Historical Consulting, Inc. and documentation necessary for regulatory compliance to prepare a pre-1914 appropriative water right filing for the City of Benicia. Tully & Young anticipates undertaking the following actions:

- ◆ Prepare Initial Statement of Diversion and Use
  - Water Course Description
  - Point of Diversion and Place of Use Legal Description and Map
  - Direct Diversion and Storage Information
  - Water Use and Water Conservation Actions
  - Water Diversion Measurement Actions
  - Reference to Historical Documentation
- ◆ Prepare Supplemental Statements of Diversion and Use
  - Historical Water Diversion, Storage, and Use under Right in Previous Years
  - Water Conservation Actions
  - Water Diversion Measurement Actions
- ◆ Coordinate Water Right Submittal with SWRCB Staff
  - Engage SWRCB Staff through email and phone communications
  - Respond to SWRCB Staff initiated correspondence

Estimated cost \$12,100.00

## Task 2 – Prepare 2017-2019 Water Conservation and Integration Analysis

Tully & Young will gather the City's 2019 water demand data and integrate that data with existing 2016-2018 demand data. Tully & Young will prepare initial water conservation estimation in order to assess City's progress to Urban Water Management Planning Act 2020 obligations. Tully & Young will recommend a course of action in order to ensure that City meets 2020 water conservation obligations under UWMP. Tully & Young will also assess water assets used in correlation with 2019 water demands. Tully & Young will integrate these findings into existing water analysis. Specific items incorporated into this effort will include:

- Gathering, sorting and analyzing 2019 water demands
- Analyzing water conservation in accordance with UWMP 2020 obligations
- Assessing water supplies used to meet water demands and the remaining water assets available for use in 2020 and beyond
- Integrating demand analysis with supply analysis for existing water asset strategy documentation.

Estimated cost \$10,560.00

### Project Costs

Under direction of City of Benicia's representatives, the tasks described above will be completed based on time and materials expended, and are expected not to exceed \$22,660.

Tully & Young will manage time-tracking and invoicing to balance costs over the duration of the project, though monthly amounts may vary. The following rates will apply:

#### **Billing Rates**

Principal	\$220/hour
Senior Resource Planner	\$175/hour
Resource Planner	\$155/hour
Administrative	\$75/hour
Mileage	\$0.58/mile (or current IRS rate)
Other Reimbursable Expenses	Actual Cost

**Period of Performance**

Work will be completed by December 31, 2020, unless the period of performance is extended by mutual written agreement between Client and T&Y.

If you have any questions or would like to discuss refinements to this proposal, please let me know. We look forward to hearing from you.

Sincerely,

*Gwyn-Mohr Tully*

Gwyn-Mohr Tully, J.D.

Principal

---

Please sign below and return a copy of the signed letter to Tully & Young, Inc. to initiate this effort.

**City of Benicia**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
CONSENT CALENDAR**

**TO** : City Manager

**FROM** : Public Works Director

**SUBJECT** : **APPROVAL OF AMENDMENT TO AGREEMENT WITH MEAD & HUNT FOR THE LAKE HERMAN DAM EMERGENCY ACTION PLAN**

**EXECUTIVE SUMMARY:**

Staff is proposing an amendment to an existing agreement with Mead & Hunt to assist the City in submitting the Lake Herman Dam Emergency Action Plan for final approval from the California Governor’s Office of Emergency Services (Cal OES).

**RECOMMENDATION:**

Adopt the resolution (Attachment 1) approving an Amendment to Agreement (Attachment 2) with Mead & Hunt for additional engineering services related to the Lake Herman Dam Emergency Action Plan for an amount not-to-exceed \$14,000, and authorizing the City Manager to sign the amendment on behalf of the City.

**BUDGET INFORMATION:**

A budget adjustment of \$14,000 is requested to cover the cost of the amendment. Enough funds are available in Water Enterprise Reserves. The cost will be paid from Water Treatment “Professional Services” Account No. 7508020-7011. If approved, this work will be rate-payer funded.

**BACKGROUND:**

The City entered into an Agreement for Consulting Services with Mead & Hunt on October 17, 2017, for preparation of the Lake Herman Dam Emergency Action Plan (EAP) and Flood Inundation Plan (FIP) for \$66,304. Under California State law that became effective July 1, 2017, the City was required to submit an EAP and FIP to the Department of Water Resources and the Governor’s Office of Emergency Services (Cal OES) by January 1, 2019.

The plans were submitted to the State on time. The City subsequently received formal notice from Cal OES stating that the EAP does not meet their current regulations. An amendment with Mead & Hunt is requested to address Cal OES’ comments and resubmit the EAP back to Cal OES.

**NEXT STEPS:**

If the resolution is adopted, staff will continue processing the amendment to agreement.

**ALTERNATIVE ACTIONS:**

The Council could choose to not approve this amendment which would prevent staff from completing this regulatory EAP.

<b>General Plan</b>	Goal: Overarching Goal of the General Plan: Healthy Community
	Goal 4.1.1: Strive to protect and enhance the safety and health of Benicians when making planning and policy decisions. Goal 4.1.4: Compile available information pertinent to the health and safety of Benicians. 4.13: Prevent property damage caused by flooding. 4.22: Update and maintain the City’s Emergency Response Plan

<b>Strategic Plan</b>	Strategic Issue #1: Protecting Community Health and Safety
	Strategy #3: Provide a high state of preparedness for disaster/emergencies

<b>CEQA Analysis</b>	This project is Categoricaly Exempt per CEQA Section 15301.
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**ATTACHMENTS:**

1. Resolution – Amendment to Mead & Hunt Agreement
2. Amendment to Agreement – Mead & Hunt

*For more information contact: Kyle Ochenduszk, Deputy Public Works Director*

*Phone: 707.746.4376*

*E-mail: KOchenduszk@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE AMENDMENT TO AGREEMENT WITH MEAD & HUNT FOR ADDITIONAL ENGINEERING SERVICES RELATED TO THE LAKE HERMAN DAM EMERGENCY ACTION PLAN FOR AN AMOUNT NOT-TO-EXCEED \$14,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY**

**WHEREAS**, the City entered into an agreement with Mead & Hunt on October 17, 2019, for preparation of the Lake Herman Dam Emergency Action Plan (EAP) and Flood Inundation Plan; and

**WHEREAS**, these regulatory required plans were submitted to the State on time and the City was subsequently notified that the EAP does not meet the requirements of the Governor’s Office of Emergency Services (Cal OES); and

**WHEREAS**, staff recommends approval of an amendment to assist the City with finalizing the EAP for final approval by Cal OES.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia does hereby approve the Amendment to Agreement with Mead & Hunt for additional engineering services related to the Lake Herman Dam EAP for an amount not-to-exceed \$14,000, and authorizes the City Manager to sign the amendment on behalf of the City.

**BE IT FURTHER RESOLVED** that a budget adjustment in the amount of \$14,000 is approved from Water Enterprise Reserves to Water Treatment “Professional Services” Account No. 7508020-7011.

\*\*\*\*\*

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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

CONTRACT # \_\_\_ - \_\_\_ - \_\_\_

**AMENDMENT TO AGREEMENT**

This Amendment of the Agreement, entered into this 17th day of December, 2019, by and between the City of Benicia, a municipal corporation (hereinafter "CITY") and Mead & Hunt, with its primary office located at 180 Promenade Circle, Suite 240, Sacramento, CA 95834, (hereinafter "CONTRACTOR"), is made with reference to the following:

**RECITALS**

A. On October 17, 2017, an Agreement for Consulting Services (Contract #17-353) was entered into by and between CITY and CONTRACTOR, ("Agreement"); and

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

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

1. Paragraph 2 (Scope of Work) of the Agreement is modified to include the additional services described in the attached Proposal dated August 21, 2019.
2. Paragraph 3 (Compensation) of the Agreement is modified to include an additional \$14,000.
3. Paragraph 5 (Term of Agreement) is modified to extend to December 31, 2020.
4. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

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

[SIGNATURES ON THE FOLLOWING PAGE]

CONTRACTOR

BY:   
Nathan Rockwood  
Title: Vice President

CITY OF BENICIA  
A Municipal Corporation

Lorie Tinfow  
CITY MANAGER

RECOMMENDED BY:

William Tarbox  
DEPARTMENT HEAD

APPROVED AS TO FORM:

Benjamin L. Stock  
CITY ATTORNEY



August 21, 2019

Kyle Ochendusko  
City of Benicia  
250 East L Street  
Benicia, CA 94510

Subject: Lake Herman Dam Emergency Action Plan – Amendment 1

Dear Kyle:

Mead & Hunt, Inc. (Mead & Hunt) is pleased to submit this proposal to provide engineering services for the above-referenced project.

### **Project Understanding**

Our proposal is based on email and phone conversations with you discussing the Cal OES review comments for the Lake Herman Dam Emergency Action Plan (EAP). Our existing Contract #17-353 and Purchase Order #18-1168 included scope to prepare the EAP, address City of Benicia review comments, and update the EAP again with comments identified during the tabletop exercise, all of which has been completed. The scope of services herein is related to obtaining Cal OES approval of the EAP. This Amendment will provide a vehicle for Mead & Hunt to work collaboratively with City of Benicia to address Cal OES review comments received to date, as well as future comments likely to be received throughout the Cal OES review process. Our understanding of the current Cal OES review process is that it is comprised of three levels of review:

1. Staff review (lead reviewer and Chief)
2. Panel review
3. Deputy Director review

Our experience indicates that each level may be comprised of multiple rounds of review, and that new comments may be introduced during subsequent reviews at the same level. Therefore, there is uncertainty regarding the total effort required to obtain Cal OES approval of an EAP.

Some review comments may be of an engineering nature, and therefore it may be expedient for Mead & Hunt to provide the requested information. Other comments may be general in nature and similar across all EAPs statewide, and therefore it may be expedient for Mead & Hunt to leverage our experience with similar comments for EAPs at other dams. Still other comments may be considered administrative in nature or may require site- or organization-specific information that can only be provided by City of

Kyle Ochendusko  
 August 21, 2019  
 Page 2

Benicia. Therefore, it is our understanding that Mead & Hunt and City of Benicia will decide together which comments (or portions thereof) will be addressed by Mead & Hunt and which will be addressed by City of Benicia staff. The objective is to balance the cost of consulting fees with the level of service needed to obtain Cal OES approval of the EAP.

## Scope of Services

After receipt of authorization to proceed, Mead & Hunt shall:

- Communicate with City of Benicia staff via phone call and/or email to determine which Cal OES comments (or portions thereof) will be addressed by Mead & Hunt, and which will be addressed by City of Benicia staff.
- Provide additional EAP content to City of Benicia for insertion into the EAP document.
- Communicate with Cal OES staff, if needed, to seek clarification of comments.
- We estimate a total of 90 hours of Mead & Hunt staff time will be needed to respond to review comments, including communication with Cal OES, project management and coordination.

## Responsibilities of City of Benicia

Our Scope of Services and Compensation are based on City of Benicia performing or providing the following:

- A designated representative with complete authority to transmit instructions and information, receive information, interpret policy, and define decisions.
- Protection of Mead & Hunt-supplied digital information or data, if any, from contamination, misuse, or changes.
- Maintain version control and format of the EAP document(s), incorporate information provided by Mead & Hunt, and submit the revised EAP to Cal OES.
- Coordinate with external agencies, if needed, to request information needed to complete the EAP.

## Project Schedule

- After receipt of authorization to proceed and receipt of each Cal OES EAP Review Report, Mead & Hunt will communicate with City of Benicia staff within **two weeks** to determine next steps.
- After deciding which comments will be addressed by Mead & Hunt, additional EAP content will be provided to City of Benicia within **one month**.

## Compensation

The work described under the Scope of Services will be performed on a time-and-expense basis in accordance with the *Mead & Hunt Standard Billing Rate Schedule*, which is attached hereto and made part of this Agreement and labeled as Exhibit C. The estimate of probable cost of engineering services is **\$14,000**. Because of the uncertainty regarding future Cal OES review and the division of responsibility,

Kyle Ochendusko  
August 21, 2019  
Page 3

Mead & Hunt has provided its best estimate (based upon our experience) for the level of effort. However, if the level of effort exceeds our estimate, a change order may be necessary in order to respond to all review comments.

**Authorization**

The Scope of Services and Compensation stated in this proposal are valid for a period of thirty (30) days from date of submission. If authorization to proceed is not received during this period, this proposal may be withdrawn or modified by Mead & Hunt.

Signatures of authorized representatives of City of Benicia and Mead & Hunt shall convert this proposal to an Agreement between the two parties, and receipt of one signed copy shall be considered authorization to proceed with the work described in the Scope of Services. All services shall be performed in accordance with the existing Agreement between City of Benicia and Mead & Hunt, designated Contract #17-353, executed on October 26, 2017.

We appreciate the opportunity to submit this proposal to City of Benicia.  
Respectfully submitted,

MEAD & HUNT, Inc.



Ryan Greif, PE, CFM  
Project Manager

Attachment

Accepted by: CITY OF BENICIA

Approved by: MEAD & HUNT, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Nathan Rockwood  
Title: Vice President

*The above person is authorized to sign for Client and bind the Client to the terms hereof.*

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

Date August 21, 2019

## EXHIBIT C

**MEAD & HUNT, Inc.**  
**Standard Billing Rate Schedule**  
**Effective January 1, 2019**

**Standard Billing Rates**

Clerical .....	\$77.00 / hour
Technical Editor .....	\$110.00 / hour
Senior Editor .....	\$178.00 / hour
Registered Land Surveyor .....	\$140.00 / hour
Accounting, Administrative Assistant .....	\$98.00 / hour
Technician I, Technical Writer .....	\$98.00 / hour
Technician II, Surveyor - Instrument Person .....	\$113.00 / hour
Technician III .....	\$130.00 / hour
Technician IV .....	\$145.00 / hour
Senior Technician .....	\$154.00 / hour
Engineer I, Scientist I, Architect I, Interior Designer I, Planner I .....	\$125.00 / hour
Engineer II, Scientist II, Architect II, Interior Designer II, Planner II .....	\$143.00 / hour
Engineer III, Scientist III, Architect III, Interior Designer III, Planner III .....	\$160.00 / hour
Senior Engineer, Senior Scientist, Senior Architect, Senior Interior Designer, Senior Planner, Senior Economist .....	\$178.00 / hour
Project Engineer, Project Scientist, Project Architect, Project Interior Designer, Project Planner .....	\$197.00 / hour
Senior Project Engineer, Senior Project Scientist, Senior Project Architect, Senior Project Interior Designer, Senior Project Planner .....	\$227.00 / hour
Senior Associate .....	\$253.00 / hour
Principal .....	\$276.00 / hour
Senior Client/Project Manager .....	\$276.00 / hour

**Expenses**

Geographic Information or GPS Systems .....	\$100.00 / day
Total Station Survey Equipment .....	\$110.00 / day
Charges for other equipment may appear in a proposal	
Out-Of-Pocket Direct Job Expenses .....	cost plus 15%
Such as reproductions, sub-consultants / contractors, etc.	

**Travel Expense**

Company or Personal Car Mileage .....	IRS rate / mile
Air and Surface Transportation .....	cost plus 15%
Lodging and Sustenance .....	cost plus 15%

**Billing & Payment**

Travel time is charged for work required to be performed out-of-office. A minimum of two hours will be billed for any work out-of-office.

Invoicing is on a monthly basis for work performed. Payment for services is due within 30 days from the date of the invoice. An interest charge of 1.5% per month is made on the unpaid balance starting 30 days after the date of invoice.

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This schedule of billing rates is effective January 1, 2019, and will remain in effect until December 31, 2019, unless unforeseen increases in operational costs are encountered. We reserve the right to change rates to reflect such increases.



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
CONSENT CALENDAR**

**TO** : City Manager

**FROM** : Public Works Director

**SUBJECT** : **APPROVAL OF PURCHASE OF STREAM FLOW GAGES FROM WESTERN HYDROLOGIC SYSTEMS**

**EXECUTIVE SUMMARY:**

The lake level indicator at Lake Herman Reservoir is at the end of its useful life and should be replaced with a new lake level indicator and two stream gages on Sulphur Springs Creek. These improvements will provide accurate, real time data to the Water Treatment Plant so operators can protect public safety. Staff is proposing an agreement to purchase these items from Western Hydrologic Systems.

**RECOMMENDATION:**

Adopt the resolution (Attachment 1) approving the Purchase and Installation Agreement (Attachment 2) with Western Hydrologic Systems for one automated reservoir level indicator, two stream flow gages, and data calibration/logging service for one year in the amount of \$51,920. Also, authorize the City Manager to sign the contract on behalf of the City.

**BUDGET INFORMATION:**

A budget adjustment of \$51,920 is requested to cover the cost of the purchase. Enough funds are available in Water Enterprise Reserves. The cost will be paid from Water Treatment “Capitalized Equipment” Account No. 7508020-7410. This purchase and installation will be rate-payer funded.

**BACKGROUND:**

Lake Herman Reservoir is located on Sulphur Springs Creek, which runs from Sky Valley to the Carquinez Strait. Sulphur Springs Creek is an ephemeral stream; in the dry season, the only inflow into Lake Herman is from the Raw Water Transmission Line. During the wet season, Sulphur Springs Creek also flows into Lake Herman (in addition to sheetflow from surrounding hills behind Community Park).

It is critical for the City to monitor flows into Lake Herman, the level of Lake Herman Reservoir, and the flows out of Lake Herman, to protect public safety and accurately meet regulatory obligations. The current reservoir level indicator is at the end of its useful life and is no longer reliable. The City does not have stream gages on Sulphur Springs Creek.

Staff proposes to install a new reservoir level indicator and two stream gages (one upstream and one downstream of Lake Herman Dam). The City reached out to multiple vendors to provide a replacement reservoir level indicator and two stream gages. Western Hydrologic Systems was the only respondent. If approved, Western Hydrologic Systems will install the reservoir level indicator and two stream gages. Additionally, Western Hydrologic Systems will calibrate these sensors, provide warranty repairs, provide telemetry assistance, and host data for one year.

**NEXT STEPS:**

If the resolution is adopted, staff will continue processing the contract. After the contract requirements are met, the purchase and subsequent installation will commence.

**ALTERNATIVE ACTIONS:**

The Council could choose to not approve this contract, which would delay or possibly prevent the purchase of this important monitoring equipment. The City will continue to meet its regulatory obligations, but through more labor-intensive activities, such as manual reservoir level inspections multiple times per day throughout the year.

<b>General Plan</b>	Goal 2.28: Improve and maintain public facilities and services
---------------------	--

<b>Strategic Plan</b>	Strategic Issue #1: Protecting Community Health and Safety
	Strategic Issue #4: Preserving and Enhancing Infrastructure

<b>CEQA Analysis</b>	This project is Categorical Exempt per CEQA Section 15301.
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**ATTACHMENTS:**

1. Resolution – Purchase of Stream Flow Gages
2. Purchase and Installation Agreement – Western Hydrological Systems

*For more information contact: Kyle Ochendusko, Deputy Public Works Director*

*Phone: 707.746.4376*

*E-mail: KOchendusko@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE PURCHASE AND INSTALLATION AGREEMENT WITH WESTERN HYDROLOGIC SYSTEMS FOR ONE AUTOMATED RESERVOIR LEVEL INDICATOR, TWO STREAM FLOW GAGES, AND DATA CALIBRATION/LOGGING SERVICE FOR ONE YEAR IN THE AMOUNT OF \$51,920 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, the lake level indicator at Lake Herman Reservoir is at the end of its useful life and should be replaced with a new lake level indicator and two stream gages on Sulphur Springs Creek; and

**WHEREAS**, Western Hydrologic System was the only respondent for this work and staff recommends approval of a Purchase and Installation Agreement; and

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia does hereby approve the Purchase and Installation Agreement with Western Hydrologic Systems for one automated reservoir level indicator, two stream flow gages, and data calibration/logging service for one year in the amount of \$51,920, and authorizes the City Manager to sign the contract on behalf of the City.

**BE IT FURTHER RESOLVED** that a budget adjustment in the amount of \$51,920 is approved from Water Enterprise Reserves to Water Treatment “Capitalized Equipment” Account No. 7508020-7410.

\*\*\*\*\*

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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

**CITY OF BENICIA (OWNER)**  
250 East L Street, Benicia, CA 94510  
**PURCHASE AND INSTALLATION AGREEMENT**

Purchase and Installation of three surface water reservoir and stream flow gage monitoring systems

Agreement No. [ ] DATE: December 17, 2019

**1. Identification of Contractor.**

CONTRACTOR: Western Hydrologic Systems

LICENSE NO:

**2. Scope of The Work.** See Scope of Work attached as Appendix A.

**Compensation for Work.** Contractor's total compensation for the Work performed under this Agreement (Contract Sum) is \$51,920 to be paid as (check one): (1)  lump sum; (2)  lump sum with progress payments; (3)  per attached schedule of rates and charges, up to a guaranteed not-to-exceed amount of \$51,920. All payments (check one):  shall  shall not be subject to a five percent retention.

Contractor's hourly rates are listed in Exhibit A, Scope of Work and Cost Proposal. In the event payments to Contractor equal the "not to exceed" amount, and absent a written modification to this Agreement signed by the Owner, Contractor shall complete all services required under this Agreement without further compensation or cost reimbursement.

**3. Schedule of Performance for the Work.** Contractor shall commence and complete the Work within a reasonable period of time as agreed between Contractor and Owner.

**3.01 Liquidated Damage Amounts.**

A. As liquidated damages for delay Contractor shall pay Owner

Appendix A - Scope of Work

\$ N/A for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

B. As liquidated damages for delay Contractor shall pay Owner \$500 for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

**3.02 Scope of Liquidated Damages**

A. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

B. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

**4. Terms and Conditions.**

**4.01** Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, Contract Documents):

B. Appendix B - General Conditions

C. Appendix C - Insurance

**4.02** The Contract Documents are the sole and exclusive provisions that govern the Work described herein. Any provision contained in any purchase order issued in connection with this Agreement or the Work described herein shall be null and void and shall have no force or effect.

Agreement number must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon to:

City of Benicia  
250 East L Street  
Benicia, CA 94510

CITY OF BENICIA:

By: Lorie Tinfow, City Manager

RECOMMENDED BY:

By: William Tarbox, Public Works Director

APPROVED AS TO FORM:

By: Benjamin L. Stock, City Attorney

CONTRACTOR

Name: William R. Slightam

By: William R. Slightam  
(signature)

Its: Owner  
Title (If Corporation: Chairman, President or Vice President)

By: \_\_\_\_\_  
(signature)

Its: \_\_\_\_\_  
Title (If Corporation: Chairman, President or Vice President)

1099 INFORMATION

Contractor Taxpayer I.D. No.: 26-3201736  
Incorporated:  Yes  No

Appendix A to Purchase Order Contract  
SCOPE OF WORK

See attached Proposal dated November 3, 2019 from Western Hydrologic Systems.

(End of Appendix A)

**WESTERN HYDROLOGIC SYSTEMS**

3652 Camino Hills Dr. Camino, CA 95709

Office/Fax: 530-647-9477

November 3, 2019

Mr. Kyle Ochendusko  
Deputy Public Works Director  
City of Benicia

**Subject:** Proposal for the installation of three surface water reservoir and stream flow gage monitoring systems.

As requested, Western Hydrologic Systems (WHS) has prepared this proposal for the installation of three Amazon data loggers with built in Sensor, satellite radio for telemetry to Water Plant, staff gage installation and discharge measurements for rating table development of the Sulphur Springs inflow and the Lake Herman outlet during winter/spring events as well as the Reservoir. WHS will need approximately six days to install the equipment as well as six trips throughout the year to monitor, calibrate and make discharge measurements for the three gages. WHS will install three custom made gage enclosures powder coated to Clients wishes and concreted with small 18 inches by 30 inches slab with 16 inches by 24 inches footing. The gage enclosure will house the Data logger/Sensor, satellite radio, battery and Solar controller. The Solar panel and Satellite radio antenna will mount to the top of the gage enclosure Solar pole six feet higher than the gage enclosure. For the reservoir WHS will secure 2-inch galvanized conduit towards water valve structure that will also house the staff gage for reference. At the inflow and outlet gages WHS will use one-inch galvanized conduit for the Sensor orifice line to stream with staff gage also installed. Once install is complete the loggers will be programmed with the PICOVALE Satellite radio system and integrated into the Benicia Water Plant Telemetry.

Sincerely,

William R. Slightam

WHS: Quantity 3- Amazon 0-15psi data loggers /sensors, 3-75 to 100-watt solar panels with controllers and 36-amp hr batteries, solar mounts, orifice line for sensor, conduit, staff gages with aluminum channel, concrete etc.	\$20,000
PICOVALE: Quantity 3 - Satellite radios and one-year Web Hosting (equipment and Install)	\$9,600
WHS: Labor for installation and travel.	\$13,920
WHS: Six trips a year field visit to develop rating tables for inflow and outflow gages, download raw data and compute data for customers Water Rights reporting as well as convert Bathymetric survey that Client has had done into rating table of Lake Herman.	\$8,400
Total for installation, Satellite radio, all equipment for three gage installs and one year web hosting plus one year monitoring.	\$51,920

**Appendix B to Purchase Order Contract**  
**GENERAL CONDITIONS**

**ARTICLE 1 TERMS OF PERFORMANCE**

**1.1 Construction Services Agreement (Agreement) Force and Effect.** The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall, whether oral or written, be a part of this agreement. The Agreement and other Contract Documents shall govern the Work described herein (whenever performed) and shall supersede all other purchase orders and agreements between Contractor and Owner, and any proposal, with respect to the Work described herein.

**1.2 No Modification or Waiver.** The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents.

**1.3 Performance of Work/No Assignment.** Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day and shall not damage or disrupt any property unless specifically part of the scope of the Agreement. Contractor shall not contract any portion of the Work or otherwise assign the Agreement without prior written approval of Owner, and any assignment without Owner's prior written approval shall be null and void. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) The Contractor shall permit Owner (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit Contractor's obligations under the Contract Documents. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of the Contract Documents.

**ARTICLE 2 LEGAL AND MISCELLANEOUS**

**2.1 Records and Payment Requests.** Contractor shall submit all billings with all necessary invoices or other appropriate evidence of proper performance, after which Owner shall make payment within thirty (30) days. Upon Owner's written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Agreement and invoices, payrolls, timecards, records and all other data related to matters covered by the Agreement. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of the Agreement shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.

**2.2 Independent Contractor.** Contractor is an independent Contractor and does not act as Owner's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor's provision of Work not the means, methods, or scheduling of the Contractor's Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other federal, state, or local taxes not specifically identified in the Contract Documents as Owner's responsibility.

**2.3 Indemnity/Liability.** Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its council members, officers, directors, representatives, agents, employees, and volunteers (**Owner Indemnities**), against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing the Work pursuant to the Contract Documents. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner's rights and remedies, whether under the Agreement or other applicable law, shall be cumulative and not subject to limitation. Contractor's obligations to defend, indemnify, and save harmless the Owner Indemnities' are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement. Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

**2.4 Defective Work; Warranties.** Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (**Defective Work**), Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so, Contractor shall pay all of the Owner's resulting claims, costs, losses and damages. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

**2.5 Compliance with Laws; Conflict of Interests.** Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. Contractor shall not engage in unlawful employment discrimination including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry,

physical handicap, medical condition, marital status, gender, citizenship, sexual orientation, or sexual identity as prohibited by state or federal law.

**2.6 Termination; Suspension; Disputes.** Owner may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor's fault. Owner will compensate Contractor for extra costs resulting from such directives only to the extent that Owner issues such directives for its convenience and not due to Contractor's fault (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner's convenience.) Contractor shall continue its Work throughout the course of any dispute, and Contractor's failure to continue Work during a dispute shall be a material breach of the Contract Documents. All claims by Contractor against Owner shall be submitted in writing to Owner, and shall be governed by Public Contract Code Sections 9204 and 20104 – 20104.6, after which time the one-year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days. Should Contractor be terminated for default, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.

**2.7 Execution; Venue; Limitations.** The Agreement shall be deemed to have been executed in City of Benicia, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities not party to the Agreement. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

**2.8 Employee Wages; Records; Apprentices.** Contractor shall pay prevailing wages to its employees on any contract in excess of \$1,000.00. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the City's Public Works Department and may be obtained from the California Department of Industrial Relations website [http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm].

Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds \$2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.

**2.9 Mandatory Contractor and Subcontractor Registration.** Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

**2.10 Worker's Compensation.** Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work.

**2.11 Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.**

**A.** If Contract Sum under the Agreement exceeds (or is expected to exceed) **\$25,000**, Contractor shall provide a construction performance bond in form attached hereto as **Appendix D – Construction Performance Bond** and a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto **Appendix E – Construction Labor and Materials Payment Bond**. Contractor may not substitute cash in lieu of the required bond(s).

**B.** If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

**2.12 Earthwork and Underground Facilities.** If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Section 7104 of the Public Contract Code. For any Work involving trench shoring that costs in excess of \$25,000, Contractor shall submit and Owner (or a registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding.

**2.13 Public Records Act.** Contractor is aware that this Agreement and any documents provided to the Owner may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents it considers to be confidential under the California Public Records Act. To the extent that Owner agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

**2.14 Claims.**

**A.** Should any clarification, determination, action or inaction by Owner, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor and Owner will make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and cost proposal for the Disputed Work with City stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of Project Documents. If a written notice and cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this paragraph, Contractor shall waive its rights to further claim on the specific issue.

**B.** Owner will review Contractor's timely notice and cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Project Documents, it shall so notify Owner, in writing, within seven Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. Within 30 Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven Days and all justifying documentation within 30 Days will result in Contractor waiving its right to the subject claim.

**C. Claim Format**

1. A. Contractor shall submit the claim justification in the following format:

- (a) Cover letter and certification;
- (b) Summary of claim, including underlying facts, entitlement, schedule analysis, quantum calculations, Project provisions supporting relief;
- (c) List of documents relating to claim including Specifications, Drawings/Plans clarifications/requests for information, schedules, notices of delay, cost calculations and any others;
- (d) Chronology of events and correspondence;
- (e) Analysis of claim merit;
- (f) Analysis of claim cost; and
- (g) Attach supporting documents referenced in paragraph 2.14.C.1(c), above.

**D. Required Provisions on Contract Claim Resolution**

1. Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 201014, et seq., specifies required provisions on resolving contract claims less than \$375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls.

*(End of Appendix B)*

**Appendix C to Purchase Order Contract**  
**INSURANCE**

1. **Commercial General Liability Insurance**, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than \$2 million general aggregate and \$2 million each occurrence.

2. **Business Automobile Liability Insurance** with limits not less than \$1 million each occurrence including coverage for owned, non-owned and hired vehicles.

3. **Workers' Compensation Employers'** limits not less than \$1 million each accident, \$1 million per disease and \$1 million aggregate. Contractor's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation against the City of Benicia, its council members, officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

4. **Builder's Risk Insurance** including, without limitation, coverage against loss or damage to the Work by fire, lightening, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all construction constituting any part of the Work, excluding the cost of excavations, of grading and filling of the land, and except that such insurance may be subject to deductible clauses not to exceed \$10,000 for any one loss. Such insurance will not cover loss or damage to Contractor's equipment, scaffolding or other materials not to be consumed in the construction of the Work. The insurer shall waive all rights of subrogation against Owner.

5. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Owner Indemnitied as Additional Insureds. The requirements for coverage and limits shall be the greater of either the minimum coverage and limits specified in this Agreement or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

6. Insurance policies in this Appendix C shall contain an endorsement containing the following terms:

6.1 Owner Indemnitied shall be named as Additional Insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and Additional Insured. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Owner has received a waiver of subrogation endorsement from the insurer.

6.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

6.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to City of Benicia thirty (30) days in advance of the effective date thereof.

6.4 Contractor insurance shall be primary insurance as to Owner and no other insurance or self-insured retention carried or held by any named or Additional Insureds other than Contractor shall be called upon contribute to a loss covered by insurance for the named insured.

6.5 Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 6.03 above. Contractor shall furnish the Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Owner before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves

the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of A-,VII or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.

8. The insurance coverage limits may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Owner and Additional Insureds, to the extent required by this Agreement, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.

9. All self-insured retentions (SIR) must be disclosed to Owner for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Contractor/named insured or Owner.

10. Contractor agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this Agreement that is required of Contractor including, without limitation, the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and Owner in the same manner and to the same extent as Contractor is bound to Owner under this Contract and its accompanying documents. Subcontractors shall further agree to include these same provisions with any lower tier subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. Contractor shall require all subcontractors to provide a valid Certificate of Insurance and the required endorsements included in the subcontract agreement and will provide proof of compliance to the Owner prior to commencement of any work by the subcontractor.

11. **Special Risks or Circumstances:** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

*(End of Appendix C)*



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
CONSENT CALENDAR**

**TO :** City Manager

**FROM :** Public Works Director

**SUBJECT :** **APPROVAL OF MAINTENANCE AGREEMENT WITH FERGUSON WATERWORKS RELATED TO WATER METER INFRASTRUCTURE**

**EXECUTIVE SUMMARY:**

Staff is proposing to enter into a three-year agreement with Ferguson Waterworks to provide maintenance and modem upgrades to the City’s 25 Advanced Metering Infrastructure (AMI) Data Collection Units (DCUs). The DCUs collect and transmit water usage information from the water meters.

**RECOMMENDATION:**

Adopt the resolution (Attachment 1) approving a three-year maintenance agreement (Attachment 2) with Ferguson Waterworks for the 25 Data Collection Units related to the AMI water meters for \$71,250 for the period of November 19, 2019 through November 18, 2022, and authorizing the City Manager to sign the agreement on behalf of the City.

**BUDGET INFORMATION:**

The cost of the three-year maintenance agreement is \$71,250, or \$23,750 per year, and will be paid from Water Distribution “Computer Maintenance” Account No. 7508021-7040. Sufficient funds have been budgeted for this annual maintenance and it will be rate-payer funded.

**BACKGROUND:**

The 2017 Water Meter Replacement AMI Improvement Project included 9,580 new Neptune water meters with AMI technology. Twenty-five DCUs were installed throughout the City to collect and transmit water usage information from customer meters to the City. The DCUs are an antenna receiving unit accompanied by a shoebox size solar panel that is mounted on either a streetlight pole or a stand-alone pole up to 40-feet high.

This report recommends entering into a three-year agreement with Ferguson Waterworks. The agreement will cover no-cost repairs (including parts and labor) and modem upgrades from 3G to 4G wireless technology for all 25 DCUs. Ferguson Waterworks is the sole-source maintenance provider of Neptune products in California; therefore, this is a sole-source agreement.

**NEXT STEPS:**

If the resolution is adopted, staff will continue processing the contract.

**ALTERNATIVE ACTIONS:**

The Council could choose to not approve this contract, which would delay or possibly prevent the maintenance of this important AMI infrastructure.

<b>General Plan</b>	Goal 2.28: Improve and maintain public facilities and services
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<b>Strategic Plan</b>	Strategic Issue #1: Protecting Community Health and Safety
	Strategic Issue #4: Preserving and Enhancing Infrastructure

<b>CEQA Analysis</b>	This project is Categorically Exempt per CEQA Section 15301.
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**ATTACHMENTS:**

1. Resolution – Ferguson Waterworks Maintenance Agreement
2. Contract – Ferguson Waterworks Maintenance Agreement

*For more information contact: Kyle Ochendusko, Deputy Public Works Director*

*Phone: 707.746.4376*

*E-mail: KOchendusko@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A THREE-YEAR MAINTENANCE AGREEMENT WITH FERGUSON WATERWORKS FOR THE 25 DATA COLLECTION UNITS RELATED TO THE ADVANCED METERING INFRASTRUCTURE (AMI) WATER METERS FOR \$71,250 FOR THE PERIOD OF NOVEMBER 19, 2019 THROUGH NOVEMBER 18, 2022, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, the City has 25 Data Collection Units that collect and transmit water usage information from the Neptune water meters; and

**WHEREAS**, staff recommends approval of a three-year agreement with Ferguson Waterworks, the sole source maintenance provider of Neptune products in California; and

**WHEREAS**, in accordance with Benicia Municipal Code Chapter 3.08, Purchasing Regulation, bid procedures are waived when the commodity or service can only be obtained via sole-source procurement.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia does hereby approve a three-year maintenance agreement with Ferguson Waterworks for the 25 Data Collection Units related to the AMI water meters for \$71,250 (Account No. 7508021-7040) for the period of November 19, 2019 through November 18, 2022, and authorizes the City Manager to sign the agreement 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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

**MAINTENANCE SERVICES AGREEMENT BETWEEN**

**CITY OF BENICIA AND**

**FERGUSON ENTERPRISES, LLC**

This Maintenance Services Agreement (the "**Agreement**") is dated November 19, 2019 and is by and between the City of Benicia, a political subdivision of the State of California ("**City**") and **Ferguson Enterprises, LLC**, a Virginia limited liability company, licensed to do business in California, ("**Ferguson**") relating to **maintenance and modem upgrades to the City's 25 AMI Data Collection Units (aka Gateway Collectors) ("Services")**.

**Recitals**

WHEREAS, City wishes to retain **Ferguson** to provide three-year Gateway Collector maintenance services and related services;

WHEREAS, **Ferguson** was selected by means of City's selection process, and represents that they possess all necessary training, licenses and permits to perform the services required by City as set forth in this Agreement, and that their performance of such services will conform to the standard of practice consistent with a firm having experience and expertise in performing professional services of like nature and complexity working on similar, successfully completed projects;

WHEREAS, Government Code section 53060 permit the City to enter into agreements for professional temporary services with individuals specially trained and experienced and competent to perform those services; and

WHEREAS, the services proposed in this Agreement are professional and temporary in nature.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

**AGREEMENT**

**1. Definitions**

1.1 Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

<b>"Agreement"</b>	This Agreement consists of this Agreement, together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, <u>Appendix A</u> (Services to be Provided by Ferguson), <u>Appendix B</u> (Payments to Ferguson), and <u>Appendix C</u> (Insurance)-
<b>"Ferguson"</b>	Ferguson Enterprises, LLC
<b>"City"</b>	City of Benicia
<b>"Project"</b>	Three-year Gateway Collector Maintenance Project

<b>"Services"</b>	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, building information modeling, coordination, and administrative services. Services that may be required, dependent on Project needs, are further described in Appendix A, Services.
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## 2. Term of Agreement

- 2.1 This Agreement is for a period of approximately **36** months, beginning with the execution of the Agreement and concluding **November 18, 2022** unless it is extended in accordance with paragraph 2.2 below.
- 2.2 This Agreement may be extended by mutual agreement of the parties hereto. Any extension shall be in written form, signed by both parties, and shall specify the length of the extension and compensation.

## 3. Services Ferguson Agree to Perform

- 3.1 **Ferguson** shall perform all Services described in Appendix A.
- 3.2 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than Excusable Delays, **Ferguson** shall apply such additional manpower and resources as necessary without Additional Services Compensation to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

## 4. Compensation

- 4.1 City shall pay **Ferguson** compensation according to the process established in Appendix B "Payments to Ferguson".
- 4.2 Invoices furnished by **Ferguson** under this Agreement must be in a form acceptable to City. All amounts paid by City to **Ferguson** shall be subject to audit by City. Payment shall be made by City to **Ferguson** at the address stated in Paragraph 6.1 below.
- 4.3 City may set off against payments due **Ferguson** under this Agreement any sums that City determines that **Ferguson** owes to City because of their errors, omissions, breaches of this Agreement, delays or other acts that caused City monetary damages. Prior to exercising such right, City must demand and attend mediation pursuant to Paragraph 21.3 below of this Agreement, to be attended by City, Ferguson, and any applicable insurance carriers; such mediation to occur within 30 calendar days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the City's demand, then the Solano City Superior Court may upon application by any party make such selection for the parties. If a party other than City refuses to mediate under this paragraph 4.5, then City shall have satisfied its obligations under this Paragraph.

## 5. Maximum Costs

- 5.1 City's obligation hereunder shall not at any time exceed the amount approved by City's Council and approved by City for payment to the Ferguson pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, City has not authorized its Supervisors, employees, officers and agents to request Ferguson to perform Services or to provide materials, equipment and supplies that would result in Ferguson performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials,

equipment and supplies agreed upon in the Agreement unless the City amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

- 5.3 City shall not reimburse Ferguson for Services, materials, equipment or supplies provided by Ferguson beyond the scope of the Services, materials, and office equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

## 6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Paragraph 17 below, City and Ferguson shall direct all communications to each other as follows:

### City:

**Drake Valentine, Public Works Maintenance Superintendent**  
**City of Benicia Corporation Yard**  
**2400 East Second Street**  
**Benicia, CA 94510**  
**Phone: (707) 746-4297**  
**Email: dvalentine@ci.benicia.ca.us**

### Ferguson:

**Eric Tracy, Business Development Manager**  
**Ferguson Enterprises, LLC**  
**7601 14<sup>th</sup> Ave.**  
**Sacramento, CA 95820**  
**Phone: (916) 260-3351**  
**Email: eric.tracy@ferguson.com**

- 6.2 Services under this Agreement shall be performed only by qualified, competent personnel under the supervision of and/or in the employment of Ferguson. Ferguson shall conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Ferguson.
- 6.3 Ferguson agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Ferguson shall not charge City for the cost of training or "bringing up to speed" replacement personnel. City may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Ferguson's cost.

## 7. Representations

- 7.1 Ferguson represents that it has reviewed Appendix A, Services to be Provided by Ferguson, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix B, Payments to Ferguson.
- 7.2 Ferguson represents that it is qualified to perform the Services and it possesses, and will continue to possess at its sole cost and expense, the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Ferguson also represents that it has knowledge of, and will comply with, all applicable building codes, laws, regulations and ordinances.

7.3 Ferguson represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.

7.4 The granting of any progress payment by City, or the receipt thereof by Ferguson, or any inspection, review, approval or oral statement by any representative of City or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of Ferguson for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

## **8. Indemnification and General Liability**

8.1 To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), Ferguson shall defend, indemnify, and hold harmless City, its officers, directors, officials, agents employees, and volunteers (collectively **"Indemnitees"**) from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Ferguson or its Subs ) expense and liability of every kind, nature, and description, at law or equity, that arises out of, pertain to, or relate to (including without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert Fergusons or expert witnesses incurred in connection therewith and costs of investigation) any negligence, recklessness, or willful misconduct of Ferguson, any Sub, anyone directly or indirectly employed by them, or anyone that they control (collectively **"Liabilities"**). Such obligations to defend, hold harmless and indemnify and Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities and in no event shall the cost to defend charges to the Ferguson exceed the Ferguson's proportionate percentage of fault.

8.2 Ferguson shall defend (including providing legal counsel reasonably acceptable to City at no cost to City), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, suit, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert Fergusons or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by City, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

## **9. Liability of City**

9.1 Except as provided in Appendix A, Services to be Provided by Ferguson and Appendix E, Insurance, City's obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 3, 4, and 5 of this Agreement,

9.2 Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

9.3 City shall not be responsible for any damage to persons or property as a result of the misuse of any equipment used by Ferguson, or by any of its employees, even though such equipment be furnished, rented or loaned to Ferguson by City.

9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Ferguson may have under this Agreement or any applicable law. All

rights and remedies of City or Ferguson, whether under this Agreement or other applicable law, shall be cumulative.

#### **10. Independent Contractor; Payment of Taxes and Other Expenses**

- 10.1 Ferguson shall be deemed at all times to be independent contractors and shall be wholly responsible for the manner in which Ferguson perform the Services required by the terms of this Agreement. Ferguson shall be fully liable for the acts and omissions of it their Subs, employees and agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between City and Ferguson. Ferguson acknowledge that neither they nor any of their employees or agents shall, for any purpose whatsoever, be deemed to be City employees, and shall not be entitled to receive any benefits conferred on City employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Ferguson shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Ferguson shall make its designated representative available as much as reasonably possible to City staff during the City's normal working hours or as otherwise requested by City. Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Ferguson's Services only and not as to the means by which such a result is obtained.

#### **11. Insurance**

- 11.1 Prior to execution of this Agreement, Ferguson shall furnish to City Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix E, Insurance, which are attached and made a part of this Agreement. Ferguson shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in Appendix E. In the event Ferguson fails to maintain any required insurance, and notwithstanding Paragraph 4.6 above, City may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Ferguson under this Agreement (or Ferguson shall promptly reimburse City for such expense).

#### **12. Suspension of Services**

- 12.1 City may, without cause, order Ferguson to suspend, delay or interrupt Services pursuant to this Agreement, in whole or in part, for such periods of time as City may determine in its sole discretion. City shall deliver to Ferguson written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an Excusable Delay and Ferguson shall be compensated for such delay to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Paragraph 12, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Ferguson is responsible.

#### **13. Termination of Agreement for Cause**

- 13.1 If at any time City believes Ferguson may not be adequately performing their obligations under this Agreement, that Ferguson may fail to complete the Services as required by this Agreement, or that City has provided written notice of observed deficiencies in Ferguson's performance, City may

request from Ferguson prompt written assurances of performance and a written plan, acceptable to City, to correct the observed deficiencies in Ferguson's performance ("**Cure Plan**"). The Cure Plan must include, as applicable, evidence of necessary resources, correction plans, Sub commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, must meet all applicable requirements and show a realistic and achievable plan to cure the breach. Ferguson shall provide such written assurances and Cure Plan within ten (10) calendar days of the date of notice of written request. Ferguson acknowledges and agrees that any failure to provide written assurances and Cure Plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Ferguson shall be in default of this Agreement and City may, in addition to any other legal or equitable remedies available to City, terminate Ferguson's right to proceed under the Agreement, in whole or in part, for cause:

- a. Should Ferguson make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Ferguson in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Ferguson or of all or any substantial part of the properties of Ferguson, or if Ferguson, its directors or shareholders, take action to dissolve or liquidate Ferguson; or
- b. Should Ferguson commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from City to Ferguson demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Ferguson to avail themselves of this time period in excess of ten (10) calendar days, Ferguson must provide City within the ten (10) calendar day period a written Cure Plan acceptable to City to cure said breach, and then Ferguson must diligently commence and continue such cure according to the written Cure Plan); or
- c. Should Ferguson violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) calendar days of the date of the notice from City to Ferguson demanding such cure; or, if such failure is curable but not curable within such ten (10) calendar day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Ferguson to avail themselves of this time period in excess of ten (10) calendar days, Ferguson must provide City within the ten (10) calendar day period a written Cure Plan acceptable to City to cure said breach, and then Ferguson must diligently commence and continue such cure according to the written Cure Plan.)

13.3 In the event of termination by City as provided herein for cause:

- a. City shall compensate Ferguson for the value of the Services delivered to City upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but City shall not compensate Ferguson for its costs in terminating the Services or any cancellation charges owed to third parties.
- b. Ferguson shall deliver to City possession of all tangible aspects of the Services in their then condition including, but not limited to, all copies (electronic, CAD, and PDF format, and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subs, and all other documentation associated

with a Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.

- c. Ferguson shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Paragraph shall not be interpreted to diminish any right that City may have to claim and recover damages for any breach of this Agreement, but rather, Ferguson shall compensate City for all loss, cost, damage, expense, and/or liability suffered by City as a result of such termination and failure to comply with the Agreement, including without limitation City's costs incurred in connection with finding a replacement.

13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience pursuant to Paragraph 14 below, and Ferguson shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Ferguson.

#### **14. Termination of Agreement for Convenience**

14.1 City may terminate performance of the Services under the Agreement in accordance with this Paragraph 14 in whole, or from time to time in part, whenever City shall determine that termination is in the City's best interests. Termination shall be effected by City delivering to Ferguson, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination ("Notice of Termination") specifying the extent to which performance of the Services under the Agreement is terminated.

14.2 After receipt of a Notice of Termination, and except as otherwise directed by City, Ferguson shall:

- a. Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts (including agreements with Subs) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
- d. Assign to City in the manner, at times, and to the extent directed by City, all right, title, and interest of Ferguson under orders and subcontracts so terminated. City shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
- e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of City to the extent City may require. City's approval or ratification shall be final for purposes of this clause;
- f. Transfer title and possession of Ferguson's and their Subs' work product to City, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by City, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination; City acknowledges that said documents were prepared for the purpose of the Project.

- g. Complete performance of any part of the Services that were not terminated by the Notice of Termination; and
  - h. Take such action as may be necessary, or as City may direct, for the protection and preservation of property related to this Agreement which is in Ferguson's possession and in which City has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Ferguson shall submit to City a termination claim, in the form and with the certification City prescribes. The claim shall be submitted promptly, but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by City upon Ferguson's written request made within such three-month period or authorized extension. However, if City determines that facts justify such action, it may receive and act upon any such termination claim at any time after such three-month period or extension. If Ferguson fails to submit the termination claim within the time allowed, City may determine, on basis of information available to it, the amount, if any, due to Ferguson because of the termination. City shall then pay to Ferguson the amount so determined.
- 14.4 Subject to provisions of Paragraph 14.3 above, Ferguson and City may agree upon the whole or part of the amount or amounts to be paid to Ferguson because of any termination of Services under this Paragraph. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Ferguson shall be paid the agreed amount.
- 14.5 If Ferguson and City fail, under Paragraph 14.4 above, to agree on the whole amount to be paid to Ferguson because of termination of Services under this Paragraph 14.5, then Ferguson's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:
- a. Reasonable value of Ferguson's Services performed prior to Notice of Termination, based on Ferguson's entitlement to compensation under Appendix B, Payments to Ferguson. Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Ferguson, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of ten (10) percent of Ferguson's total costs of performing the Services.
  - b. When, in opinion of City, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of Ferguson's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.
  - c. Reasonable cost to Ferguson of handling material returned to vendors, delivered to City or otherwise disposed of as directed by City.
- 14.6 Except as provided in this Agreement, in no event shall City be liable for costs incurred by Ferguson (or Subs) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or

other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense that is not reasonable or authorized under Paragraph 14.5 above.

14.7 This Paragraph shall not prohibit Ferguson from recovering costs necessary to discontinue further Services under the Agreement as provided for in Paragraph 14.2 above or costs authorized by City to settle claims from Subs.

14.8 in arriving at amounts due Ferguson under this Paragraph 14, there shall be deducted:

- a. All unliquidated advance or other payments on account theretofore made to Ferguson, applicable to the terminated portion of Agreement,
- b. Any substantiated claim that City may have against Ferguson in connection with this Agreement, and
- c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Ferguson or sold under the provisions of this Paragraph 14, and not otherwise recovered by or credited to City.

14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Ferguson may file with City a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement that is not terminated. City may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of City and Ferguson to agree upon amount or amounts to be paid to Ferguson for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit City's rights and remedies pursuant to this Agreement or at law.

## **15. Conflicts of Interest/Other Agreements**

15.1 Ferguson represents that it is familiar with Section 1090 and Section 87100, et seq., of the Government Code of the State of California, the Conflict of Interest Code, Resolution 06-23, adopted by the City on October 3, 2006, and that it does not know of any facts that constitute a violation of those sections.

15.2 Ferguson represents that it has completely disclosed to City all facts bearing upon any possible interests, direct or indirect, which Ferguson believes any member of City, or other officer, agent or employee of City or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by City for cause. Ferguson shall comply with the City's conflict of interest codes and their reporting requirements.

15.3 Ferguson covenants that it presently has no interest, and during the term of this Agreement shall not have any interest, direct or indirect, that would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Ferguson represents to and agrees with the City that Ferguson has no present, and in the future during the term of this Agreement will not have any, conflict of interest between providing the City the Services hereunder and any interest Ferguson may presently have, or will have in the future, with respect to any other person or entity (including, but not limited to, any federal or state wildlife, environmental or regulatory agency) that has any interest adverse or potentially adverse to the City, as determined in the reasonable judgment of the City.

## **16. Proprietary or Confidential Information of City; Publicity**

- 16.1 Ferguson acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Ferguson may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Ferguson agree that all private, confidential, or proprietary information disclosed by City to or discovered by Ferguson in the performance of the Services shall be held in strict confidence and used only in performance of the Agreement. Ferguson shall exercise the same standard of care to protect such information as a reasonably prudent Ferguson would use to protect its own proprietary data, and shall not accept employment adverse to the City's interests where such confidential information could be used adversely to the City's interests. Ferguson shall notify the City immediately in writing if it is requested to disclose any information made known to or discovered by Ferguson during the performance of or in connection with the Services pursuant to this Agreement.
- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the City's sole discretion and control. Ferguson shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without City's prior written consent. Ferguson shall have the right, however, without City's further consent, to include representations of Services among Ferguson's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Paragraph 16 shall remain fully effective indefinitely after termination of Services to the City hereunder.

## **17. Notices to the Parties**

- 17.1 All notices (including requests, demands, approvals or other communications other than ordinary course Project communications) under this Agreement shall be in writing and shall include the word "NOTICE" in the subject line.
- 17.2 Notice shall be sufficiently given for all purposes as follows:
- a. When personally delivered to the recipient, notice is effective on delivery.
  - b. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
  - c. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
  - d. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this Paragraph 17.
- 17.3 Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service,
- 17.4 Addresses for the purpose of giving notice are set forth in Paragraph 6.1 above. Either party may, by written notice given at any time or from time to time require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address or fax number, or both, by giving the other party notice of the change in any manner permitted by this Paragraph 17.

## 18. Record Keeping and Audit Requirements

- 18.1 Ferguson shall keep such full and detailed accounting records as are necessary for proper financial management of the Project. Ferguson shall maintain a complete and current set of all books and records relating to the construction of the Project. City shall be entitled, upon forty-eight (48) hour written notice, to inspect all books, records, and accounts kept by Ferguson relating to the work contemplated by this Contract. Within 90 calendar days after Final Completion, Ferguson shall deliver to City those records necessary for City to perform a financial audit of the Project ("Final Audit").
- 18.2 Invoice and progress/final reports and all required audit reports shall be submitted to City in a timely manner.
- 18.3 Maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to Ferguson's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for a period of three years after Final Completion of the Project and shall be subject to examination and/or audit by City or designees, state government auditors or designees.
- 18.4 Make such books, records, supporting documentations, and other evidence available to City or designees, their designated representatives, during the course of the Project and for a period of three years after Final Completion of the Project, and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, Ferguson agrees to include a similar right of City to audit records and interview staff in any subcontract related to the performance of this Contract.

## 19. Subcontracting/Assignment/City Employees

- 19.1 Ferguson and City agree that Ferguson's unique talents, knowledge and experience form a basis for this Agreement and that the Services to be performed by Ferguson under this Agreement are personal in character. Therefore, Ferguson shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by City in a written instrument executed and approved by the City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph 19.1 shall confer no rights on any party and shall be null and void.
- 19.2 Ferguson shall not employ or engage, or attempt to employ or engage, any person who is or was employed by City or any department thereof at any time that this Agreement is in effect, and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of City.

## 20. Other Obligations

- 20.1 Discrimination, Equal Employment Opportunity and Business Practices. Ferguson shall not discriminate against any employee or applicant for employment, nor against any Sub or applicant for a subcontract, because of race, color, religious creed, age, gender, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Ferguson shall comply with all federal, state and local laws (including, without limitation, City ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

- 20.2 Drug-Free Workplace Policy. Ferguson acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Ferguson agrees that any violation of this prohibition by Ferguson, its employees, agents or assigns shall be deemed a material breach of this Agreement.
- 20.3 Compliance with Americans with Disabilities Act and Rehabilitation Act. Ferguson acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Ferguson shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Ferguson agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Ferguson, its employees, agents or assigns shall constitute a material breach of this Agreement. Ferguson shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- 20.4 Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Ferguson to penalties, including but not limited to: (a) termination of this Agreement; (b) disqualification of the Ferguson from bidding on or being awarded a City contract for a period of up to 3 years; (c) liquidated damages of \$2,500 per violation; and/or (d) imposition of other appropriate contractual and civil remedies and sanctions. To effectuate the provisions of this section, the City shall have the authority to examine Ferguson's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Ferguson under this Agreement or any other agreement between Ferguson and City. Ferguson shall report to the City the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 calendar days of such filing, provided that within such 30 days such entity has not notified Ferguson that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Ferguson shall provide City with a copy of their response to the complaint when filed.

## **21. Disputes**

- 21.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Project Manager and a principal of the Ferguson who shall attempt, in good faith, to resolve the dispute. Such referral shall be initiated by written request from either party, and a meeting between the Project Manager and principal of the Ferguson shall then take place within five (5) calendar days of the date of the request.
- 21.2 Provided that City continues to compensate Ferguson in accordance with this Agreement, Ferguson shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Ferguson to discontinue Services during the course of any dispute. Ferguson's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement Ferguson agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement including, but not limited to, the time to complete the Services. Ferguson also agrees that should Ferguson discontinue Services due to a dispute or disputes; City may terminate this Agreement for cause as provided herein.

21.3 In the event of claims exceeding \$50,000, as a precondition to commencing litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of JAMS, in Benicia, California, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Solano City Superior Court from an approved list of JAMS qualified construction mediators. The parties may initially agree to engage in discovery prior to mediation. Should parties proceed with discovery, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 201 9, et seq., and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

## **22. Agreement Made in California; Venue**

22.1 This Agreement shall be deemed to have been executed in the City of Benicia, County of Solano. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this Agreement shall be in the Superior Court of the County of Solano unless the parties agree otherwise in a written amendment to this Agreement.

22.2 The parties shall execute four (4) copies of this Agreement, each of which shall be deemed originals.

## **23. Compliance with Laws**

23.1 Ferguson shall comply with the Standard of Care in the interpretation and application of all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Ferguson shall comply with all security requirements imposed by authorities with jurisdiction over any Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

23.2 Ferguson represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations and be consistent with the Standard of Care.

## **24. Miscellaneous**

24.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.

24.2 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by City of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This Paragraph 24.2 shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure, Sections 337.1 and 337.15, shall continue to apply.

24.3 Any provisions or portion thereof of this Agreement that is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from

this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.

- 24.4 Either party's waiver of any breach, or the omission or failure of either party, at any time, to in force in force any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to in force or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 24.5 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.
- 24.6 Ferguson acknowledges that Ferguson, and all Subs hired by Ferguson to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Ferguson is and shall remain in compliance with the IRCA and shall ensure that any Subs hired by Ferguson to perform services under this Agreement are in compliance with the IRCA. In addition, Ferguson agrees to indemnify, defend and hold harmless the City, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Ferguson's employees, or the employees of any Sub hired by Ferguson, are not authorized to work in the United States for Ferguson or its Sub and/or any other claims based upon alleged RCA violations committed by Ferguson or Ferguson's Sub(s).

## **25. Entire Agreement; Modifications**

- 25.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 25.2 To the extent this Agreement conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this Agreement shall control.
- 25.3 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of City, Ferguson expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 25.4 Ferguson, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Ferguson shall require their Subs (if any) to do the same, and the Subs' price proposals shall accompany Ferguson's price proposals.

- 25.5 Ferguson and its Subs shall, upon request by City, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 25.6 Changes in the Services made pursuant to this Paragraph 25 and extensions of the Agreement time necessary by reason thereof shall not in any way release Ferguson's representations and agreements pursuant to this Agreement.
- 25.7 Whenever the words "**as directed**", "**as required**", "**as permitted**", or words of like effect are used, it shall be understood as the direction, requirement, or permission of City. The words "**approval**", "**acceptable**", "**satisfactory**", or words of like import, shall mean approved by, or acceptable to, or satisfactory to City, unless otherwise indicated by the context.

**[SIGNATURE LINES FOLLOW ON NEXT PAGE]**

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.**

"City"

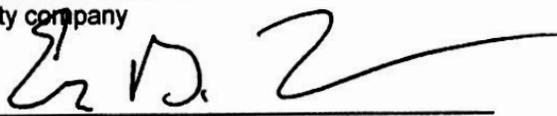
CITY OF BENICIA

By: \_\_\_\_\_  
Lorie Tinfow

Its: City Manager

"Ferguson"

FERGUSON ENTERPRISES, LLC, a Virginia limited liability company

By:   
Eric B. Tracy

Its: Business Development Manager

RECOMMENDED BY:

\_\_\_\_\_  
William Tarbox  
DEPARTMENT HEAD

APPROVED AS TO FORM:

\_\_\_\_\_  
Benjamin L. Stock  
CITY ATTORNEY

**APPENDIX A**

**SERVICES TO BE PROVIDED BY Ferguson**

1.1 **See attached quote from Ferguson Enterprises, LLC dated 10/28/19**

R900 Gateway Maintenance

Maintenance contract services include:

- Free repair of unit, including parts and labor to install those
- Return shipment of repaired product is prepaid ground service
- Free inspection and preventative maintenance
- Repair turnaround time of 10 working days, excluding transit time
- Toll-free assistance at Customer Support 1-800-647-4832

NOT included in Maintenance Contract Services:

- Batteries
- Cables and miscellaneous hardware
- Equipment damaged by abuse or negligence or environmental damage as a result of fires and storms
- Firmware modifications
- Priority Overnight return shipment of repaired units
- Neptune disclaims any implied warranties, including the implied warranties of merchantability and fitness for a particular purpose
- Antennas
- USB flash drive
- Labor to remove/install equipment

R900 GATEWAY 09.14

Repair Notes: A Return Material Authorization (RMA) number MUST accompany all incoming repairs. This RMA number may be obtained by calling Customer Support at 1-800-647-4832.

- Customer pays all incoming shipment charges
- All outgoing repairs are shipped ground service

- Requested Priority Overnight return shipment is paid by the customer
- Repair warranty is 90 days from shipment date
- Warranty and maintenance contract repair turnaround time of 10 working days, excluding transit time
- Non-warranty and non-maintenance contract repair turnaround time of 20 working days, excluding transit time

FERGUSON DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**END OF APPENDIX A**

**APPENDIX B**

**PAYMENTS TO Ferguson**

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated November 19, 2019 by and between Ferguson Enterprises, LLC, hereinafter referred to as "**Ferguson**" or and the City of Benicia, hereinafter referred to as "**City**" providing for professional construction management services.

1. The maximum payment to Ferguson under this Agreement for the Project shall be: \$71,250
2. For the period 11/19/2019 - 11/18/2020 the total cost is \$23,750.
3. For the period 11/19/2020 - 11/18/2021 the total cost is \$23,750.
4. For the period 11/19/2021 - 11/18/2022 the total cost is \$23,750.

**END OF APPENDIX B**

## APPENDIX C

### INSURANCE REQUIREMENTS

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated November 19, 2019, by and between **Ferguson Enterprises, LLC**, hereinafter referred to as "**Ferguson**" or "**Ferguson**" and the City of Benicia, hereinafter referred to as "**City**" providing for professional construction management services.

1. **Ferguson's Duty to Show Proof of Insurance.** Ferguson, in order to protect City and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Ferguson's acts, in connection with the performance of Ferguson's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Ferguson shall not perform any work under this Agreement until Ferguson has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the City's authorized insurance representative, insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate Ferguson shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Ferguson shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Ferguson or City as an additional insured.

#### 1.1 Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Ferguson's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Ferguson shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least five million dollars (\$5,000,000) each occurrence and five million dollars (\$5,000,000) aggregate. Required limits may be evidenced by a combination of primary and excess coverage.

#### 1.2 Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least five million dollars (\$5,000,000) each occurrence.

#### 1.3 Workers' Compensation Insurance

Ferguson shall submit written proof that Ferguson is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code. Ferguson shall require any Subs to provide workers' compensation for all of the Subs' employees, unless the Subs' employees are covered by the insurance afforded by Ferguson. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Ferguson shall provide and/or require each Sub

to provide adequate insurance for the coverage of employees not otherwise covered. Ferguson shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease. Ferguson shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

1.4 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to City and must be approved by the City Risk Manager.

1.5 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Ferguson, at Ferguson's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **Insurance terms and conditions:**

2.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Ferguson shall be maintained until the completion of all of Ferguson's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Ferguson shall not be suspended, voided, cancelled except after ten (10) days written notice by Ferguson in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Ferguson shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

2.2 City as Additional Insured

On Ferguson's Commercial General Liability and Automobile policies, the City of Benicia, its officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 37 04 13 plus ISO form CG 20 10 04 13 (or equivalents).

2.3 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII Any exception to these requirements must be approved by the City Risk Manager.

2.4 If Ferguson is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Ferguson shall provide coverage equivalent to the insurance coverages and endorsements required above. The City will not accept such coverage unless the City determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Ferguson is equivalent to the above-required coverages.

2.5 For any claims related to the Agreement, the Ferguson's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the

City, its officers, officials, employees, or volunteers shall be excess of the Ferguson's insurance and shall not contribute with it.

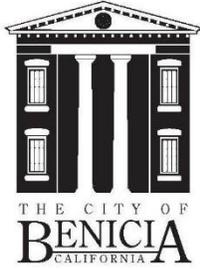
2.6 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Ferguson for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the City from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

2.7 Failure by Ferguson to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Ferguson. City, at its sole option, may terminate this Agreement and obtain damages from Ferguson resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Ferguson, City shall deduct from sums due to Ferguson any premiums and associated costs advanced or paid by City for such insurance. If the balance of monies obligated to Ferguson pursuant to this Agreement are insufficient to reimburse City for the premiums and any associated costs, Ferguson agrees to reimburse City for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by City to take this alternative action shall not relieve Ferguson of its obligation to obtain and maintain the insurance coverages required by this Agreement.

2.8 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

2.9 City may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case Ferguson and its subs shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Ferguson's fees under this Agreement (and the fee of its subs under sub agreements) shall be reduced by the amount of insurance premiums that may be avoided by Ferguson and its subs by virtue of the City's obtaining the project-specific insurance, wrap-up insurance or administering an OCIP, and the exclusion of this project from coverage of Ferguson's and subs policies. Construction Manager and its subs will afford City access to their books and records and cooperate with City in verifying the amount of savings realized.

**END OF APPENDIX C**



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
CONSENT CALENDAR**

**TO** : City Manager

**FROM** : Assistant City Manager

**SUBJECT** : **ADOPTION OF THE 2020 CITY COUNCIL REGULAR MEETING CALENDAR**

**EXECUTIVE SUMMARY:**

The Open Government Ordinance (Section 4.08.040 of Ordinance No. 05-6) states that each body established by ordinance shall establish and publish an annual schedule of regular meetings. The attached calendar lists the City Council’s proposed regular meeting dates for 2020.

**RECOMMENDATION:**

Adopt, by motion, the 2020 City Council Regular Meeting Calendar (Attachment 1).

**BUDGET INFORMATION:**

No budget impact at this time.

**BACKGROUND:**

Per the City’s Open Government Ordinance, the proposed schedule of regular meetings of the City Council for 2020 follows for Council review and approval. As reflected in the attached schedule, it is recommended that the first regular meeting in August be canceled to allow for Council Members and staff to participate in National Night Out, which is held on the first Tuesday of August annually. This cancellation also provides Council and staff an opportunity to make vacation plans accordingly, if they wish, as well as giving staff an extra few weeks prior to the next Council meeting to address various projects.

**ALTERNATIVE ACTIONS:**

None.

<b>General Plan</b>	Goal 2.28: Improve and maintain public facilities and services.
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<b>Strategic Plan</b>	Strategy 8.00: Build Organizational Quality and Capacity.
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<b>CEQA Analysis</b>	Adoption of the calendar is not subject to the California Environmental Quality Act under Guidelines Section 15378 (b) (5) because organizational or administrative activities of governments that will not result in a direct or indirect physical change in the environment is not a project.
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**ATTACHMENT:**

1. 2020 City Council Regular Meeting Calendar

*For more information contact: Alan Shear, Assistant City Manager*

*Phone: 707-746-4309*

*E-mail: [ashear@ci.benicia.ca.us](mailto:ashear@ci.benicia.ca.us)*

**2020 City Council Regular Meeting Calendar**

The regular meetings of the City Council are held on the first, third and fourth Tuesdays of each month. If a closed session is not required, the regular meeting starts at 7:00 p.m. The fourth Tuesday meeting is reserved for workshops, study sessions, or closed sessions to the extent possible and will be canceled if not required. The fourth Tuesday meetings begin at 6:00 p.m. Meetings are typically held in the Council Chamber at City Hall.

This schedule does not include special City Council meetings, including study sessions. For more information on upcoming special meetings, please visit the City’s website at [www.benicia.ca.us](http://www.benicia.ca.us) or contact the City Manager’s office at (707) 746-4200.

January

- January 7
- January 21
- January 28

July

- July 7
- July 21
- July 28

February

- February 4
- February 18
- February 25

August

- August 4 (National Night Out)
- August 18
- August 25

March

- March 3
- March 17
- March 24

September

- September 1
- September 15
- September 22

April

- April 7
- April 21
- April 28

October

- October 6
- October 20
- October 27

May

- May 5
- May 19
- May 26

November

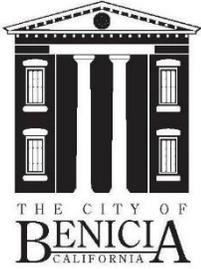
- November 3
- November 17
- November 24

June

- June 2
- June 16
- June 23

December

- December 1
- December 15
- December 22



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**CONSENT CALENDAR**

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **APPROVAL OF AGREEMENT WITH MUNICIPAL RESOURCES GROUP FOR TECHNICAL FINANCIAL ASSISTANCE**

**EXECUTIVE SUMMARY:**

The City’s Finance Department has utilized Municipal Resources Group (MRG) for technical financial assistance and consulting related to the preparation of the City’s bank reconciliation. The original agreement was approved by the City Manager and is close to reaching the \$50,000 maximum City Manager approval limit, per Benicia Municipal Code 3.10.030. However, the City is still in need of assistance with the technical project support for general ledger entries and timely preparation of the bank reconciliation, and the Finance department does not have the capacity to perform the work in-house.

**RECOMMENDATION:**

Move to adopt a resolution (Attachment 1) approving a Consultant Agreement with MRG (Attachment 2) for technical financial services related to preparation of the City’s bank reconciliation, for a total cost of \$80,000, and authorizing the City Manager to sign the agreement.

**BUDGET INFORMATION:**

The total cost of MRG services is \$80,000. Current expenditures for MRG services are approximately \$45,000. Staff is requesting a budget appropriation of \$35,000 from General Fund unassigned fund balance to account 0103100-7011 (General Fund – Finance Professional / Technical Services) for the additional services.

**BACKGROUND:**

The timely preparation of the City’s bank reconciliation fell behind as a result of several factors. Implementation of the City’s new Enterprise Resource Planning (ERP) software resulted in a sharp reduction of staff time available to focus on day-to-day operational projects. Staff time was re-allocated to time-sensitive conversion projects like legacy system data conversion, as well as transaction testing and training in the new ERP system.

Additionally, turnover in key staff resulted in the loss of institutional knowledge and procedures for preparing the bank reconciliation. Documented procedures for preparing the bank reconciliation were only for the legacy system, leaving new City staff without bank reconciliation procedures for the new ERP system. The staff turnover, coupled with procedure changes due to the ERP

implementation, left staff unable to fully complete the bank reconciliation.

The City’s external auditors, Maze and Associates, listed timely preparation of the bank reconciliation as a significant deficiency in their Memorandum of Internal Control for the Fiscal Year ended June 30, 2018. Although the City has since caught up on the bank reconciliation, staff currently requires additional assistance to keep the reconciliation prepared in a timely manner. The use of MRG to prepare the bank reconciliation allows the City to meet the goal of timely preparation as well as review best practices and procedures for preparing the bank reconciliation in the new ERP system going forward.

Per MRG estimates, the preparation of the bank reconciliation takes approximately 32 to 40 hours per month, depending on the various issues and reconciling items that arise. The hours include:

1. Providing the City’s Finance Department technical project support finalizing general ledger entries and reconciliations.
2. Completing FY 2019-20 bank reconciliations and journal entries.
3. MUNIS reporting support.
4. Reviewing completed staff work and adjustments.
5. Researching discrepancies in the City’s cashbook to reconcile the deposits recorded in the City’s general ledger to deposits in the bank account.

**NEXT STEPS:**

N/A

**ALTERNATIVE ACTIONS:**

If no action is taken, the City is at risk of falling behind on the timely preparation of the bank reconciliations. The lack of timely preparation of the bank reconciliation has an effect on other aspects of the Finance, including, but not limited to, year-end audit, preparation of the quarterly Investment Report, and reporting accuracy.

<b>General Plan</b>	Goal 1: Creating a sustainable community in Benicia
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<b>Strategic Plan</b>	Strategy Issue #3: Strengthening Economic and Fiscal Conditions
	Strategy Issue #4: Manage City Finances Prudently

<b>CEQA Analysis</b>	The proposed amendments are exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3), the “general rule” exemption that states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA. The City has determined that the proposed action will not have an impact on the environment and therefore are exempt from CEQA under the general rule.
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**ATTACHMENTS:**

1. Resolution – MRG Agreement
2. Agreement with Municipal Resources Group

*For more information contact: Cindy Mosser, Finance Director*

*Phone: (707) 746-4217*

*E-mail: [cmosser@ci.benicia.ca.us](mailto:cmosser@ci.benicia.ca.us)*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN AGREEMENT WITH MUNICIPAL RESOURCES GROUP FOR TECHNICAL FINANCIAL ASSISTANCE FOR \$80,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE CITY**

**WHEREAS**, the City has utilized Municipal Resources Group for technical financial services support related to the general ledger entries and to the timely preparation of the bank reconciliation; and

**WHEREAS**, the original agreement is close to reaching the \$50,000 maximum approval limit by City Manager; and

**WHEREAS**, staff recommends approving an Agreement with Municipal Resources Group for continued technical financial services related to the preparation of the City's bank reconciliation for a total cost of \$80,000; and

**WHEREAS**, funding in the amount of \$35,000 is requested from General Fund Reserves; and

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

**WHEREAS**, utilizing Municipal Resources Group will allow City staff to review best practices and procedures while completing the timely preparation of the bank reconciliation; and

**WHEREAS**, Municipal Resources Group is the most capable in all material aspects to perform the contract requirements and is highly qualified to perform these services for the City.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the Consulting Agreement with Municipal Services Group for continued technical financial support related to general ledger entries and to the preparation of the City's bank reconciliation, for a total cost of \$80,000, and authorizes the City Manager to sign the agreement 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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

CONTRACT # \_\_\_ - \_\_\_

**AGREEMENT FOR CONTRACT SERVICES**

**[\$50,000 and above (BMC 3.10.030 A)]**

**THIS AGREEMENT** (“Agreement”) is made and entered into this 17<sup>th</sup> day of December 2019 between the City of Benicia, a municipal corporation in Solano County, California, (hereinafter "CITY") and Municipal Resources Group, a California corporation, with its primary office located at 675 Hartz Ave., Suit 300, Danville, CA 94526 (hereinafter "CONTRACTOR") (collectively, "the Parties").

**RECITALS**

**WHEREAS**, CITY and CONTRACTOR each desire to enter into an Agreement whereby CONTRACTOR will perform contracting services for CITY; and

**WHEREAS**, CITY staff does not have the capacity to perform this work in-house.

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

1. DESCRIPTION OF SERVICES TO BE PROVIDED

CONTRACTOR shall provide services to CITY in accordance with the Proposal dated September 19, 2019 and December 2, 2019 for **finance consulting**. The Proposal are incorporated herein by reference and are attached as Exhibit “A”. CONTRACTOR shall perform the services contemplated hereunder in a competent and professional manner and to the satisfaction of the CITY's Department Head or his/her designee.

2. PAYMENT

CONTRACTOR shall be paid for the above described services in the amount of \$80,000. The compensation agreed to be paid to CONTRACTOR shall be the sole and exclusive consideration paid or provided to the CONTRACTOR by the CITY.

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

- within 30 days after receipt of any invoice therefore.
- within 30 days after the completion of the work.
- on a monthly basis, beginning on \_\_\_\_\_, in equal installments of \$ \_\_\_\_\_ each.

3. CONTRACT TERMINATION

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

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

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

4. INDEMNIFICATION

(a) CONTRACTOR agrees to indemnify, release, defend and hold harmless the CITY, its officers, agents and employees ("indemnitees") from and against any and all claims, demands, losses, defense costs or liability of any kind or nature which indemnitees may sustain or incur or which may be imposed upon them for injuries to or death of persons, or damage or injury to property as a result of, arising out of, or in any manner connected with CONTRACTOR's performance under the terms of this Agreement. CONTRACTOR or any approved Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of the Agreement are undertaken in addition to, and shall not be in any limited by, the insurance obligations contained in this Agreement.

(b) Further, CONTRACTOR will indemnify CITY, and hold it harmless, from an assertion that as a result of providing services to CITY, CONTRACTOR or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, CONTRACTOR's obligations for any payments to such claimant shall be limited to those payments which CITY may be required to pay.

5. INSURANCE

(a) Required Coverage. Without limiting CONTRACTOR's indemnification, it is agreed that CONTRACTOR shall maintain in force at all times during the term of this Agreement the following types of insurance providing coverage on an "occurrence" basis. Said insurance, with the exception of Worker's Compensation and Errors & Omissions Liability, shall name the CITY as additional insureds and evidence of said insurance shall be delivered to CITY in certificate and endorsement forms acceptable to the CITY prior to execution of this Agreement.

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

Commercial general liability and property damage insurance. Coverage: at least \$1,000,000 per occurrence. The general aggregate limit shall be at least twice the required occurrence limit.

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

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

(b) General Provisions.

(i) CONTRACTOR shall obtain insurance acceptable to the CITY in a company or companies admitted in California and with a Best rating of no less than A VII or as acceptable to the CITY. The endorsements, naming the CITY as an additional insured, are to be signed by a person authorized by CONTRACTOR's insurer to bind coverage on its behalf.

(ii) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in the Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the CITY (if agreed to in a written contract) before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

(iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.

(v) The insurance provided by these policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the CITY.

(c) Additional Insured. The CITY will be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(i) Each such policy shall be endorsed with the following language:  
*The City, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, including the insured's general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.*

(ii) This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

(iii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iv) The Additional Insured coverage under the CONTRACTOR's policy shall be primary and non-contributory and will not seek contribution from the CITY's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(d) Worker's Compensation. CONTRACTOR and CONTRACTOR's insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONTRACTOR's workers' compensation insurance policy which arise from the work performed by CONTRACTOR for CITY.

(e) Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the City, its officers, officials, agents, employees and volunteers; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY. The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

(f) Subcontractors. In the event CONTRACTOR desires to hire or employ any other company or person to perform any part of the services contemplated herein, the written approval therefore must be first obtained from the CITY. The CITY may withhold such approval for any reason.

(i) If approval is given by the CITY, CONTRACTOR agrees to include with all Subcontractors in the subcontract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by the CONTRACTOR agree to be bound to CONTRACTOR and CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Agreement Contract Documents. Subcontractor further agrees to include these same provisions with any Subcontractor. A copy of the CITY's Agreement Contract Document indemnity and insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to the commencement of any work and will provide proof of compliance to the CITY.

(ii) CONTRACTOR shall secure and provide CITY with evidence securing said Worker's Compensation insurance covering said approved employee(s) in statutory amounts and providing 30 days' advance notice to CITY in the event said policy is canceled.

When box is checked the following Section 6 ("PREVAILING WAGE") will apply:

6. PREVAILING WAGE

(a) CONTRACTOR will comply with all applicable laws, rules & regulations including, but not limited to, the requirements of Labor Code §3800 regarding workers' compensation insurance and shall, prior to CITY's execution of this Agreement, provide CITY with either a Certificate of Insurance documenting CONTRACTOR's workers' compensation insurance coverage from a company acceptable to City or a letter stating CONTRACTOR has no employees.

(b) For services deemed public works, CONTRACTOR, by signing this Agreement, CONTRACTOR is certifying pursuant to Labor Code section 1861, "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(c) CONTRACTOR shall comply with the requirements of the California Labor Code including, but not limited to, hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages.

(d) Not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to workers, laborers, and mechanics employed in the execution of the work by CONTRACTOR or any Subcontractor doing or contracting any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed with, and available for inspection, at the City offices. CONTRACTOR shall post, at each job site, a copy of the general prevailing rate of per diem wages. The CONTRACTOR shall forfeit two hundred dollars (\$200.00) per day for each calendar day or portion thereof, for each worker paid less than the stipulated prevailing wage rates for any public work done under this Agreement by the CONTRACTOR or any Subcontractor under the CONTRACTOR.

(e) CONTRACTOR shall also comply with Labor Code Sections 1776, 1777.5, 1777.6, 1777.7 and 1810.

When box is checked the following Section 7 ("LIQUIDATED DAMAGES") will apply:

7. LIQUIDATED DAMAGES

It is agreed that CONTRACTOR's failure to complete the work within the time allowed will result in damages being sustained by the CITY. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified, as adjusted in accordance with standard specifications, for completion of the work the CONTRACTOR shall pay to the CITY, or have withheld from moneys due it, the sum of \$100 per day. Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

8. CONTRACTOR RELATIONSHIP

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

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

9. COMPLIANCE WITH THE LAW

CONTRACTOR, in the conduct of the services contemplated hereunder, shall comply with all statutes, state or federal, and all ordinances, rules and regulations of the City Council, and City of Benicia. Prior to commencement of work, CONTRACTOR shall procure a City business license.

10. SUPPLIES

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

11. ASSIGNMENT

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

12. NOTICES

(a) Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the CITY:

\_\_\_\_\_  
Cindy Mosser  
City of Benicia  
250 East L Street  
Benicia, CA 94510

To CONTRACTOR: Mary Egan

MRG  
PO Box 561  
Wilton, CA 95693

(b) Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

13. GOVERNING LAW AND VENUE

This Agreement shall be administered and interpreted under California law as if written by both parties. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force. **If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state court situated in the County of Solano, State of California or, if necessary, in a federal court situated in the City and County of Sacramento, California.**

14. ENTIRE AGREEMENT

(a) This Agreement supersedes any and all other agreements, either oral or written, between the CITY and CONTRACTOR with respect to the subject matter of this Agreement.

(b) This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

(c) No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

15. WAIVER

(a) No waiver shall be binding, unless executed in writing by the party making the waiver.

(b) No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

(c) Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

16. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

17. LITIGATION EXPENSES AND ATTORNEY'S FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

18. AUTHORITY TO ENTER AGREEMENT

CONTRACTOR has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

19. PROHIBITED INTERESTS

CONTRACTOR warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

20. NONDISCRIMINATION

(a) CONTRACTOR shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis.

(b) Consistent with CITY's policy that harassment and discrimination are unacceptable employer/employee conduct, CONTRACTOR agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONTRACTOR or CONTRACTOR's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONTRACTOR agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

21. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE

**IN WITNESS WHEREOF**, the undersigned execute this Agreement on the date first written above.

CONTRACTOR

CITY OF BENICIA  
A Municipal Corporation

BY: Mary Egan

Title: CEO/Managing Partner

\_\_\_\_\_  
Lorie Tinfow  
CITY MANAGER

RECOMMENDED BY:

\_\_\_\_\_  
Name  
FINANCE DIRECTOR

APPROVED AS TO FORM:

\_\_\_\_\_  
Ben Stock  
CITY ATTORNEY

Attachments: Exhibit A – Proposal

September 19, 2019

Lorie Tinfow, City Manager  
Cindy Mosser, Finance Director  
City of Benicia  
250 East L Street  
Benicia, CA 94510

Via email to: [ltinfo@ci.benicia.ca.us](mailto:ltinfo@ci.benicia.ca.us)

Re: Finance Department Professional Consulting Services

Dear Ms. Mosser:

Thank you for requesting additional hours of professional consulting services from Municipal Resource Group (“MRG”) to provide technical financial project support in the Finance Department in Benicia. MRG looks forward to continuing to support the specific finance-related projects, with the attached scope of work for the months of July, August and September. At that time, the project progress will be evaluated as to the percentage complete, status of anticipated new hire readiness and consultant availability. The entire MRG Team will provide other subject matter expertise as needed.

Tina Mckenney will continue to provide on- and off-site professional finance-related consulting services for Benicia through the end of September. Please review the scope of work and associated fees. This amended fee schedule will provide additional hours to same scope of work in anticipation of transitioning the completed projects.

Sincerely,



**Mary Egan**  
Managing Partner  
MRG, LLC  
916-261-7547  
[egan@solutions-mrg.com](mailto:egan@solutions-mrg.com)

## Scope of Work

The City of Benicia requests the following services for approximately three months:

1. Provide Finance Department technical project support finalizing GL entries and reconciliations.
2. Completing FY 2018-19 reconciliations and journal entries.
3. MUNIS reporting support.
4. Review completed staff work for accuracy and completion.
5. Other requests as needed – review for compliance, etc.

*The services of a Subject Matter Expert Consultant specifically do not include the evaluations, hiring, firing, or supervision of any City personnel. Also, Consultant shall not have any contracting or signing authority or act in the position of the Department Head or represent the position at commission or Council meetings.*

## Project Fees

All services performed under this Scope of Work shall be performed on a project basis, invoiced for convenience on an hourly basis. Benicia has requested an additional amount of services for \$15,000 for a total not-to-exceed \$45,000. The professional fee is \$115 per hour up to 250 hours for consulting fees and travel one-way to Benicia. Expenses will be invoiced at cost including, but not limited to mileage, parking, tolls, and postage as needed. All hours will be invoiced as incurred.

Additional projects requested outside this scope of work or extending the amount of time to complete projects will be invoiced at \$115 per hour after approval of both MRG and the City of Benicia.

December 2, 2019

Lorie Tinfow, City Manager  
Cindy Mosser, Finance Director  
City of Benicia  
250 East L Street  
Benicia, CA 94510

Via email to: [ltinfo@ci.benicia.ca.us](mailto:ltinfo@ci.benicia.ca.us)

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Sincerely,



**Mary Egan**  
Managing Partner  
MRG, LLC  
916-261-7547  
[egan@solutions-mrg.com](mailto:egan@solutions-mrg.com)

## Scope of Work

The City of Benicia requests the following services for approximately three months:

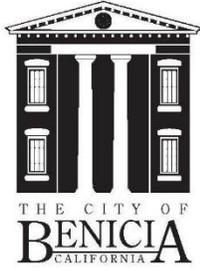
1. Provide Finance Department technical project support finalizing GL entries and reconciliations.
2. Completing FY 2018-19 reconciliations and journal entries.
3. Completing FY 2019-20 reconciliations and journal entries.
4. MUNIS reporting support.
5. Review completed staff work for accuracy and completion.
6. Other requests as needed – review for compliance, etc.

*The services of a Subject Matter Expert Consultant specifically do not include the evaluations, hiring, firing, or supervision of any City personnel. Also, Consultant shall not have any contracting or signing authority or act in the position of the Department Head or represent the position at commission or Council meetings.*

## Project Fees

All services performed under this Scope of Work shall be performed on a project basis, invoiced for convenience on an hourly basis. Benicia has requested an additional amount of services for \$35,000 for a total not-to-exceed \$80,000. The professional fee is \$115 per hour up to 300 hours and travel one-way to Benicia. Expenses will be invoiced at cost including, but not limited to mileage, parking, tolls, and postage as needed. All hours will be invoiced as incurred.

Additional projects requested outside this scope of work or extending the amount of time to complete projects will be invoiced at \$115 per hour after approval of both MRG and the City of Benicia.



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
BUSINESS ITEMS**

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **RESOLUTION FOR SOLANO COUNTY TRANSIT TO  
TRANSITION TO A LEGISLATIVELY RECOGNIZED TRANSIT  
DISTRICT**

**EXECUTIVE SUMMARY:**

The City of Benicia entered into a Joint Power Agreement (JPA) with Solano County Transit (SolTrans) on November 30, 2010, to provide bus services to residents of Benicia and surrounding cities. SolTrans seeking sponsoring legislation to convert the JPA into a Transit District. This will assist in long-term funding and potential incremental increased services.

**RECOMMENDATION:**

Adopt the resolution (Attachment 1) supporting the Solano County Transit’s transition to a legislatively recognized Transit District.

**BUDGET INFORMATION:**

This resolution and letter of support have no budgetary impacts.

**BACKGROUND:**

Solano County Transit (SolTrans) was formed on November 30, 2010, to officially consolidate transit operations. Their founding Guiding Principals are to enhance service coverage, frequency, affordability and mobility options, subject to available funding. While the transition to the consolidated system has been very successful, projections for long-term funding are not good, with estimates that project stagnant or declining revenue streams. SolTrans staff began exploring options for new revenue streams, which included sponsoring legislation to convert the current Joint Powers Agreement (JPA) into a Transit District. This conversion would make SolTrans more competitive for Transportation Development Act (TDA) funding or possibly Cap and Trade funding, while giving SolTrans the authority to place a sales tax measure on the ballot or issue bonds, all of which would potentially generate sufficient new revenues to sustain the current levels of service, if not incremental increases.

**ALTERNATIVE ACTIONS:**

Council could choose not to adopt the resolution.

<b>General Plan</b>	Goal 2.28 Improve and maintain public facilities and services
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<b>Strategic Plan</b>	Strategic Issue #4: Preserving and Enhancing Infrastructure
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<b>CEQA Analysis</b>	This project is Categorical Exempt per CEQA Section 15301.
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**ATTACHMENT:**

1. Resolution – SolTrans Transition to Transit District

*For more information contact: Lorie Tinfow, City Manager  
 Phone: 707.746.4200  
 E-mail: ltinfow@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ENDORSING ITS SUPPORT FOR THE CREATION OF A SOLANO COUNTY TRANSIT DISTRICT**

**WHEREAS**, on November 30, 2010, the Cities of Benicia and Vallejo, along with the Solano Transportation Authority, entered into the Solano County Transit (SolTrans) Joint Powers Agreement to create a new transit agency, for the sole purpose of improving and expanding the provision of transit services within the consolidated boundaries of the two cities; and

**WHEREAS**, on July 1, 2011, SolTrans officially assumed responsibility for the transit operations and began operations in its own name; and

**WHEREAS**, since that time, SolTrans has successfully worked towards the goals established by the founding Guiding Principles, including the enhancement of service coverage, frequency, affordability and mobility options, subject to available funding; and,

**WHEREAS**, while the consolidation has been effective, SolTrans is constrained in its ability to generate additional revenue options beyond current revenue sources such as Transportation Development Act (TDA) funding and Cap and Trade funding; and

**WHEREAS**, the creation of a new transit district would provide revenue options not currently available to SolTrans that would ensure the financial viability of transit services for the heavily transit-dependent population of Solano County.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia does hereby resolve that the City Council endorses the proposed creation of Solano County Transit District as a successor-in-interest to the Solano County Transit Joint Powers Agreement and requests the Solano County legislative delegation to move such legislation forward.

\*\*\*\*\*

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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
BUSINESS ITEMS**

**TO** : City Manager

**FROM** : Public Works Director

**SUBJECT** : **APPROVAL OF CONSULTANT AGREEMENT FOR PUBLIC OUTREACH AND ENGAGEMENT FOR THE UPCOMING WATER AND WASTEWATER RATE STUDY**

**EXECUTIVE SUMMARY:**

Staff is preparing for the next water and wastewater rate study and is recommending the use of professional assistance from JM Consultants to develop and conduct robust public outreach related to the utility rate development process.

**RECOMMENDATION:**

Adopt the resolution (Attachment 1) approving the consultant agreement (Attachment 2) with JM Consultants for public outreach and engagement for the next 5-year water and wastewater rate study in the amount not-to-exceed \$100,000 and authorizing the City Manager to sign the agreement on behalf of the City.

**BUDGET INFORMATION:**

A budget adjustment of \$100,000 is requested to cover the cost of the agreement. Enough funds are available in Water and Wastewater Enterprise Reserves. The cost of the consultant agreement is \$91,224 and the remainder of \$8,776 will be used for contingency. The cost will be split evenly between Water Treatment “Professional Services” Account No. 7508020-7011 and Wastewater Treatment “Professional Services” Account No. 7108030-7011. If approved, this work will be rate-payer funded.

**BACKGROUND:**

The last water and wastewater rate study was conducted in 2015-2016 and recommended utility rates for fiscal years 2016-2021. The next rate study is planned to start next year and would cover the projected financial needs of the water and wastewater enterprise funds from 2021 through 2026.

To be more transparent and inclusive, City staff recommends hiring a consultant to assist with public outreach and engagement for the upcoming water and wastewater rate study. A Request for Proposal (RFP) was issued on November 1, 2019 and three firms submitted a proposal by the due date of November 17, 2019. Staff evaluated the proposals and recommends entering into a contract with JM Consultants based on the proposal, qualifications, and expertise in the area of public outreach and engagement.

JM Consultants’ scope of work includes the following tasks:

- Assess the 2016 water and wastewater rate process
- Conduct City Council workshops
- Create a public participation plan
- Identify and provide staff for a public advisory workgroup
- Conduct public meetings
- Assist with multimedia outreach (e.g. webpage, flyers, social media, community meetings, etc.)

JM Consultants will ensure that residents can participate in an open, transparent, and authentic rate setting process. The goal is to provide ratepayers with a clear understanding of the services provided by the City and associated financial costs of service.

**NEXT STEPS:**

If the resolution is adopted, staff will continue processing the agreement.

**ALTERNATIVE ACTIONS:**

The Council could choose to not approve this agreement and another consultant could be selected, which would delay or possibly prevent the hiring of a public relations and engagement professionals for the upcoming water and wastewater rate study.

<b>General Plan</b>	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

<b>Strategic Plan</b>	Strategic Issue #1: Protecting Community Health and Safety
	Strategic Issue #3: Strengthening Economic and Fiscal Conditions
	Strategy #4: Manage City finances prudently
	Strategic Issue #4: Preserving and Enhancing Infrastructure

<b>CEQA Analysis</b>	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 – Rate Study Public Engagement
2. Consultant Agreement - Rate Study Public Engagement

*For more information contact: Kyle Ochendusko, Deputy Public Works Director*

*Phone: 707.746.4376*

*E-mail: KOchendusko@ci.benicia.ca.us*

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A CONSULTANT AGREEMENT WITH JM CONSULTANTS FOR PUBLIC OUTREACH AND ENGAGEMENT FOR THE WATER AND WASTEWATER RATE STUDY IN THE AMOUNT NOT-TO-EXCEED \$100,000, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, staff is preparing for the next water and wastewater rate study and is recommending the use of professional assistance to develop and conduct robust public outreach related to the utility rate development process; and

**WHEREAS**, the last water and wastewater rate study was conducted in 2015-2016 and recommended utility rates for Fiscal Years 2016-2021; and

**WHEREAS**, the next rate study is planned to start next year and would cover the projected financial needs of the water and wastewater enterprise funds from 2021 through 2026; and

**WHEREAS**, a Request for Proposal (RFP) to perform public outreach and engagement for the five-year water and wastewater rate study was issued on November 1, 2019; and

**WHEREAS**, three proposals were received and reviewed by staff; and

**WHEREAS**, based on their proposal, qualifications, and expertise in the area of public outreach and engagement, staff is recommending JM Consultants at a not-to-exceed cost of \$100,000; and

**WHEREAS**, the specific cost of the proposal is \$91,224, while the remainder \$8,776 will be used for contingency.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia does hereby approve the consultant agreement with JM Consultants for public outreach and engagement for the water and wastewater rate study up to \$100,000, and authorizes the City Manager to sign the contract on behalf of the City; and

**BE IT FURTHER RESOLVED** that a budget adjustment in the total amount of \$100,000 is approved as follows: \$50,000 from Water Enterprise Reserves to Water Treatment “Professional Services” Account No. 7508020-7011 and \$50,000 from Wastewater Enterprise Reserves to Wastewater Treatment “Professional Services” Account No. 7108030-7011.

\*\*\*\*\*

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 17<sup>th</sup> day of December, 2019 by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

\_\_\_\_\_  
Date

CONTRACT #\_\_ - \_\_ - \_\_

## AGREEMENT FOR CONSULTING SERVICES

**THIS AGREEMENT** ("Agreement") is made and entered into this 17th day of December 2019 between the City of Benicia, a municipal corporation in Solano County, California, (hereinafter "CITY") and JM Consultants, a sole proprietor, with its primary office located at 8113 Craft Court, Orangevale, CA 95662 (hereinafter "CONSULTANT") (collectively, "the Parties").

### RECITALS

**WHEREAS**, CITY has determined it is necessary and desirable to secure certain professional services for Public Outreach and Engagement for the Water and Wastewater Rate Study. The scope of work for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference;

**WHEREAS**, CITY staff does not have the expertise to perform this work in-house;

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

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

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

### AGREEMENT

1. INCORPORATION OF RECITALS

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

2. SCOPE OF SERVICE

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

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

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

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

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT's field of expertise at the time CONSULTANT's work is performed. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT's activities under this Agreement shall be performed to the full satisfaction and approval of the Department Head or his/her designee.

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

### 3. COMPENSATION

(a) Schedule of Payment. The compensation to be paid by CITY to CONSULTANT for the services rendered hereunder shall be on a time and materials basis based upon the rate schedule in Exhibit A attached hereto and hereby incorporated by reference not to exceed \$100,000 dollars. The rate schedule in Exhibit A itemizes those standard and expected expenses for which CONSULTANT shall receive compensation. If CONSULTANT obtains CITY's prior written approval from the Department Head or his/her designee, CONSULTANT may be reimbursed for extraordinary costs incurred on the Project.

(b) Additional Services. CITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

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

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

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

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

#### 4. PRODUCT REVIEW AND COMMENT

CONSULTANT shall provide CITY with at least two (2) copies of each product described in Exhibit A. Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

#### 5. TERM OF AGREEMENT

This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until June 30, 2021, unless amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION

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

(b) If CITY issues a notice of termination,

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

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

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

7. AMENDMENTS

Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of CITY without the prior written consent of CITY.

9. INSPECTION

CITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by CITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR

In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICES

Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

To CITY: William Tarbox, Public Works Director  
City of Benicia  
250 East L Street  
Benicia, CA 94510

To CONSULTANT: Jodie Monaghan  
JM Consultants  
8113 Craft Court  
Orangevale, CA 95662

12. OWNERSHIP OF MATERIALS

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

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING

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

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

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

14. BINDING AGREEMENT

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

15. WAIVER

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

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

16. NONDISCRIMINATION

(a) CONSULTANT shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis.

(b) Consistent with CITY's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY

(a) To the fullest extent allowed by law, CONSULTANT specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement, however caused, regardless of any negligence of the CITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the CITY. The CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations contained in this agreement.

(b) Further, CONSULTANT will indemnify CITY, and hold it harmless, from an assertion that as a result of providing services to CITY, CONSULTANT or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, CONSULTANT's obligations for any payments to such claimant shall be limited to those payments which CITY may be required to pay.

18. INSURANCE

(a) Required Coverage. Without limiting CONSULTANT's indemnification, it is agreed that CONSULTANT shall maintain in force at all times during the term of this Agreement the following types of insurance providing coverage on an "occurrence" basis. Said insurance, with the exception of Worker's Compensation and Errors & Omissions Liability, shall name the CITY as additional insureds and evidence of said insurance shall be delivered to CITY in certificate and endorsement forms acceptable to the CITY prior to execution of this Agreement.

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

Commercial general liability and property damage insurance. Coverage: at least \$1,000,000 per occurrence. The general aggregate limit shall be at least twice the required occurrence limit.

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

E&O/ Professional's Liability, errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage: at least \$1,000,000 per Claim.

(b) General Provisions.

(i) CONSULTANT shall obtain insurance acceptable to the CITY in a company or companies admitted in California and with a Best rating of no less than A VII or as acceptable to the CITY. The endorsements, naming the CITY as an additional insured, are to be signed by a person authorized by CONSULTANT's insurer to bind coverage on its behalf.

(ii) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in the Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the CITY (if agreed to in a written contract) before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

(iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.

(v) The insurance provided by these policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the CITY.

(c) Additional Insured. The CITY will be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(i) Each such policy shall be endorsed with the following language:  
*The City of Benicia, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from:*  
*(a) activities performed by or on behalf of the Named Insured, including the insured's general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.*

(ii) This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

(iii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iv) The Additional Insured coverage under the CONSULTANT's policy shall be primary and non-contributory and will not seek contribution from the CITY's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(d) Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the CITY, its officers, officials, agents, employees and volunteers; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY. The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

## 19. WORKERS' COMPENSATION

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

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

20. FINANCIAL RECORDS

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

21. CONFLICT OF INTEREST

CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY's interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement. CONSULTANT shall immediately notify CITY of any and all violations of this Section upon becoming aware of such violation. CONSULTANT shall file FPPC form 700 the City Clerk if required by CITY's Conflict of Interest Code.

22. TIME OF THE ESSENCE

CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY

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

24. GOVERNING LAW AND CHOICE OF FORUM

This Agreement shall be administered and interpreted under California law as if written by both parties. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force. **If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state court situated in the County of Solano, State of California or, if necessary, in a federal court situated in the City and County of Sacramento, California.**

25. COSTS AND ATTORNEYS' FEES

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

26. INTEGRATION

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7. The effective date of this Agreement shall be the date of execution by the CITY as shown below.

**IN WITNESS WHEREOF**, the undersigned execute this Agreement on the date shown below their respective signatures.

CONSULTANT

CITY OF BENICIA  
A Municipal Corporation

BY: Jodie Monaghan

\_\_\_\_\_  
Lorie Tinfow  
CITY MANAGER

Title: PRINCIPAL

Date: NOV. 26, 2019

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

RECOMMENDED BY:

\_\_\_\_\_  
William Tarbox  
DEPARTMENT HEAD

APPROVED AS TO FORM:

\_\_\_\_\_  
Benjamin L. Stock  
CITY ATTORNEY

Attachment: Exhibit A – Scope of Work/Proposal

EXHIBIT A  
Scope of Work/Proposal



## Proposal for Utility Rate Study Outreach Project for the City of Benicia

November 15, 2019

*Submitted by:*

**JM Consultants**

8113 Craft Court

Orangevale, CA 95662

(916) 616-1134

[jodie@jmconsultants.net](mailto:jodie@jmconsultants.net)



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## Project Overview

The last water and wastewater study was conducted by NBS and was completed in May 2016. It is the basis for the rate structure in place today. The Benicia City Council approved annual adjustments to water and sewer rates through fiscal year 2020-21, with the last increase scheduled to take effect in July 1, 2020. As noted on the City of Benicia Water and Wastewater Utility Rates webpage, “These rates ensure the health and safety of the community and ensure Benicia’s water and sewer utilities remain financially solvent and operational. The increases will help the City continue to provide residents with reliable and safe water and sewer services.”

Looking forward, the City of Benicia will conduct a rate study and analyze existing water and wastewater utility services in order to recommend rate adjustments for fiscal years 2021-2026. Escalating costs and funding for capital improvement projects demand rates increases overtime. Periodic increases are needed for repairing/replacing aging infrastructure, ensuring regulatory compliance obligations, and ongoing operations. The goal of the rate study is to ensure that the revenues cover the cost of services, meet the debt coverage and reserve requirements, and provide revenue for capital improvements.

Few residents look forward to rate increases. However, if residents can participate in an open, transparent, and authentic rate setting process, they not only understand the need for any increases, but will likely support rate changes. It is critically important that residents be provided with enough information to make an informed decision when supporting any proposed rate increases. The purpose of Utility Rate Study Outreach Project is to provide outreach and facilitation services in support of the 2021-2026 water and wastewater rate study.

## Approach

JM Consultants proposes the following process to ensure extensive and robust public engagement and participation:

### ***Review of 2016 rate process***

Conduct interviews with current and former elected officials, Public Works staff, and residents familiar with the process. Determine what worked well; what could be improved.

### ***Develop Outreach Strategies***

Include outreach strategies to reach:

- Internal (Elected officials and City leadership and staff)
- Advisory Working Group
- General Public

#### Internal proposed strategies:

- Strong City leadership must be committed to an open and transparent process for the outreach to be successful.
- Inclusive (not exclusive) process.

- Anticipate issues and work to address them proactively.
- Collaborative decision-making without abdicating regulatory responsibility.
- Be open to alternative ideas.

#### Advisory Working Group proposed strategies

- Identify key members of the public to serve in an advisory capacity to guide the process.
- Identify key partners such as Valero and any other major water users.
- Include representatives from all categories of stakeholders (e.g., major users, small business owners, local homeowners, renters, elected official, city staff, etc.)

#### General Public proposed strategies

- Early and continued involvement of interested parties.
- Involve the public at many levels.
- Emphasis on relationship and trust building.
- Early meetings with community leaders to explain process and garner support.
- Determine how the public wishes to be communicated with (e.g., newspaper, mail, email, Facebook, twitter, etc.)
- Clear communication of information, options, and participation opportunities.
- Be responsive to public concerns:
  - Listen respectfully,
  - Be open to new ideas,
  - Seek mutually acceptable solutions, not announce and defend, and
  - Actively explore creative solutions.

#### ***Develop an Outreach Plan***

A robust and inclusive public engagement and outreach plan should include:

- City Council workshop to educate council members on the issues and the process.
- Community leaders meeting: engaging community leaders in advance of the public project launch creates support for the process.
- Initial public scoping meeting to announce the project, educate residents on water and wastewater financial needs and determine the public's additional issues of concern.
- Periodic public workshops to engage residents and other interested parties in both understanding and participating in the rate discussion.
- Website updated frequently with status of rate study, meeting announcements and Frequently Asked Questions. Should include an option for the public to submit comments.
- Use of social media including Facebook, NextDoor and Twitter feeds if appropriate.
- Bulk mailings to all city addresses.
- Paid project advertisements and meeting notices.
- Periodic newspaper articles.
- Op/Ed newspaper pieces.

- Bill stuffers.
- Informational flyers (in multiple languages?)
- Media opportunities.
- Speakers Bureau for local service clubs, organizations, etc.
- City Council agenda item to accept public input.
- Advisory Working Group meetings open to the public.
- Any other effective outreach activities suggested by the Advisory Working Group.
- Explore civic project with schools.

## Scope of Services

The following is a description of the proposed tasks:

### Task 1: Conduct assessment of 2016 Water Rate Process

- Determine what worked; what needed to be improved
- Share findings with Public Works leadership
- Develop project strategy and work plan based on lessons learned

### Task 2: Conduct City Council Workshops

- Design and facilitate an initial workshop to educate council members on the Rate Study and the public engagement process.
- Design and facilitate additional workshops to update the Council on major milestones including:
  - Scoping Meeting Report
  - Advisory Working Group recommendations
  - Rate Study recommendations
- Design and facilitate required public hearings on rate increase.

### Task 3: Create Public Participation Plan

Prepare draft outreach and public participation plan that includes:

- Website updated frequently with status of rate study, meeting announcements and Frequently Asked Questions. Should include an option for the public to submit comments.
- Facebook page updated regularly with status of rate study, meeting announcements and any relevant information.
- Periodic newspaper articles
- Op/Ed newspaper pieces
- Twitter feeds
- Bill stuffers
- Informational flyers (in additional languages?)
- Media opportunities
- Speakers Bureau for local service clubs, organizations, etc.

- City Council agenda items to accept public input
- Advisory Working Group meetings open to the public
- Any other effective outreach activities suggested by the Advisory Working Group.

**Task 4: Identify and convene Public Advisory Working Group**

- Determine categories of residents and interested parties.
- Invite residents and interested parties to apply for membership on the Advisory Working Group.
- Convene and facilitate a working group composed of 12 – 15 members who will meet monthly to ensure stakeholder concerns and interests are heard and to the extent possible, reconciled with any rate increases.
- Share draft work plan and draft public participation plan with Working Group.

**Task 5: Conduct Public Meetings**

- Plan and facilitate an initial public scoping meeting to announce the project, educate residents on water and wastewater financial needs and determine the public's additional issues of concern.
- Plan and facilitate up to 4 public workshops to:
  - Educate the general public about the water and wastewater processes,
  - Regulatory requirements and cost impacts
  - Status of Benicia's infrastructure, operations and maintenance requirements
  - Cost studies
  - Rate Options
  - Other topics of concern

**Task 6: Implement other outreach activities**

- Convene community leaders' meetings to share process in advance
- Advise and design flyers and other collateral materials
- Draft website page and updates
- Draft Facebook posts
- Draft newspaper articles, columns, etc.
- Explore civics project with High Schools – engage students in process.
- Other activities as identified.

**Task 7: Project Management**

Work includes:

- Project management
- Coordination and attending meetings with city staff
- Contract management
- Invoicing

- Monthly Report preparation
- Any other tasks that may be necessary to complete this scope of work.

**General Scope Assumptions—All Tasks:**

- **Hours identified may be shifted between tasks with the approval of the City.**
- Travel time will be billed at half the standard rate.
- Communication of meeting materials will be provided electronically.
- Photocopying and printing will be done by the Client unless otherwise arranged in advance.
- Client will provide meeting facilities unless otherwise agreed to.
- Client will provide all audio-visual equipment for meetings.
- Client will provide any translation services necessary.
- Direct expenses for this project may include:
  - Copying and printing
  - Meeting materials
  - Mileage at the prevailing Federal rate
  - Production and postage regarding written materials
  - Other reproduction services
  - Meeting facility rental; Meeting equipment rental
  - Beverages and snacks for public meetings
  - Advertising (newspaper and other publications)
  - Supplies and materials including flipcharts
- Conditions causing assumptions described in this scope of work to be exceeded will be communicated to the client for their approval in advance of any work.

**Project Personnel**

All work will be performed by Jodie Monaghan. Please see Exhibit 1 for Ms. Monaghan’s resume. Also included is a more detailed project description of the outreach efforts Ms. Monaghan conducted for the Lake Davis Pike Eradication Process (Exhibit 2). The project was selected because it mirrors the City of Benicia’s issues: the need to regain public confidence and trust.

**Billing Rate**

Work will be completed on a time and materials basis. The rate for Ms. Monaghan is \$150 per hour. Travel time is billed at half the rate or \$75.00 per hour plus the prevailing federal mileage rate (currently \$ .58 per mile.)

**Billing Rate for Additional Services**

Any agreed on additional services will be billed at the same rate: \$150 per hour with travel time at \$75 per hour and mileage at the prevailing federal mileage rate.

## **Project Schedule**

The project schedule will be determined by the City and JM Consultants after discussion of the rate study schedule and the needs of the Department of Public Works. The estimated start date is January 2, 2020.

## **Proposed Budget**

The proposed budget is based on the tasks designed in the Utility Rate Study Outreach Project RFP and the City's desire for robust civic engagement. The budget is presented as a not-to-exceed amount. If the actual work does not use all the hours estimated, the hours will not be billed. A detailed budget follows on the next page.

**Proposed Budget**

<b>Task</b>	<b>Description</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>1</b>	<b>2016 Process Assessment</b>			
	Develop questionnaire	3	\$ 150	\$ 450.00
	Conduct up to 12 interviews including scheduling	18	150	2,700.00
	Assessment analysis and summary report	4	150	600.00
	<b>Task 1 Subtotal</b>	<b>25</b>		<b>\$ 3,750.00</b>
<b>2</b>	<b>Conduct City Council Workshops</b>			
	Design and prep for Initial Workshop	12	150	\$ 1,800.00
	Design and prep for 3 additional workshops	24	150	3,600.00
	Assist with design and preparation for public hearing	8	150	1,200.00
	<b>Task 2 Subtotal</b>	<b>44</b>		<b>\$ 6,600.00</b>
<b>3</b>	<b>Create Public Participation Plan</b>			
	Create draft	8	150	\$ 1,200.00
	Two revisions (based on City staff and Advisory Working Group comments)	4	150	600.00
	<b>Task 3 Subtotal</b>	<b>12</b>		<b>\$ 1,800.00</b>
<b>4</b>	<b>Public Advisory Working Group</b>			
	Determine criteria for membership and develop application	4	150	\$ 600.00
	Announce the formation of an Advisory Working Group	2	150	300.00
	Design, convene and facilitate 6 meetings	48	150	7,200.00
	Meeting notes and follow-up	24	150	3,600.00
	<b>Task 4 Subtotal</b>	<b>78</b>		<b>\$ 11,700.00</b>
<b>5</b>	<b>Public Meetings</b>			
	Plan and facilitate initial scoping meeting	24	150	\$ 3,600.00
	Summary scoping meeting report	4	150	600.00
	Plan and facilitate 4 additional public meetings	96	150	14,400.00
	<b>Task 5 Subtotal</b>	<b>124</b>		<b>\$ 18,600.00</b>
<b>6</b>	<b>Other Outreach activities</b>			
	Design, invite and facilitate Community Leaders meeting(s)	36	150	\$ 5,400.00
	Draft webpage and updates	12	150	1,800.00
	Advise and design flyers and other collateral material	48	150	7,200.00
	Draft Social media posts	36	150	5,400.00
	Draft newspaper articles, weekly column, etc.	48	150	7,200.00
	Set up Speakers Bureau and extend invitations to local clubs and organizations	24	150	3,600.00
	<b>Task 6 Subtotal</b>	<b>204</b>		<b>\$ 30,600.00</b>

Task	Description	Hours	Rate	Total
<b>7</b>	<b>Project Management</b>			
	Bi-weekly project phone meetings with Client	27	150	\$ 4,050.00
	Monthly in-person meetings with Client	24	150	3,600.00
	Monthly invoice and status report	24	150	3,600.00
	<b>Task 7 Subtotal</b>	<b>75</b>		<b>\$ 11,250.00</b>
	<b>Direct Expenses</b>			
	Travel	54	75	\$ 4,050.00
	Mileage	2800 miles	.58	1,624.00
	Refreshments for public meetings			500.00
	Copying and printing			250.00
	Meeting materials			500.00
	<b>Direct Expense Subtotal</b>			<b>\$ 6,924.00</b>
	<b>Labor Total</b>			<b>\$ 84,300.00</b>
	<b>Direct Expense Total</b>			<b>6,924.00</b>
	<b>Proposal Total</b>			<b>\$ 91,224.00</b>

## Exhibit 1: Resume



### Jodie Monaghan

Principal

#### JM Consultants

Mediation • Facilitation • Training

8113 CRAFT COURT • ORANGEVALE, CA 95662

(916) 616-1134 • jodie@jmconsultants.net

## Summary

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Jodie Monaghan is the founding Principal of JM Consultants. She has over 25 years' experience as a Mediator and Facilitator - specializing in stakeholder engagement, public participation and conflict resolution. Ms. Monaghan has a comprehensive background facilitating consensus-based, multi-stakeholder public policy processes involving natural resource management, water management, land use planning, emergency preparedness and organizational development. She also has extensive project management experience, overseeing budgets, staffing, and client communications.

Prior to founding JM Consultants, Ms. Monaghan was a Lead Mediator with the Center for Collaborative Policy, a unit of California State University, Sacramento. Previously, she was employed by Zellerbach Paper Company, providing management consulting and, among other projects, implemented the Total Quality Management program in the Hawaii Branch.

Ms. Monaghan holds a B.A. in Communications Studies from California State University, Sacramento. She has completed graduate classes in the Public Policy and Administration Program at California State University, Sacramento. Ms. Monaghan has additionally completed numerous courses in facilitation, mediation and conflict resolution.

## Selected Experience

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### Solano County Water Agency

Client: Solano County Water Agency (SCWA)

Year: March 2017 – Present

Role: Project Manager and Facilitator

Assisting SCWA's Water Policy Committee to create consensus-based short-term and long-term policies to address flooding and water transfers both within the County and outside the County. The Water Policy Committee includes the SCWA General Manager, 6 SCWA Board Members and 1 representative from the Solano Water Advisory Committee (SWAC). The Water Policy Committee is tasked with drafting policies for consideration and approval by the full Board of 15 Participating Agencies. The Participating Agencies include the seven cities in Solano County, the five County Supervisors and three water districts. The short-term flood policy is in the process of being implemented. The long-term policy will require additional discussions and negotiations with key stakeholders. The

Committee has created a short-term water transfer policy and is in the process of discussing a long-term policy.

### **Prop 1 Disadvantaged Communities and Tribal Involvement Project**

Client: Sierra Water Workgroup

Year: 2017 - Present

Role: Process Designer, Facilitator and Outreach

Ms. Monaghan was instrumental in bringing the 11 Intergrated Regional Water Management (IRWM) programs in the Mountain Counties Funding Area (MCFA) together to submit a single grant application for Prop 1 funding for Disadvantaged Communitied and Tribal Outreach. The challenge was bringing together 11 IRWMs who had previously been competing for funding, and helping them to cooperatively write a Request for Qualifications to solcitra a grant applicant, select the applicant and develop a Scope of Work for the grant application. DWR required one grant application from each funding area for funds to be used cooperatively to identify DACs and tribes in the MCFA. The MCFA was allocated \$1.7M for this effort. Ultimately, Sierra Institute for Community and Environment was selected. Ms. Monaghan continues to work with Sierra Institute providing planning and facilitation for water and waterwater needs assessment surveys and workshops.

### **City of El Cajon: Successfully Moving to District Elections**

Client: City of El Cajon / Institute for Local Government

Year: 2016 - 2017

Role: Project Lead, Process Designer, Facilitator and Outreach

Recognizing the risk of a potential lawsuit challenging the City of El Cajon's City Council election process under the California Voting Rights Act of 2001, the city proactively sponsored a measure asking voters to consider a move from "at large" elections to district elections. Significant minorities included 28% Latino and approximately 25% residents of Middle Eastern descent.

Dedicated to making the entire process transparent, the City contracted for assistance with Institute for Local Government (ILG) in planning and executing the public engagement process. The City was clear they wanted public outreach "on steroids!" Jodie Monaghan was the lead mediator/facilitator. The engagement effort focused on building relationships with El Cajon's diverse residents and offering community members a variety of ways to engage. Outreach include informal meetings with community leaders, flyers and other collateral materials produced in English, Spanish and Arabic, multiple mailings to all households in the City advising residents of workshop dates and locations, and public workshops with translation services provided in Spanish and Arabic.

Following the successful passage of the ballot measure, four community workshops were hosted where the public was invited to learn about and submit draft boundary maps. At a subsequent public workshop, residents were invited to comment on the 18 proposed maps that had been submitted. Considerable outreach was done before each workshop. The community was encouraged to participate and mini-trainings were held to help them engage. The City of El Cajon's district elections engagement effort serves as a model of highly strategic public engagement planning and implementation, which resulted in robust participation in a public process.

### **Solano County Water Agency Strategic Plan**

Client: Solano County Water Agency (SCWA)

Year: September, 2015 – December 2016

Role: Process Designer, Facilitator and Project Management

SCWA is a wholesale water agency who provides untreated water to cities and agricultural districts in Solano County from the Federal Solano Project and the North Bay Aqueduct of the State Water Project. The agency also has a flood control function. Assisted the SCWA and its 15 Participating Agencies in developing a Strategic Plan to guide SCWA for the next 10 years. The Participating Agencies include the seven cities in Solano County, the five County Supervisors and three water districts. Conducted an assessment of key stakeholders to assess the current effectiveness of SCWA. Designed a stakeholder-driven strategic planning process that includes representatives from SCWA and the Participating Agencies. Assisted the stakeholder group in creating a robust Strategic Plan with goals, objectives and a short-term implementation plan that will allow SCWA to achieve their vision and mission.

### **Yosemite-Mariposa Integrated Regional Water Management Plan**

Client: Mariposa County Resource Conservation District

Year: 2012 – 2017

Role: Process Designer, Facilitator and Project Management

Ms. Monaghan assisted the Yosemite-Mariposa Integrated Water Management Group engage interested parties in collaboratively developing an Integrated Regional Water Management Plan (IRWM Plan) to plan for and manage the water resources in the County. The IRWM Plan was developed by stakeholders representing the Mariposa County Resources Conservation District, Mariposa County, public and private water districts, local community and environmental non-profit groups, tribal interests, and state and federal resource agency partners. Assisted with meeting planning and project management, and negotiated the governance structure. Provided facilitation to the Resource Water Advisory Council (RWAC) and several of its committees including the governance and public outreach committees. Created a public participation plan to engage interested parties and disadvantaged communities. Assisted the Public Outreach Committee in developing a mailer sent to every County resident informing them of the benefits of the IRWMP. The RWAC completed the IRWM Plan in July, 2014.

### **Eldorado Forest Travel Management Plan**

Client: US Forest Service

Year: 2013

Role: Lead Mediator and Project Manager

Mediated a long-standing dispute involving the US Forest Service, Off-Highway Vehicle community, county governments and environmental groups. Various stakeholders had challenged the Eldorado Forest Travel Management Plan. Eleven appeals were filed in response to the Final Supplemental Environmental Impact Statement and Record of Decision (ROD). Assessed the issues and stakeholder interests, identified areas of common goals, and facilitated a meeting about towards a potential negotiated agreement. Individualized negotiation communications after the meeting resulted in a mutually beneficial agreement and the withdrawal of all eleven appeals, allowing the ROD to be implemented.

### **State Wildlife Action Plan (SWAP)**

Client: California Department of Fish and Wildlife (DFW)

Year: 2012 – June, 2014

Role: Lead Mediator and Project Manager

Assisted with public engagement and public outreach for this multi-year statewide planning process. Provided strategic management and planning consultation to assist DFW Project Management. Managed development of the SWAP website. Developed the project newsletter and managed its monthly publication. Designed and facilitated thirteen scoping meetings statewide – many of them highly contentious. Planning included meeting design to address contentious issues, announcements, press releases, newsletters, and other innovative approaches to disseminate scoping meeting information to encourage public participation and input.

### **Climate Change Consortium**

Client: California Department of Food and Agriculture (CDFA)

Year: Nov. 2012 – June 2013

Role: Project Lead, Process Designer and Facilitator

Understanding that climate change will affect the state's \$43 Billion agriculture business, CDFA convened a consortium of stakeholders representing the 23 specialty crops grown in the state. The purpose of the Consortium was to determine specific strategies that can be implemented on the ground to adapt to climate change and provide some direction to CDFA on needs and actions that can be taken to help agriculture adapt to climate change and protect California's diverse specialty crop food supply into the next century. Ms. Monaghan designed the meetings to accommodate both subject matter experts and engaging discussion among Consortium members who included growers, scientists, members from the California Resource Conservation District, members from the California Agricultural Commissioners and Sealers Association Certified Crop/Pesticide Advisors and other representatives from the largest specialty crops commodity groups in California.

### **Unified Program Assessment and Strategic Plan**

Client: Cal/EPA

Year: February through June, 2012

Role: Process Designer, Interviewer, Facilitator, Strategic Plan Author

In recognition of the Unified Program's 20th year of operation, conducted an evaluation of the program in preparation for updating the Unified Program Administration and Advisory Group's (UPAAG) Strategic Plan. Reviewed current statutes and regulations to understand the intent of the Unified Program; conducted an assessment of key stakeholders to assess the current effectiveness of the Unified Program; made recommendations to align current operations with the goals of the Unified Program; and facilitated the update of the 2009 Strategic Plan. The strategic planning process included members of the UPAAG representing local Certified Unified Program Agencies, Cal/EPA, the State Water Board, California Emergency Management Agency and the Department of Toxic Substances Control. Provided the project design, developed the assessment questionnaire, conducted the assessment interviews and facilitated the 2-day strategic planning meeting. Presented the assessment results, strategic plan overview, and recommendations for further improving the Unified Program to the Cal/EPA Secretary and his management team.

### **Sacramento Water Conservation Advisory Group**

Client: City of Sacramento

Year: 2010 – 2014

Role: Project Lead, process designer and facilitator

Water conservation is a priority and long-standing element of the City of Sacramento's water resource portfolio. With the passage of Senate Bill 7 of Special Extended Session 7 (SBX7-7), the City was required to meet specific water conservation savings targets by 2020. Ms. Monaghan facilitated the Advisory Group who serve in an ongoing advisory capacity to the Department of Utilities regarding the City's water conservation programs and policies. Assisted in the development of the Water Conservation Plan, outreach to key stakeholders and building collaborative partnerships between stakeholders as they advised on measures to achieve SX7-7's goals.

### **Suction Dredge**

Client: California Department of Fish and Game (DFG)

Year: 2009 – 2011

Role: Associate Mediator and Facilitator

Assisted with facilitation of three scoping meetings for a Subsequent Environmental Impact Report (SEIR) to analyze and select a preferred method for regulating suction dredge mining within California. Provided strategic management consultation to the DFG project manager that led to the convening of a Public Advisory Committee (PAC). Assisted with the planning, process design and co-facilitated three highly contentious PAC meetings. The PAC's goal was to identify potential regulatory options to help inform DFG as they developed proposed regulations for suction dredging. Created two newsletters sent to interested parties. Conducted robust public outreach, inviting all interested parties to public hearings held throughout the state. Facilitated five contentious public hearings for the SEIR.

### **Lake Davis Northern Pike Eradication Project**

Client: California Department of Fish and Game (DFG)

Year: 2005 – 2008

Role: Public Outreach Manager and Stakeholder Coordinator

Managed the design and implementation of the public outreach program for this highly controversial project. Provided strategic guidance to DFG project staff on how to engage stakeholders collaboratively. Created a comprehensive public outreach, education, and communications plan to increase public awareness of the risks and benefits of the proposed project. Worked directly with diverse, affected stakeholders to resolve conflicts. Designed and facilitated twelve public workshops. Assisted in mediating complex multi-party resource management conflicts. Managed the post project public outreach campaign.

### **San Joaquin County Flood Control Technical Advisory Group (TAC)**

Client: San Joaquin County

Year: 2007 – 2011

Role: Project Lead

The purpose of this group of local flood control interests, regional and local government representatives, Reclamation Districts, developers and consultants was to enhance communication, share data on flood protection issues, and, where

possible, achieve consensus on regional strategies related to flood protection. Facilitated meetings of the TAC. Also facilitated the Outreach Subcommittee of the TAC engaged in outreach to residents, real estate and insurance professionals, businesses, and elected officials regarding the National Flood Insurance Program required by recent changes to the FEMA flood maps. Conducted community educational meetings to inform residents of new requirements for flood insurance.

### **Yolo County Habitat Conservation Plan / Natural Communities Conservation Plan (HCP/NCCP)**

Client: Yolo County Joint Powers Authority

Year: 2005 – 2007

Role: Facilitator, Meeting Designer, Strategic Planner

The Yolo Natural Heritage Program (YNHP) was established to prepare a county-wide HCP/NCCP for the 653,820 acre planning area. The purpose of the HCP/NCCP is to conserve the natural open space and agricultural landscapes that provide habitat for many special status and at-risk species found in the county. The YNHP described measures to be undertaken to conserve important biological resources, obtain permits for urban growth and public infrastructure projects and continue Yolo County's rich agricultural heritage. Facilitated the Steering Advisory Committee and assisted with the formation of the various Technical Advisory Committees. At the conclusion of this phase, the Steering Advisory Committee approved the draft Ecological Baseline Report.

### **Suisun Marsh Charter Group**

Client: CA Department of Fish and Game

Year: 2003 - 2009

Role: Project Lead

The Suisun Marsh Charter Group is a multi-agency resource management organizational effort to resolve long-standing regulatory and land/water management issues in the Suisun Marsh. The goal of the process was to develop a mutually beneficial implementation plan that meets the various regulatory compliance requirements, increases opportunities for tidal wetland creation, protects state and federal water project interests, and enhances management of existing freshwater wetlands habitat. Assisted seven federal, state and local agencies (including the Suisun Resource Conservation District) who partnered in the development of an Environmental Impact Statement/Environmental Impact Report to comply with NEPA/CEQA. Developed a robust public outreach plan to engage local and state agencies, elected officials, local residents, the environmental community, agricultural interests, and the hunting and fishing communities.

## Exhibit 2: Lake Davis Project Highlight

### Lake Davis Pike Eradication Project – California Department of Fish and Game and U.S Forest Service Plumas National Forest

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CLIENT: California Department of Fish and Game

YEARS: 2005 - 2008

LOCATION: Portola, CA

In 1999, northern pike were rediscovered in Lake Davis, a noted trout fishery in the eastern Sierras. Lake Davis is a man-made lake on the Feather River in Eastern Plumas County, California – and wholly within Plumas National Forest. The reservoir has a capacity of 84,000 acre-feet, covers 4,000 surface acres, and has a shoreline length of 65 miles.

A non-native predatory species, northern pike were detrimental to the fishery at Lake Davis – and had the potential to do irreversible damage to the aquatic ecosystem and fisheries of California should they escape Lake Davis. A similar failed eradication attempt in 1997 by then-California Department of Fish and Game (DFG) was highly controversial and extremely contentious. No other state or federal agencies, with the exception of the Department of Water Resources, were consulted or involved with the project. The short-term result was broad and persistent national negative attention for DFG and the community. The long-term legacy was significant distrust of DFG and local elected officials due to lack of transparency and a heavy-handed approach to implementation.

Employed at the Center for Collaborative Policy (CCP), Jodie Monaghan was the lead facilitator/mediator. She assisted DFG and the U.S. Forest Service (USFS) navigate the myriad of challenges and choices that citizens, agencies, technical specialists, and public process advisors faced in the design and implementation of a second Eradication Project (Project). The project was the expressed highest priority effort for DFG in fiscal years 2006 and 2007, costing over \$25 million.

The Project goal was to eradicate pike from the lake, protect California aquatic ecosystems and fisheries impacted by Lake Davis, restore Lake Davis to a world-class fishery, and revive the economy of the local community. DFG recognized the need to:

- Restore trust with the community and the Lake Davis Steering Committee (a group of local Plumas County residents)
- Involve all Federal, State and local agencies with jurisdiction over Lake Davis
- Involve local residents
- Build relationships

As co-leads, DFG and USFS committed to an open and transparent NEPA/CEQA process involving the public. CCP was engaged to assist in fostering that collaborative environment and conduct robust public involvement and outreach activities. Ms. Monaghan assisted with project planning and management, risk management and strategic consultation. She facilitated the Lake Davis Steering Committee meetings as well as planning and facilitating 12 public workshops. She assisted with behind-the-scenes conflict resolution. Ms. Monaghan produced

monthly project newsletters, wrote a weekly newspaper column, and managed informational mailings to over 6,000 households in Plumas County. She also conducted the EIR/EIS public hearings. Recognizing the potential for conflict, CCP staff provided training to DFG and USFS staff on Risk Communication.

Despite threats of litigation and delaying tactics, the EIR/EIS document was approved and the project initiated without legal challenge. Ms. Monaghan assisted with outreach activities during project implementation. Following a successful project, she assisted DFG and USFS with public outreach activities to announce the restocking of Lake Davis and its return to a world-class trout fishery.

**Exhibit B**

**ACCEPTANCE OF FORM OF PROFESSIONAL SERVICES AGREEMENT**

NAME OF RESPONDENT JM CONSULTANTS

The above Respondent hereby agrees to sign Professional Services Agreement substantially similar to the form of Professional Services Agreement attached to the RFP as Exhibit A, or has attached proposed modifications to the form of Professional Services Agreement as an Addendum to this signed Acceptance.

**[Respondent must check one of the following boxes, and complete if applicable]**

Respondent's proposed modifications to the Professional Services Agreement are attached as Attachment[s] \_\_\_\_\_ **[complete as applicable]** to this signed Acceptance, pursuant to the "Strikeout" or "Underline" format described in RFP Section 3.1.

Respondent has no proposed modifications to the Professional Services Agreement.

Signature: Jodie Monaghan

Print Name: JODIE MONAGHAN

Title: PRINCIPAL

Date: 11-15-19



**PROPOSAL AUTHORIZATION**

NAME OF RESPONDENT JM CONSULTANTS

1. The above-named Respondent is a Respondent to the Request for Qualifications / Request for Proposals of the City of Benicia for professional services and possesses the legal authority to submit this Proposal.
2. The undersigned is authorized to conduct all negotiations for and legally bind the Respondent in all matters relating to this Proposal submittal.
3. The undersigned has reviewed, understands, is able to comply with and agrees to be bound by the General Conditions Governing the RFP described in Section 7 of the RFP.
4. The undersigned grants the City a right to conduct reference checks and reasonable investigation of all information provided by Respondent.
5. The undersigned certifies that this Proposal is irrevocable until 120 days after its submission date.

Signature: Jodie Monaghan  
Print Name: JODIE MONAGHAN  
Title: PRINCIPAL  
Date: 11-15-19

**Exhibit E**

**ACKNOWLEDGMENT OF ADDENDUM FORM ("ACKNOWLEDGMENT")**

TO THE CITY OF BENICIA

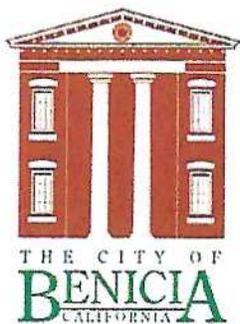
THIS ACKNOWLEDGMENT IS SUBMITTED BY:

JM CONSULTANTS

(Firm/Company Name)

1. In submitting this Proposal, Proposer represents that the Proposer has examined all of the Contract Documents and the following Addenda (receipt of all of which is hereby acknowledged).

Addendum Number	Addendum Date	Signature of Proposer
1	11-8-19	Jodie Monaghan



**Public Works Department  
ADDENDUM NO. 1  
November 8, 2019**

**SUBJECT: Utility Rate Study Outreach Project**

NOTICE IS HEREBY GIVEN to all interested parties that the "Request for Proposal" of the subject project is hereby modified only insofar as the following clarifications, corrections, changes, and amendments are concerned. The proposer **MUST** make acknowledgment of the receipt of this addendum by signing on the space provided and **ATTACHING THIS ADDENDUM** to the **PROPOSAL** at the time that the proposal is submitted.

**1. Revised insurance requirements:**

Appendix E of the Professional Services Agreement has been revised to lower the General Liability requirement from \$5 million to \$2 million (Page 23, Section 1.1) and Professional Liability from \$5 million to \$2 million (Page 24, Section 1.4).

Signed:

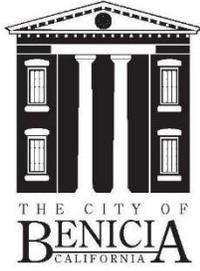
Jodie Monaghan  
Proposer

11-15-19  
Date

Signed:

Kyle Ochendusko  
Kyle Ochendusko, Deputy PW Director

November 8, 2019  
Date



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**BUSINESS ITEMS**

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **TWO-STEP REQUEST FOR REPURPOSING AND UPDATING TRAFFIC BICYCLE PEDESTRIAN SAFETY COMMITTEE (TBPSC)**

**EXECUTIVE SUMMARY:**

Mayor Elizabeth Patterson submitted a two-step process request (see Attachment 1) for Council’s consideration of repurposing and updating the Traffic Bicycle Pedestrian Safety Committee (TBPSC).

**RECOMMENDATION:**

Discuss the request and provide direction to staff on whether or not to schedule this topic for future Council discussion.

**BUDGET INFORMATION:**

There is no budget impact for determining whether or not to place this topic on a future agenda for Council discussion.

**BACKGROUND:**

City Council members may request items be placed on future agendas according to the process described in the “Council Rules of Procedure” in Section II:

**B. TWO-STEP PROCESS.**

City Council Members may request that a policy matter be considered by the City Council using the Two-Step Process. A Council Member submits the Council Member Requested Agenda Item form (Attachment 1) to the City Manager. The Council Member shall fill out the form as completely as possible and indicate a desired date for agendization of Step 1 and for Step 2. Once Step 1 is agendized, the City Council shall vote whether or not to pursue study or action on the policy matter. If there is interest by a majority of the City Council, the policy proposal shall be directed to the Policy Calendar Process for scheduling a study session (see Section II.E below) or to an upcoming agenda for action if the subject of the request is time sensitive (Step 2). The Council Member submitting the request shall inform the Council if the item is time sensitive.

Please see attached two-step process request included as Attachment 1.

<b>General Plan</b>	N/A
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<b>Strategic Plan</b>	N/A
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<b>CEQA Analysis</b>	N/A
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**ATTACHMENT:**

1. Two-Step Request, Mayor Elizabeth Patterson

*For more information contact: City Manager Lorie Tinfow*

*Phone: 707.746.4200*

*E-mail: ltinfow@ci.benicia.ca.us*

**APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM**

Requested by: **Mayor Patterson** \_\_\_\_\_

Desired Initial Council Meeting Date: **November 5, 2019** \_\_\_\_\_

Desired Date for Second Step or Policy Calendar Review: **January 2020**

Deadline for Action, if any: \_\_\_\_\_

Problem/Issue/Idea Name: **Repurposing and updating Traffic Bicycle Pedestrian Safety Committee (TBPSC).**

**Description of Problem/Issue/Idea:** There is a disproportionate use of city staff resources for the TBPSC making it costly and less efficient. This nearly 50-year old commission is out of date and does not meet the current needs of the public and city.

Compare the process of the TBPSC with building permits. Building permits are processed by staff and if additional entitlements are needed, the building application is dependent on those additional entitlements such as zoning, design review or general plan amendment.

However, for a traffic safety request that is evaluated by staff based on state statutory standards and other traffic standards it is necessary to convene the TBPSC to review those standards [similar to Uniform Building Standards, these standards are adopted by local government]. Time and resources could be saved by having staff process the “safety” request. If necessary and recommended by staff a Traffic Calming Process is recommended. This is the same planning process as used – more or less – by the building/planning department.

This proposal is to modernize traffic safety by having staff process the request and make recommendations as suitable for a Traffic Calming process. The proposal suggests that the replacement for the existing committee be an “Active Transportation” committee similar to other jurisdictions. The committee would be reconstituted with public members and liaison member from the Planning Commission and others to be determined.

**Background**

The current TBPSC was initiated in late 70s. There is no resolution describing the purpose, nor staff report for the why the committee was established. Thanks to research by the City Clerk and my summer intern we can confirm this information. This is a nearly half century old committee and it needs to be modernized.

Transportation is changing and the future of transportation – how people get around – is uncertain and exciting. Uncertain because innovations are emerging often with no public policy to direct and avoid unintended consequences. The on-demand (Lyft and Uber) are examples of

public policy trying to catch up for things like public curb space for buses used by on-demand drivers. Futurists caution settling on any one approach and advise to think, study and understand the millenials since they are the largest populaton bulge. Others also note that for the first time in history the population pyramid will be top heavy with those over 55.

Exciting because people are involved in innovating, planning and using all forms of getting around and expect to have a voice in decision making and implementation.

Because of the need for adapting to the future and engaging the public, the TBPSC needs to be updated and repurposed to address comprehensive bicycle, scooter, drone and pedestrian modes of transportation. Policy for autonomous cars and trucks should be addressed.

The current TBPSC does not reflect the diversity, alternatives, innovations and future possibilities of transportation. While the Traffic Calming manual is useful, it mainly addresses driving. The committee is very staff centric and duplicates staff work. Many communities have migrated the traditional traffic safety to staff functions most of which are governed by state standards. There is the standard appeal process in the BMC. Instead communities have established Active Transportation Committees and Commissions. One example is provided.

The purpose of this request is to modernize an advisory committee, be more efficient with city staff including public works and the police department and to have it citizen driven with liaison of the Planning Commission, Economic Development Board and Parks and Recreation.

The benefits of this new committee would be local public involvement in active transportation planning and issues; there would be opportunities for advocacy of active transportation; there would be increasing awareness of older adult needs for safer sidewalks, shade and tricycles. Another benefit would be to meet the needs of millenials whose demographics show less interest in driving, more active transportation and accepting innovation.

Resources currently used for the TBPSC could be used for active transposrtation planning. We lack the policies and public engagement for the future. The Active Transportation committee will provide these in a more cost effective manner.

It is propossed to have public workshop to determine pubic needs and interest in active transportation – safe sidewalks, bike lanes, tricycle paths, etc. Replacing an out of date committee with a citizen committee gives the public a seat at traffic safety for the future.

\*\*\*\*\*

COUNCIL DIRECTION

- No Further Action
- Schedule for Second Step on \_\_\_\_\_
- Schedule for Policy Calendar Review on \_\_\_\_\_
- Refer to:     Staff \_\_\_\_\_  
                  Commission \_\_\_\_\_  
                  Board \_\_\_\_\_  
                  Committee \_\_\_\_\_

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

# City of SACRAMENTO

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Home > City Clerk > Legislative Bodies > Boards & Commissions > Active Transportation Commission

## ACTIVE TRANSPORTATION COMMISSION

The Active Transportation Commission was formed by ordinance and was established for the purpose of providing advice on strategies related to walking and bicycling in the city. The power and duties of the commission are as follows: 1) Advise staff and the council on the implementation, criteria, and priority of pedestrian and bicycling related policies and projects; 2) Provide input to staff on pursuit of grant funding opportunities; 3) Provide input on program development in walking and bicycle safety, education, law enforcement, and other areas pertinent to walking and bicycling in the city; 4) Review and discuss current walking and bicycling issues and advise staff and council; 5) Advise staff on the need for periodic updates of the pedestrian master plan and bikeway master plan; 6) Provide for public participation and involvement with respect walking and bicycling project and program implementation, and other active transportation matters; and 7) Annually, report to and make recommendations to the mayor and council regarding the status of walking and bicycling in the city and activities of the commission.

### 2019 COMMITTEE MEETING SCHEDULE

### COMMITTEE DETAILS AND ROSTER

CITY CLERK HOME

WELCOME

CONTRACT POSTING

▶ GOOD GOVERNANCE AND COMPLIANCE

▶ ELECTIONS

CALENDAR

▼ LEGISLATIVE BODIES

▼ BOARDS & COMMISSIONS

ACTIVE TRANSPORTATION COMMISSION

AIFM BOARD

ANIMAL CARE SERVICES CITIZEN

ADVISORY  
COMMITTEE

## COMMITTEE AGENDAS & MINUTES

▶ ANN LAND AND  
BERTHA HENSCHEL  
MEMORIAL FUND  
COMMISSION

## APPLY TO SERVE ON A CITY BOARD OR COMMISSION

CAPITAL AREA  
DEVELOPMENT  
AUTHORITY

## NEED ASSISTANCE OR HAVE QUESTIONS?

CIVIL SERVICE BOARD

We are happy to assist you. Please contact us via email  
at: [clerk@cityofsacramento.org](mailto:clerk@cityofsacramento.org), or by phone at (916) 808-7200.

COMPENSATION  
COMMISSION

DEFINED  
CONTRIBUTION  
PLANS COMMITTEE

DOWNTOWN  
RIVERFRONT  
STREETCAR POLICY  
STUDY STEERING  
COMMITTEE

ETHEL MACLEOD  
HART TRUST FUND  
ADVISORY  
COMMITTEE

HOUSING CODE  
ADVISORY AND  
APPEALS BOARD

MEASURE U  
COMMUNITY  
ADVISORY  
COMMITTEE

NATOMAS BASIN  
CONSERVANCY  
BOARD OF  
DIRECTORS

PARATRANSIT INC  
BOARD OF  
DIRECTORS

PARKS AND

Attachment 1 - Two-Step Request, Mayor Elizabeth Patterson

COMMUNITY  
ENRICHMENT  
COMMISSION

PLANNING AND  
DESIGN COMMISSION

PRESERVATION  
COMMISSION

SACRAMENTO  
COMMUNITY POLICE  
REVIEW COMMISSION

SACRAMENTO  
DISABILITIES  
ADVISORY  
COMMISSION

SACRAMENTO  
ENVIRONMENTAL  
COMMISSION

SACRAMENTO ETHICS  
COMMISSION

SACRAMENTO  
HERITAGE INC BOARD  
OF DIRECTORS

SACRAMENTO  
HOUSING AND  
REDEVELOPMENT  
COMMISSION

SACRAMENTO  
METROPOLITAN ARTS  
COMMISSION

SACRAMENTO YOLO  
MOSQUITO VECTOR  
CONTROL DISTRICT  
BOARD OF TRUSTEES

SACRAMENTO YOUTH  
COMMISSION

UTILITIES RATE  
ADVISORY  
COMMISSION

▶MEETINGS & AGENDAS

▶SERVICES

CONTACT US

## SITEMAP

### ONLINE SERVICES

- 311 Service Requests
- Animals and Pets
- eBid Portal
- Bike Registry
- City Code
- Employment
- Code Compliance
- Council Meetings
- File a Police Report
- Crime Statistics
- Donations
- Fees and Charges
- Find Your District
- Maps
- Open Data Portal
- Pay a City Invoice
- Pay Parking Citation
- Pay Your Utility Bill
- Permits
- Records Library
- Traffic Alerts

### LIVING HERE

- Arts and Culture
- Birth & Death Certificates
- Code Compliance
- Education
- Jobs
- Libraries
- Marriage License
- Neighborhoods
- Parking Services
- Public Safety
- Recycling & Solid Waste
- Residential Permits
- Summer Heat
- Traffic Alerts
- Utility Services
- Volunteer Program
- Winter Weather
- YPCE

### BUSINESS

- Building Permits
- Business Operation Tax
- City Code
- Code Compliance
- Demographics
- Doing Business with the City
- Sales Tax Data
- Special Business Permits
- Starting a Business
- Taxes and Fees

### VISITORS

- Arts and Culture
- Calendar
- Demographics
- Parking & Transportation
- Photos and Videos
- Points of Interest
- Virtual Tour
- Visit Sacramento
- Other Resources

### CITY HALL

- City Auditor
- City Clerk
- City Code
- Office of the City Manager
- Office of the City Treasurer
- Code Compliance
- Departments
- Executive Team
- Employment
- Green City
- Holiday Schedule
- Mayor & Council

Attachment 1 - Two-Step Request, Mayor Elizabeth Patterson

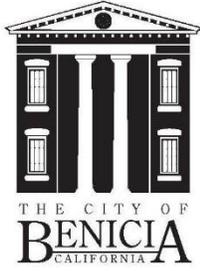
- Meeting Schedules
- Citywide Policies
- Media Contacts
- Records Library
- Whistleblower Hotline

TRANSLA  ▼

Please note that languages other than English will be written by machine translation and may contain errors.



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**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**BUSINESS ITEMS**

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **TWO-STEP REQUEST FOR ADJUSTING TAX RATE FOR CANNABIS DELIVERY OPERATIONS AND REVIEWING CANNABIS BUSINESS APPLICATION FEES**

**EXECUTIVE SUMMARY:**

Councilmember Young & Vice Mayor Strawbridge submitted a two-step process request (see Attachment 1) for Council’s consideration of adjusting the tax rate for cannabis delivery operations and reviewing the cannabis business application fees.

**RECOMMENDATION:**

Discuss the request and provide direction to staff on whether or not to schedule this topic for future Council discussion.

**BUDGET INFORMATION:**

There is no budget impact for determining whether or not to place this topic on a future agenda for Council discussion.

**BACKGROUND:**

City Council members may request items be placed on future agendas according to the process described in the “Council Rules of Procedure” in Section II:

**B. TWO-STEP PROCESS.**

City Council Members may request that a policy matter be considered by the City Council using the Two-Step Process. A Council Member submits the Council Member Requested Agenda Item form (Attachment 1) to the City Manager. The Council Member shall fill out the form as completely as possible and indicate a desired date for agendization of Step 1 and for Step 2. Once Step 1 is agendized, the City Council shall vote whether or not to pursue study or action on the policy matter. If there is interest by a majority of the City Council, the policy proposal shall be directed to the Policy Calendar Process for scheduling a study session (see Section II.E below) or to an upcoming agenda for action if the subject of the request is time sensitive (Step 2). The Council Member submitting the request shall inform the Council if the item is time sensitive.

Please see attached two-step process request included as Attachment 1.

<b>General Plan</b>	N/A
---------------------	-----

<b>Strategic Plan</b>	N/A
-----------------------	-----

<b>CEQA Analysis</b>	N/A
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**ATTACHMENT:**

1. Two-Step Request, Councilmember Young & Vice Mayor Strawbridge

*For more information contact: City Manager Lorie Tinfow*

*Phone: 707.746.4200*

*E-mail: ltinfow@ci.benicia.ca.us*

**APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM**

Requested by: Councilmember Young & Vice Mayor Strawbridge

Desired Initial Council Meeting Date: December 17, 2019

Desired Date for Second Step or Policy Calendar Review: \_\_\_\_\_

Deadline for Action, if any: \_\_\_\_\_

Problem/Issue/Idea Name: Adjusting Tax Rate for Cannabis Delivery Operations and Review of Cannabis Business Application Fees

Description of Problem/Issue/Idea:

In late 2018, the City Council set tax rates for various types of cannabis activities. The rate for delivery businesses was set at 2% for 2019, escalating to 3% in 2020 and 4% in 2021. For a variety of reasons, the City approval of cannabis business applications has been delayed. Now, with the recent decision by the Council to allow unlimited delivery businesses in the Industrial Park, we have at least one delivery business interested in locating there. But there are two impediments to them doing so. Two others, one begun by a Benicia businessman, have opted to locate in Pacheco and Oakland, instead, due in part to our excessive fees.

Since no delivery businesses will be up and operating in 2019, part one of this request is to postpone the escalation of the tax rate by one year, so that the tax rate in 2020 would be 2%, going up to 3% in 2021 and 4% in 2022.

The second part of the request relates to the City fees for cannabis businesses, and how they are calculated.

We currently charge \$19,000 for an application for any kind of a cannabis business, and an additional \$16,000 for the public safety license. In addition, businesses must also pay a fee to apply for a Conditional Use Permit. Our \$35,000 fee is well in excess of what other cities charge, and will (unless modified) mean that cannabis businesses will likely not locate here, costing the City potentially significant revenue. If we want to encourage this new industry to locate here, as well as attempt to cut into the black market, we must offer a competitive environment. The State recently announced they are raising their taxes an additional 15% as well.

By comparison, Santa Ana charges \$1,690 in application fees and, if approved, \$12,098 in permit fees.

San Jose charges \$13,846 as an annual operating fee.

Long Beach charges \$5,870 to apply for a license as well as an additional \$1,136 in permit fees for dispensaries and up to \$2,751 for manufacturers.

Union City charges \$9,904 for anyone who makes it through four steps of the process.

Chula Vista charges \$6,879 for application fees.

Commerce charges \$13,025

West Hollywood \$12,375.

Sacramento \$9650

Lompoc \$13,000 all inclusive

Monterey County- \$10,000

The most interesting way to charge for application processing, in our opinion, comes from Nevada City.

There, applicants make a deposit of between \$5-10,000. The City then charges for their actual time expended by city employees in processing the application. All city employees charge a rate of \$75/hr., except for the City Attorney who charges \$175/hr.

This is how other professionals like attorneys and accountants typically bill for their services, and is an approach we favor as a way to assure we are charging fees commensurate with the time needed to process the applications. The City, of course, could charge different hourly rates.

While it would require those city employees who deal with cannabis applications to log and record the time spent while working on specific applications, it is a far more transparent and equitable way to document what we are charging our customers.

When asking members of the industry about their experiences with fees in various California localities,, two comments of note:

"Your city and others are the reason we still have a thriving black market.

Name one other business or industry that is charged \$35,000 prior to getting a license. Then the business needs a property and a year of payments while all these permits go through.

If I want to open a retail clothing store it's a one day application and a small permit fee. I could be open within a week.

Your are only helping your local dealer thrive. Think about that."

And " Fees can not be made up, they need to have a cost basis. Check the state laws." I am not suggesting that our fees are "made up", but note only that we need to justify them.

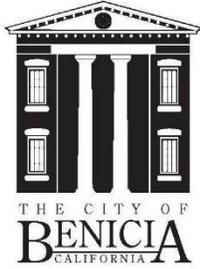
This request is time sensitive as three businesses, and at least one landlord, are waiting on City action before committing to making Benicia their home.

\*\*\*\*\*

COUNCIL DIRECTION

- No Further Action
- Schedule for Second Step on \_\_\_\_\_
- Schedule for Policy Calendar Review on \_\_\_\_\_
- Refer to:     Staff \_\_\_\_\_  
                  Commission \_\_\_\_\_  
                  Board \_\_\_\_\_  
                  Committee \_\_\_\_\_

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



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**COUNCIL MEMBER COMMITTEE REPORT**

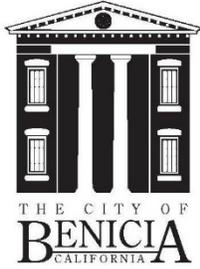
**TO** : Mayor Patterson  
Council Member Campbell

**FROM** : Interim Community Development Director

**SUBJECT** : **MARIN CLEAN ENERGY (MCE)**

The following information is provided for your committee report at the December 17, 2019 Council meeting.

The next regular scheduled meeting is January 3, 2020. The meeting schedule and minutes can be found online at: <https://www.mcecleanenergy.org/meeting-archive/>.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**COUNCIL MEMBER COMMITTEE REPORT**

**TO** : Mayor Patterson  
Council Member Strawbridge

**FROM** : Public Works Director

**SUBJECT** : **SOLANO COUNTY WATER AGENCY**

The following information is provided for your committee report at the December 17, 2019 Council meeting.

Attached are the regular board minutes from October 10, 2019 and the agenda from the regular board meeting held on November 14, 2019. The agenda for the December 12<sup>th</sup> meeting is not available at this time. The next regular board meeting will be on January 9, 2020 at the SCWA office.

**ATTACHMENTS:**

1. Minutes from the October 10, 2019 Board meeting
2. Agenda from the November 14, 2019 Board meeting

**SOLANO COUNTY WATER AGENCY  
BOARD OF DIRECTORS MEETING MINUTES  
MEETING DATE: October 10, 2019**

The Solano County Water Agency Board of Directors met this evening at the Solano County Water Agency office in Vacaville. Present were:

Mayor Elizabeth Patterson, City of Benicia  
Vice-Mayor Scott Pederson, City of Dixon  
Mayor Harry Price, City of Fairfield  
Mayor Ronald Kott, City of Rio Vista  
Mayor Ron Rowlett, City of Vacaville  
Mayor Bob Sampayan, City of Vallejo  
Supervisor Erin Hannigan, Solano County District 1  
Supervisor Monica Brown, Solano County District 2  
Supervisor Jim Spering, Solano County District 3  
Supervisor John Vasquez, Solano County District 4  
Director Dale Crossley, Reclamation District No. 2068  
Director John Kluge, Solano Irrigation District

**CALL TO ORDER**

The meeting was called to order by Chair Kott at 6:30 pm.

**APPROVAL OF AGENDA**

On a motion by Mayor Rowlett and a second by Vice-Mayor Pederson the Board unanimously approved the agenda.

**PUBLIC COMMENT**

Mr. Jeff Tenpas, representing the Friends of Putah Creek, commented on the condition of vegetation within the Winters Putah Creek Park, asserting that revegetation efforts have failed and that the Winters Putah Creek Park Project Phase III has negatively impacted groundwater conditions at the park.

Mr. Alan Pryor, representing the Friends of Putah Creek, stated that groundwater conditions in the vicinity of the Winters Putah Creek Park have continued to deteriorate as a result of recent creek restoration projects, which has in turn negatively impacted riparian vegetation.

**CONSENT ITEMS**

General Manager Roland Sanford requested that items 5(B) Expenditure Approvals and 5(C) Quarterly Financial Reports be removed from the Consent Items to correct an error (inadvertent inclusion of expenditures outside of reporting period). Mr. Sanford stated that the corrected September Expenditure Approvals and Quarterly Financial Reports will be included with the Consent Items scheduled for the November Board meeting.

On a motion by Mayor Patterson and a second by Supervisor Hannigan the Board unanimously approved the following consent items:

- (A) Minutes
- (D) Contract with A2Z Landscaping
- (E) Contract with UC Davis

**BOARD MEMBER REPORTS**

There were no Board Member reports.

**GENERAL MANAGER'S REPORT**

In addition to the written report, General Manager Roland Sanford briefly discussed the status of the ongoing Dixon drainage study, noting that consultant proposals for the Phase II Dixon drainage study have been received and are currently being reviewed, with the expectation that a contract for the selected firm will be on the agenda for the November Board meeting. Mr. Sanford also reported that earlier today the Streamkeeper, Rich Marovich, announced that he will be retiring by the end of the year.

**SOLANO WATER ADVISORY COMMISSION**

There were no additions to the written notes from the August 28<sup>th</sup> meeting.

**COST SHARING AGREEMENT FOR FIRST PHASE OF HABITAT CONSERVATION PLAN  
FOR PORTIONS OF YOLO BYPASS/CACHE SLOUGH COMPLEX**

General Manager Roland Sanford noted that the Yolo Bypass/Cache Slough Complex (YBCS) is viewed by most state and federal resource agencies as an ideal location for large scale habitat restoration projects, and that several restoration projects are currently in progress, with more anticipated in the next few years. Mr. Sanford explained that while laudable, restoration projects, particularly wetland restoration projects, can be problematic for municipal water purveyors who must comply with drinking water standards, and to water diverters in general, due to potentially increased presence of endangered species, which can in turn necessitate additional pumping restrictions by regulatory agencies. Mr. Sanford went on to explain that while poor water quality conditions can be addressed through sophisticated, albeit typically expensive water treatment methods, conflicts between water diversions and endangered species are much more difficult to avoid or otherwise mitigate.

Mr. Sanford briefly described some of the interagency planning efforts occurring in the YBCS and how there is a growing consensus among the interagency participants -State and Federal resource agencies, County of Solano, County of Yolo, Solano County Water Agency, Reclamation District 2068, Sacramento Area Flood Control Agency, West Sacramento Area Flood Control Agency, and others – that the most and quite possibly only viable option for the continued operation of water diversion infrastructure in the YBCS, given the inherent conflict between water diversions and presence of endangered species, is to develop a narrowly focused Habitat Conservation Plan (HCP) that provides YBCS water diversions with long-term “take coverage” of endangered species. Mr. Sanford then discussed the proposed cost sharing agreement between the Sacramento Area Flood Control Agency, County of Solano, and Water Agency for completion of the first phase of the proposed HCP, noting that preparation of the HCP would occur in three phases, with the majority if not all of the costs of the second and third phases to be borne by State and Federal agencies. Mr. Sanford explained that the total cost of the first phase is estimated to be \$120,000, of which \$40,000 would be the Water Agency’s cost share.

On a motion by Mayor Patterson and a second by Supervisor Vasquez the Board unanimously approved the cost sharing agreement for the first phase of the proposed Habitat Conservation Plan for portions of the Yolo Bypass/Cache Slough Complex.

**LEGISLATIVE UPDATES**

Mayor Kott reported that the Legislative Committee is soliciting proposals for legislative advocacy services and that the Committee intends to complete candidate interviews toward the end of October or early November, and make a recommendation to the Board at the November Board meeting. Mayor Kott also reported that the Committee is drafting the Water Agency’s 2020 Legislative Platform, for Board consideration in December, as well as a work plan for the 2020 calendar year.

**WATER POLICY UPDATES**

1. Staff had nothing to report on emerging Delta and Water Policy issues.
2. There were no updates from the Water Policy Committee.
3. There were no updates for either the Delta County Coalition or the Delta Protection Committee.
4. There was no report on the activities of the Delta Conservancy.

**CLOSED SESSION**

The Board moved into closed session at 6:55 p.m. to conference with legal counsel pursuant to Government Code 54956.9, existing litigation, Friends of Putah Creek v. Central Valley Flood Protection Board, Solano County Superior Court, case no. FCS051040. The Board returned to open session at 7:23 p.m., there was nothing to report out of the closed session.

**TIME AND PLACE OF NEXT MEETING**

Thursday, November 14, 2019 at 6:30 p.m., at the SCWA offices in Vacaville.

**ADJOURNMENT**

This meeting of the Solano County Water Agency Board of Directors was adjourned at 7:24 p.m.

---

Roland Sanford  
General Manager & Secretary to the  
Solano County Water Agency



## BOARD OF DIRECTORS:

### **Chair:**

*Supervisor Skip Thomson*  
Solano County District 5

### **Vice Chair:**

*Mayor Ron Kott*  
City of Rio Vista

*Mayor Elizabeth Patterson*  
City of Benicia

*Mayor Thom Bogue*  
City of Dixon

*Mayor Harry Price*  
City of Fairfield

*Director Ryan Mahoney*  
Maine Prairie Water  
District

*Director Dale Crossley*  
Reclamation District No.  
2068

*Mayor Ron Kott*  
City of Rio Vista

*Supervisor Erin Hannigan*  
Solano County District 1

*Supervisor Monica Brown*  
Solano County District 2

*Supervisor Jim Spering*  
Solano County District 3

*Supervisor John Vasquez*  
Solano County District 4

*Director John D. Kluge*  
Solano Irrigation District

*Mayor Lori Wilson*  
City of Suisun City

*Mayor Ron Rowlett*  
City of Vacaville

*Mayor Bob Sampayan*  
City of Vallejo

## GENERAL MANAGER:

*Roland Sanford*  
Solano County Water  
Agency

## BOARD OF DIRECTORS MEETING

**DATE:** Thursday, November 14, 2019

**TIME:** 6:30 P.M.

**PLACE:** Berryessa Room  
Solano County Water Agency Office  
810 Vaca Valley Parkway, Suite 203  
Vacaville

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

4. **PUBLIC COMMENT**

Limited to 5 minutes for any one item not scheduled on the Agenda.

5. **CONSENT ITEMS** *(estimated time: 5 minutes)*

(A) **Minutes:** Approval of the Minutes of the Board of Directors meeting of October 10, 2019.

(B) **Expenditure Approvals:** Approval of the September and October 2019 checking account register.

(C) **Quarterly Financial Reports:** Approve Income Statement and and Balance Sheet for period ending September 30, 2019.

(D) **Contract Amendment with Richard Heath and Associates (RHA):** Authorize General Manager to execute \$110,000 contract Amendment with RHA for administer Regional Low Income Water Efficiency Upgrade Program.

(E) **Purchase of MRC Global gate actuators:** Authorize General Manager to purchase two MRC Global gate actuators for Putah South Canal, total cost not to exceed \$26,000.

- (F) Lake Berryessa Mussel Prevention Program Grant: Adopt Resolution 2019-08 authorizing General Manager or designee to file grant application and execute grant agreements and any other documents necessary to secure California State Parks Division of Boating and Waterways Quagga and Zebra Mussel Infestation Prevention grant.
- (G) State Water Project Tolling Agreement Amendment: Authorize General Manager to execute eighth amendment to Tolling Waiver Agreement with California Department of Water Resources regarding State Water Project charges.
- (H) Contract Amendment with AD Consultants: Authorize General Manager to execute \$40,000 contract amendment for additional Lake Berryessa Operations analyses and review of State Water Resources Control Board's modeling results.

6. **BOARD MEMBER REPORTS** *(estimated time: 5 minutes)*

RECOMMENDATION: For information only.

7. **GENERAL MANAGER'S REPORT** *(estimated time: 5 minutes)*

RECOMMENDATION: For information only.

8. **SOLANO WATER ADVISORY COMMISSION REPORT** *(estimated time: 5 minutes)*

RECOMMENDATION: For information only.

9. **EMPLOYEE MEDICAL BENEFITS** *(estimated time: 20 minutes)*

RECOMMENDATIONS:

- 1) Effective January 1, 2020; set employer health care benefit contribution to \$1,598/month (80% of monthly Kaiser Permanente family health care plan cost for 2020).
- 2) In future years, set employer health care benefit contribution to 80% of prevailing monthly Kaiser Permanente family health care cost.

10. **LEGISLATIVE UPDATES** *(estimated time: 5 minutes)*

RECOMMENDATION:

- 1. Hear report from Committee Chair on activities of the SCWA Legislative Committee.

**11. WATER POLICY UPDATES (estimated time: 5 minutes)**

**RECOMMENDATION:**

1. Hear report from staff on current and emerging Delta and Water Policy issues and provide direction.
2. Hear status report from Committee Chair on activities of the SCWA Water Policy Committee.
3. Hear report from Supervisor Thomson on activities of the Delta Counties Coalition, Delta Protection Commission.
4. Hear report from Supervisor Thomson on activities of the Delta Conservancy.

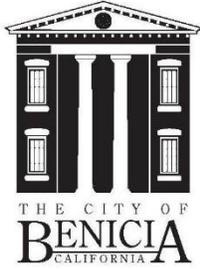
**12. TIME AND PLACE OF NEXT MEETING**

Thursday, December 12, 2019 at 6:30 p.m. at the SCWA offices.

*The Full Board of Directors packet with background materials for each agenda item can be viewed on the Agency's website at [www.scwa2.com](http://www.scwa2.com).*

Any materials related to items on this agenda distributed to the Board of Directors of Solano County Water Agency less than 72 hours before the public meeting are available for public inspection at the Agency's offices located at the following address: 810 Vaca Valley Parkway, Suite 203, Vacaville, CA 95688. Upon request, these materials may be made available in an alternative format to persons with disabilities.

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**AGENDA ITEM  
CITY COUNCIL MEETING DATE – DECEMBER 17, 2019  
COUNCIL MEMBER COMMITTEE REPORT**

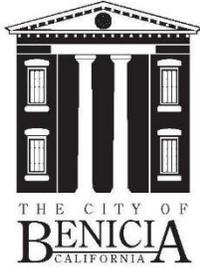
**TO** : Council Member Young  
Council Member Largaespada

**FROM** : Interim Community Development Director

**SUBJECT** : **SKY VALLEY OPEN SPACE COMMITTEE**

The following information is provided for your committee report at the December 17, 2019 Council meeting.

These committee meetings are now scheduled on an as-needed basis. At this time, the next meeting date is unknown.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**COUNCIL MEMBER COMMITTEE REPORT**

**TO** : Council Members Campbell and Strawbridge  
**FROM** : City Manager  
**SUBJECT** : **SOLANO EDC BOARD OF DIRECTORS**

The following information is provided for your committee report at the December 17, 2019 City Council meeting.

A meeting of the Board of Directors was held on November 14, 2019 at First Northern Bank Operations Center in Dixon. The agenda is attached. The minutes are not yet available.

The next meeting is scheduled for Thursday, January 9, 2020 at 9:00 a.m. at a location to be announced. The agenda is not yet available.

**ATTACHMENTS:**

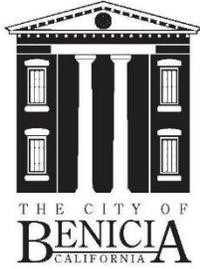
1. Solano EDC agenda, November 14, 2019



**Solano EDC Board of Directors Meeting**  
**November 14, 2019**  
First Northern Bank's Operations Center, 210 Stratford Ave, Dixon

**AGENDA**

- |             |    |   |                           |
|-------------|----|---|---------------------------|
| 9:00 am     | 1. | Call to Order                             | Barry Nelson, Chair       |
| Action Item | 2. | Approval of Sept 12, 2019 Meeting Minutes | Barry Nelson, Chair       |
| Action Item | 3. | Treasurer's Report – October 2019         | Jeremy Craig, Treasurer   |
| Action Item | 4. | 2020 Board Ballot                         | Barry Nelson, Chair       |
|             | 5. | President's Report                        | Bob Burris, President/CEO |
|             | 6. | Items from Directors                      |                           |
| 10:00 am    | 7. | Adjourn Meeting                           |                           |



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**COUNCIL MEMBER COMMITTEE REPORT**

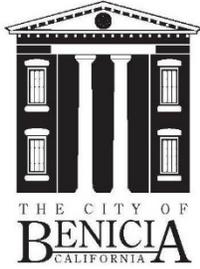
**TO** : Mayor Patterson  
Council Member Largaespada

**FROM** : Public Works Director

**SUBJECT** : **SOLANO TRANSPORTATION AUTHORITY (STA)**

The following information is provided for your committee report at the December 17, 2019 Council meeting.

Annual awards were held on November 13, 2019 and hosted by the City of Fairfield. The agenda for the regular board meeting on December 11, 2019 is not available at this time. The next regular board meeting will be on December 11, 2019 at the City of Suisun Council Chambers.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**COUNCIL MEMBER COMMITTEE REPORT**

**TO** : Council Member Young  
Council Member Largaespada

**FROM** : Public Works Director

**SUBJECT** : **TRAFFIC, PEDESTRIAN, BICYCLE SAFETY COMMITTEE**

The following information is provided for your committee report at the December 17, 2019 Council meeting.

The TPBS Committee last met on October 17, 2019. Attached are the agenda from the October 17, 2019 meeting and the approved minutes from the July 18, 2019 meeting. The next regular meeting will be Thursday, January 16, 2020, in the City of Benicia Commission Room.

**ATTACHMENTS:**

1. Minutes – July 18, 2019
2. Agenda – October 17, 2019

**Draft Minutes  
CITY OF BENICIA  
TRAFFIC, PEDESTRIAN, AND BICYCLE SAFETY (TPBS) COMMITTEE**

Thursday, July 18, 2019  
7:00 p.m.

**1. Call to Order.**

Meeting called to order at 7:01 p.m. by Chair, Council Member Steve Young

1. Roll Call:

Present:

Chair, Council Member Steve Young, Vice Chair, Council Member Lionel Largaespada, Public Works Director William Tarbox, Police Lieutenant, Edward Criado, Traffic Officer Mark Simonson, Danny Urrutia, Assistant Engineer, and Public Works Administrative Secretary, Lisa Kemmer

Absent: Senior Civil Engineer, Nouae Vue Chair

2. Pledge of Allegiance

3. Fundamental Rights Statement was read by Committee Chair, Council Member, Steve Young

**2. Adoption of the Agenda**

Upon a motion by Danny Urrutia, seconded by William Tarbox, approved the agenda as presented.

**3. Approval of May 30, 2019 Meeting Minutes**

Upon a motion by Lionel Largaespada, seconded by William Tarbox, approved the minutes of May 30, 2019, as presented. Abstain: Steve Young (absent)

**4. Public Comments:**

Sabrina Boone, 375 West I Street, spoke about traffic safety and speeding on West J Street between 3<sup>rd</sup> and 4<sup>th</sup> Street and the need for stop signs and crosswalks. Neighborhood has many children under the age of ten.

Mark Simonson, Police Traffic Officer, added that he has written a few citations and most vehicles were traveling 38 m.p.h. or faster.

**5. Verbal Staff Updates**

***A. ATP Grant- Safe Routes to School at five schools in Benicia***

Public Works Director, William Tarbox, updated the Committee and members of the public on the grant status. City of Vallejo held the bid opening on June 24, 2019, bids came in over \$2 million from the budgeted grant fund. A joint meeting with STA/Vallejo/Benicia resulted in recommending the project be

rebid in January 2020. Also, by rebidding in January, it is anticipated having a better bid market.

#### **B. HSIP Grant application for Military West & West 7<sup>th</sup> Street Intersection**

Assistant Engineer, Danny Urrutia, updated the Committee and members of the public on the grant status. Advertised project and the bids came in higher than the budget allows. Worked with Caltrans to approve additional funding of \$93,000 and has been approved. Contract awarded by City Council on July 2, 2019. Anticipate construction to begin in middle of August 2019.

#### **C. HSIP Grant application for East 5<sup>th</sup> & Vecino Street Intersection**

Public Works Director, William Tarbox, updated the Committee and members of the public on the grant status. The bid opening on June 20, 2019 resulted in bids much higher than the budgeted grant amount. Staff is now working with Caltrans to secure additional funding to bridge that gap.

#### **D. Southampton Road – North Sidewalk**

Public Works Director, William Tarbox, updated the Committee and members of the public that the Active Transportation Plan (ATP) Solano Transportation Authority (STA) has been working on includes and identifies this section of Southampton for sidewalk construction and installation of sidewalks. The ATP report will help position the City to receive future grant funding for pedestrian and bicycle improvements throughout Benicia.

#### **E. Reservoir Road Closure**

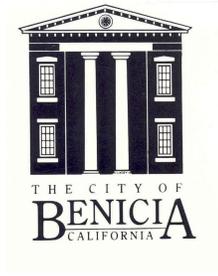
Public Works Director, William Tarbox, updated the Committee and members of the public on current status. Public Works has requested Fehr & Peers Consulting to provide a proposal to complete a road closure analysis for Reservoir Road. We have since received their proposal and are now executing a task order to perform the necessary analysis. The scope of work in the analysis will show us how closing of Reservoir Road will impact traffic on East 2<sup>nd</sup> Street as well as traffic impacts to Lake Herman Road. The work performed will help us to better determine whether this is truly a viable option for our City. As discussed at the previous TPBS Committee meeting, it is very difficult to re-open a road that has been closed for some time, so a thorough examination is warranted before making a decision.

### **6. ACTION ITEMS**

None.

### **7. ADJOURNMENT**

The meeting was adjourned at 7:56 p.m.



**BENICIA TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY COMMITTEE  
TRAFFIC PEDESTRIAN & BICYCLE SAFETY (TPBS) COMMITTEE AGENDA**

**City Hall - Commission Room  
October 17, 2019  
7:00 PM**

**1. Call To Order**

1. Roll Call
2. Pledge of Allegiance
3. Fundamental Rights Statement

**2. Adoption Of Agenda**

**3. Approval Of Minutes**

**3.A Approve Minutes from July 18, 2019 meeting**

[TPBS Minutes - Draft 7-18-19 Mtg](#)

**4. Public Comments**

**5. Verbal Staff Updates**

**5.A Solano Transportation Authority (STA) - Active Transportation Plan (ATP)**

**5.B ATP Grant - Safe Routes to School Update**

**5.C HSIP Grant - Military West and West 7th Street Improvements Project**

**5.D HSIP Grant - East 5th and Vecino Street Improvements Project**

**5.E Reservoir Road Closure**

**5.F West J @ West 3rd & West 4th Streets**

**5.G Rose Drive, Hastings Drive, and Panorama Drive Speed Survey**

**5.H Evacuation Annex and Information (PD)**

**5.I Benicia High School - Intersection Scramble**

**5.J McAllister Landbridge Traffic Calming Striping**

**6. Action Items**

None.

**7. Adjournment**

Next Meeting: January 16, 2020

**8. Committee Members**

Steve Young ( Chair, City Council member)

Lionel Largaespada (Vice Mayor, City Council member)

William Tarbox (Public Works Director)

Mark Menesini (Lieutenant Police Department Representative)

Nouae Vue (Senior Civil Engineer, Public Works)

## **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](http://www.ci.benicia.ca.us) under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the

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

<b>Contact Your Council Members</b>
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If you would like to contact the Mayor or a Council Member, please call the number listed below to leave a voicemail message.

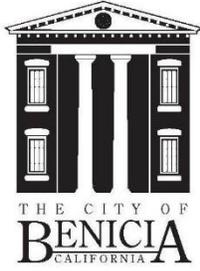
Mayor Patterson: 746-4213

Vice Mayor Strawbridge: 746-4213

Council Member Campbell: 746-4213

Council Member Young: 746-4213

Council Member Largaespada: 746-4213



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE – DECEMBER 17, 2019**  
**COUNCIL MEMBER COMMITTEE REPORT**

**TO** : Councilmember Largaespada

**FROM** : Interim Community Development Director

**SUBJECT** : **TRI-CITY AND COUNTY COOPERATIVE  
PLANNING GROUP “SOLANO OPEN SPACE”**

The following information is provided for your committee report at the December 17, 2019, Council meeting.

The minutes from the most recent meeting on April 22, 2019 are not yet available. The next meeting has not been scheduled yet.

For a list of additional upcoming Solano County outdoor events please visit:  
<http://solanoopenspace.org/AandE.asp>.