PUBLIC COMMENT: Members of the Public may provide public comments during the City Council Meeting via ZOOM (https://ZoomRegular.Cityofvallejo.net), or via phone, by dialing (669) 900-6833.

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment

VIEW THE MEETING:

There are three different ways you can view this public meeting:

- Watch Vallejo local channel 28
- Stream from the City website: www.cityofvallejo.net/Streaming
- Join the Zoom webinar: https://ZoomRegular.Cityofvallejo.net

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. PRESENTATIONS AND COMMENDATIONS

Due to the Coronavirus emergency, all City Council meetings will be held via teleconference. Members of the public may provide public comments during the City Council Meeting via ZOOM

https://ZoomRegular.CityofVallejo.net
Option to join by phone:
Dial (669) 900-6833
Enter Meeting ID: 914 0075 0676#
Press *9 to digitally raise your hand from the phone
For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment
5. **FIRST COMMUNITY FORUM**

Due to the current Shelter at Home Order and in conformance with the Governor’s Executive Order N-29-30, the City of Vallejo has opted to hold City Council meetings via teleconference. Any interested members of the public desiring to communicate with the City Council as part of the First Community Forum may do so via ZOOM: [https://ZoomRegular.Cityofvallejo.net](https://ZoomRegular.Cityofvallejo.net), Option to join by phone: Dial (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press *9 to digitally raise your hand from the phone.

For additional instructions on how to speak during public comment, please visit, [www.cityofvallejo.net/publiccomment](http://www.cityofvallejo.net/publiccomment). The conduct of the community forum shall be limited to a maximum of fifteen (15) minutes, with each speaker limited to three minutes pursuant to Vallejo Municipal Code Section 2.20.300.

6. **PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS**

Due to the current Shelter at Home Order and in conformance with the Governor’s Executive Order N-29-30, the City of Vallejo has opted to hold City Council meetings via teleconference. Any interested members of the public desiring to communicate with the City Council as part of the Public Comment Regarding Consent Calendar Items may do so via ZOOM ([https://ZoomRegular.Cityofvallejo.net](https://ZoomRegular.Cityofvallejo.net)), or via phone, by dialing (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press *9 to digitally raise your hand from the phone. For additional instructions on how to speak during public comment, please visit, [www.cityofvallejo.net/publiccomment](http://www.cityofvallejo.net/publiccomment).

Each speaker is limited to three minutes pursuant to Vallejo Municipal Code Section 2.02.310. Requests for removal of Consent Items received from the public are subject to approval by a majority vote of the Council. Items removed from the Consent Calendar will be heard immediately after approval of the Consent Calendar and Agenda.

7. **CONSENT CALENDAR AND APPROVAL OF AGENDA**

A. **FISCAL YEAR 2020-21 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM BUDGET AMENDMENT (STEP 2 OF 2)**

   *Recommendation:* Adopt a Resolution to amend the Fiscal Year (FY) 2020-21 Community Development Block Grant Program Budget (CDBG Program Budget) to increase the expenditure budget by $2,078,031 and to reauthorize funding for projects and activities in progress.

   Contact: Judy Shepard-Hall, Housing & Community Development Program Manager (707) 648-4408
   
   [judy.shepard-hall@cityofvallejo.net](mailto:judy.shepard-hall@cityofvallejo.net)
B. **AMENDMENT OF FY 2020-21 BUDGET TO APPROPRIATE EXPENDITURE OF $962,689 NAVY GRANT PROCEEDS (2ND STEP)**

Recommendation: Adopt a Resolution to amend the Mare Island Conversion Fund #106 Fiscal Year 2020-2021 budget to recognize the additional US Navy grant and appropriate funds in the amount of $962,689 to be placed into the ESCA Contingency Fund to pay for expenditures associated with the ongoing Mare Island Environmental Remediation Project.

Contact: Erin Hanford, Economic Development Program Manager (707) 648-5406
Erin.Hanford@cityofvallejo.net

C. **GRANTING AN EASEMENT TO PACIFIC AND ELECTRIC COMPANY (PG&E) OVER AND ACROSS A PORTION OF 1850 BROADWAY STREET**

Recommendation: Adopt a Resolution granting an easement to Pacific Gas and Electric Company (PG&E) on a parcel of land located at 1850 Broadway Street for the installation of additional electrical and/or natural gas service.

Contact: Justin Peters, Real Property and Asset Manager (707) 648-4343
justin.peters@cityofvallejo.net

8. **ACTION CALENDAR**

**NOTICE:** Members of the public wishing to address the Council on Action Calendar Items may do so via ZOOM (https://ZoomRegular.Cityofvallejo.net), or via phone, by dialing (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press *9 to digitally raise your hand from the phone.

*For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment. Each speaker is limited to five minutes pursuant to Vallejo Municipal Code Section 2.02.420.*

A. **HOME INVESTMENT PARTNERSHIPS PROGRAM LOAN AGREEMENT AND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH VALLEJO PERMANENT SUPPORTIVE HOUSING, L.P.**

Recommendation: Approval of a HOME Investment Partnerships Program Loan Agreement and Amended and Restated Disposition and Development Agreement (DDA) with Vallejo Permanent Supportive Housing (PSH), L.P.

Contact: Judy Shepard-Hall, Housing & Community Development Program Manager (707) 648-4408
judy.shepard-hall@cityofvallejo.net
B. CONSIDERATION OF RESOLUTION ADOPTING CELLULAR SITE SIMULATOR POLICY
Recommendation: Staff recommends that the City Council approve a resolution adopting the revised usage and privacy policy for the cell site simulator previously acquired by the City of Vallejo.
Contact: Shawny K. Williams, Chief of Police (707) 648-4540
shawny.williams@cityofvallejo.net

C. UPDATE ON VALLEJO POLICE DEPARTMENT IMPLEMENTATION PLAN
Recommendation: Receive and comment on this report and presentation from Chief Williams, covering: 1) the progress and activities associated with the latest crime spike in Vallejo and 2) the OIR Report and Implementation Plan (IP).

The OIR IP update includes the following:

• A summary of citizen input on the IP;
• Changes to it due to that input, as well as from Council;
• Progress to date; and,
• Priorities for next steps.
Contact: Shawny Williams, Police Chief
shawny.williams@cityofvallejo.net
D. APPROVAL OF PUBLIC SAFETY EMERGENCY ORDERS AND EXTENSION OF PUBLIC SAFETY EMERGENCY

Recommendation:

Adopt the two proposed emergency orders and two resolutions authorizing the City Manager to take the following actions:

- Allocate an unrepresented Deputy Chief position and retitle the existing Assistant Chief position to Deputy Chief, resulting in two Deputy Chiefs.
- Addition of two analyst positions to support the legally required review and maintenance of body camera footage, implementation of the OIR recommendations, and provision of information to the Department of Justice as part of the collaborative agreement.
- Implement 23 Lexipol policy updates for the Vallejo Police Department, many of which are required by state law.
- Allocation of $195,000 for necessary professional services to conduct Internal Affairs investigations, accomplish a comprehensive update of Vallejo Police Department (VPD) policies and procedures consistent with best practices, and additional training for the police department.
- Extend the proclamation of emergency for another 60 days.

Or, in the alternative:

- Direct the City Manager to initiate a feasibility study on policing alternatives to take effect in FY2021-22.

Maintaining the status quo in the Vallejo Police Department is no longer an option. Without the requested resources, reform will not be possible, and the City’s fiscal liability will continue to grow and reach a point that will become unmanageable. The only viable alternative is to begin exploring policing alternatives for the community of Vallejo.

Contact: Anne Cardwell, Assistant City Manager (707) 648-4579 anne.cardwell@cityofvallejo.net

9. INFORMATION CALENDAR

NOTICE: Members of the public wishing to address the Council on Information Calendar Items may do so via ZOOM (https://ZoomRegular.Cityofvallejo.net), or via phone, by dialing (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press *9 to digitally raise your hand from the phone.

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment. Each speaker is limited to five minutes pursuant to Vallejo Municipal Code Section 2.02.420.
A. **FISCAL YEAR 2019-20 FINANCIAL RESULTS AND FIRST QUARTER BUDGET UPDATE**

Recommendation: Receive the FY 2019-20 and FY 2020-21 First Quarter Financial Reports.

Contact: Rekha Nayar, Finance Director (707) 648-4592
Rekha.Nayar@cityofvallejo.net

10. **CITY MANAGER'S REPORT**

11. **CITY ATTORNEY’S REPORT**

12. **COMMUNITY FORUM**

Due to the current Shelter at Home Order and in conformance with the Governor's Executive Order N-29-30, the City of Vallejo has opted to hold City Council meetings via teleconference. Any interested members of the public desiring to communicate with the City Council as part of the Community Forum may do so via ZOOM (https://ZoomRegular.Cityofvallejo.net), or via phone, by dialing (669) 900-6833.

Enter Meeting ID: 914 0075 0676#. Press *9 to digitally raise your hand from the phone.

For additional instructions on how to speak during public comment, please visit www.cityofvallejo.net/publiccomment.

Each speaker is limited to three minutes pursuant to Vallejo Municipal Code Section 2.20.300.

13. **REPORT OF THE PRESIDING OFFICER AND MEMBERS OF THE CITY COUNCIL**

14. **CLOSED SESSION**

15. **ADJOURNMENT**

___________________________________________________________

**ADDITIONAL CITY INFORMATION**

Members of the public can:
Like us on Facebook (www.facebook.com/cityofvallejo)
Sign up to receive City Communications via e-mail (www.cityofvallejo.net/living/connect)
Sign up to receive City updates and get connected with your neighbors on Nextdoor (www.nextdoor.com)

Dated: Thursday, November 12, 2020

Bob Sampayan, Mayor

I, Dawn Abrahamson, City Clerk do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Vallejo City Council, at the time and in the manner prescribed by law and that this agenda was posted at City Hall, 555 Santa Clara Street, CA at 5:00 p.m., Thursday, November 12, 2020.
DATE: November 17, 2020
TO: Mayor and Members of the City Council
FROM: Judy Shepard-Hall, Housing and Community Development Program Manager
SUBJECT: FISCAL YEAR 2020-21 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM BUDGET AMENDMENT (STEP 2 OF 2)

RECOMMENDATION
Adopt a Resolution to amend the Fiscal Year (FY) 2020-21 Community Development Block Grant Program Budget (CDBG Program Budget) to increase the expenditure budget by $2,078,031 and to reauthorize funding for projects and activities in progress.

REASONS FOR RECOMMENDATION
The City benefits from its use of CDBG Program funds. By reauthorizing the funding for activities in progress or not yet underway, the City is assisted in accomplishing its affordable housing and community development objectives. The federal government also requires the City to expend its CDBG Program funds in a timely manner. If the City fails to do so, these funds are recaptured.

BACKGROUND AND DISCUSSION
On July 21, 2020, the City Council approved CDBG Program activities for FY 2020-21 for the period beginning July 1, 2020 and ending June 30, 2021. Some of the activities completed in the prior fiscal year (2019-20) are completed and may be closed out. Other activities may be in progress or are not yet underway, and may be carried over. Funds for some activities may be reallocated if the activity does not proceed for any reason. The revised and proposed FY 2020-21 CDBG Program Budget is attached. Staff is requesting that a total amount of $2,078,031 be reallocated as set forth in Figure 1 of the proposed resolution. This is the second step of the process to reauthorize funding for projects and activities in process.

This item was reviewed by the Housing and Community Development Commission on November 5, 2020.

Staff and the Commission's main recommendation is the reallocation of $1,043,316 in unspent funds from FY 2019-20 CDBG Program housing projects, social service activities, and previously unallocated entitlement funding to the Navigation Shelter Project.

FISCAL IMPACT
As these are federal funds, there would be no fiscal impact to the City of Vallejo's General Fund.

The net effect of the recommendation is to increase the expenditure budget by $2,078,031 in prior year funds not automatically carried over, and to reauthorize or reallocate funding in FY 2020-21 for CDBG Program activities and projects that are in progress, or are not yet underway.
ENVIRONMENTAL REVIEW
This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

ATTACHMENTS
1. FY 2020-21 CDBG Program Budget Amendment
2. Resolution for FY 2020-21 CDBG Budget Amendment Stamped

CONTACT
Judy Shepard-Hall, Housing & Community Development Program Manager (707) 648-4408
judy.shepard-hall@cityofvallejo.net
**CITY OF VALLEJO**

**CDBG PROGRAM BUDGET AMENDMENT, FISCAL YEAR (FY) 2020-21, FIGURE 1**

### TABLE: CDBG Program Activities

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| Staff Project Delivery |       |                           |                                 |           | 6,834                          | 6,834                                         | 3,641                          | -                 | 3,641                          | -                       | -                       |
| (101-2104-463.40-68) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Public Improvements |       |                           |                                 |           | 42,500                        | 7,980                                         |                                 |                   |                                | 42,500                  | 42,500                 |
| (101-2104-463.40-56) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Subtotal, Public Improvement Projects |       |                           | 744,457                          |           | 804,857                        | 725,208                                       | 660,879                        | -                 | 42,500                          | 7,980                   | -                       |

| Housing Projects |       |                           |                                 |           | 161,570                        | 161,570                                       | 161,570                        | -                 | 161,570                          | 161,570                 | -                       |

| Contingency Account |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |
| (101-2104-463.40-99) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Subtotal, Housing Projects |       |                           | 1,274,048                        |           | 1,214,048                      | 1,218,825                                     | 54,998                         | 1,164,321                         | (63,171)                 | 332,910                 | 387,408                 |

| Social Services |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| CHDC- Homebuyer Education/Counseling (101-2104-463.40-91) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Fair Housing Advocates of Solano (101-2104-463.45-02) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Global Center for Success (101-2104-463.40-52) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| The House of Acts (101-2104-463.40-41) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Legal Services of Northern California (101-2104-463.45-03) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Meals on Wheels of Solano County (101-2104-464.40-32) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Vallejo Senior Citizens’ Council (101-2104-463.40-80) |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| Subtotal, Social Services [7] |       |                           | 110,542                          |           | 110,542                        | 13,512                                        | 187,548                        | -                 | 13,512                          | 187,548                 | -                       |

| Unallocated Entitlement Funding |       |                           | -                                |           | -                             | 198,387                                       | -                              | 198,387                         | (198,387)                 | -                       | -                       |

|                              |       |                           |                                 |           |                                |                                               |                                 |                   |                                |                          | -                       |

| TOTAL | $2,362,246 | $2,550,246 | 2,172,660 | $1,065,958 | $94,629 | $2,078,031 | - | - | $2,078,031 | $3,238,618 |

**Notes:**

1. Of the total FY 2019-20 budget of $2,550,246, $15,000 was estimated program income; $249,109 in FY 2019-20 program income was received.
2. IDIS: Integrated Disbursement and Information System; unspent Entitlement balance: $2,172,660.
3. Of the total FY 2020-21 budget of $1,065,958, $15,000 is projected FY 2020-21 program income.
4. A total of $1,043,316 is proposed for reallocation to Navigation Shelter.
5. Contingency Account may be used for public improvement or housing projects that need additional funding in order to be completed.
6. Meals on Wheels also received an allocation of $16,800 from the General Fund in FY 2020-21.
7. Unspent social services funds in amount of $13,512 are not eligible to be carried over and expended on social service activities in FY 2020-21.
WHEREAS, on July 21, 2020, the City Council adopted a Budget for the Fiscal Year (FY) 2020-21 federal Community Development Block Grant (CDBG) Program; and

WHEREAS, City Charter Section 703 requires that available funds not included in the Budget may be appropriated by the City Council after giving one week’s notice of intention to do so; and

WHEREAS, staff is proposing that the revised CDBG Program expenditure budget be increased by $2,078,031 in prior year funds not automatically carried over, as set forth in Figure 1 of this Resolution; and

WHEREAS, on November 10, 2020, the City Council provided a Notice of Intention to amend the FY 2020-21 CDBG Program Budget; and

WHEREAS, the City Council has considered the report and recommendations of the City Manager on the Budget amendment and has determined that the Budget amendment is both fair and appropriate.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF VALLEJO DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Council of the City of Vallejo, pursuant to Charter Section 703, hereby amends the City’s CDBG Program (Fund 101) Budget for FY 2020-21, by changing certain expenditure appropriations, as set forth in Figure 1 of this Resolution, which is by this reference incorporated herein; and

Section 2. The Council of the City of Vallejo hereby authorizes the City Manager or his designees to prepare and execute written Agreements and Amendments as may be necessary with subrecipient agencies and developers receiving FY 2020-21 CDBG Program funds.
Adopted by the City Council of the City of Vallejo at a regular meeting held on November 17, 2020 with the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

________________________________________
BOB SAMPAYAN, MAYOR

ATTEST:

________________________________________
DAWN G. ABRAHAMSON, CITY CLERK
DATE:  November 17, 2020
TO:    Mayor and Members of the City Council
FROM:  Paul Kelley, Economic Development Director
SUBJECT: AMENDMENT OF FY 2020-21 BUDGET TO APPROPRIATE EXPENDITURE OF $962,689
        NAVY GRANT PROCEEDS (2ND STEP)

RECOMMENDATION
Adopt a Resolution to amend the Mare Island Conversion Fund #106 Fiscal Year 2020-2021 budget to
recognize the additional US Navy grant and appropriate funds in the amount of $962,689 to be placed into the
ESCA Contingency Fund to pay for expenditures associated with the ongoing Mare Island Environmental
Remediation Project.

REASONS FOR RECOMMENDATION
Approval of the resolution is the second step in the two-step process to amend the Fiscal Year 2020-21 Mare
Island Conversion Fund budget to recognize the grant and authorize expenditure of the funds. This will allow
Lennar Mare Island and the City of Vallejo to continue the environmental cleanup activity and accelerate
development on Mare Island.

BACKGROUND AND DISCUSSION
On April, 2001, the City executed the Environmental Services Cooperative Agreement (ESCA-East) with the
Navy, the Mare Island Remediation Agreement ((MIRA)with Lennar, and other agreements which provided for
the environmental remediation of the ~650 acre Eastern Early Transfer Parcel (EETP). The ESCA-East
originally provided approximately $78.97M in grant funding to accomplish the remediation of known hazardous
waste within the EETP. Additional funds via the First, Second, Third and Fifth Amendments to the ESCA were
received by the City in an amount of $11.7M.

The Fourth amendment to the ESCA East recognized approximately $31M in environmental cleanup funds
from a settlement agreement, however these funds are earmarked for the remediation of the remaining
unknown conditions detailed in the settlement agreement. The other ESCA amendments are direct Navy
grant funds for the original known environmental cleanup sites.

Under the terms of the Sixth amendment to the ESCA-East dated September 30, 2020, the Navy provided
$962,689 in additional grant funds to be deposited into the ESCA Contingency Fund to be made available to
the City and LMI solely to fund the cost of remediating remaining known conditions. These Navy grant funds
cannot be used for any other purposes.

FISCAL IMPACT
Approval of this item will increase the Mare Island Conversion Fund# 106 FY 2020-21 budget for revenue and
expenditures in the amount of $962,689 for Environmental Remediation Project.

**ENVIRONMENTAL REVIEW**
As this is a budget action only: this action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

**ATTACHMENTS**
1. 202011 ESCA 6th Amend Funds Acceptance Resolution with CAO stamp

**CONTACT**
Erin Hanford, Economic Development Program Manager (707) 648-5406
Erin.Hanford@cityofvallejo.net
RESOLUTION NO. N.C.

A RESOLUTION AMENDING THE MARE ISLAND CONVERSION FUND# 106 FISCAL YEAR 2020-21 BUDGET TO INCREASE REVENUES AND EXPENDITURES IN THE AMOUNT OF $962,689 FROM NAVY GRANT FUNDS FOR MARE ISLAND ENVIRONMENTAL REMEDIATION

WHEREAS, on September 30, 2020, the City executed the Sixth Amendment to the Environmental Services Cooperative Agreement between the Department of the Navy and the City of Vallejo (ESCA East Sixth Amendment); and

WHEREAS, under the terms of the ESCA East Sixth Amendment, $962,689 was to be deposited into the ESCA East Funds and made available to the City and Lennar Mare Island (LMI) to fund the cost of remediating the known environmental conditions at the Eastern Early Transfer Parcel (EETP); and

WHEREAS, on June 30, 2020, the City Council did adopt a budget for the Fiscal Year 20-21; and

WHEREAS, City Charter Section 703 requires that available funds not included in the budget may be appropriated by the City Council after giving one week's notice of intention to do so; and

WHEREAS, notice was provided on November 10, 2020; and

WHEREAS, the City has received the funds totaling $962,689.

NOW, THEREFORE, BE IT RESOLVED that the Council hereby amends the Mare Island Conversion Fund# 106 budget for Fiscal Year 2020-21 by increasing revenues and expenditures in the amount of $962,689 to recognize the additional US Navy grant and permit disbursement of funds for Mare Island Environmental Remediation Project.

PASSED AND ADOPTED by the City Council of the City of Vallejo, State of California this ____ day of ______________, 2020, by the following vote:

AYES:

NOES:

ABSENT:

______________________________
BOB SAMPAYAN, MAYOR

ATTEST:

______________________________
DAWN G. ABRAHAMSON, CITY CLERK
DATE: November 17, 2020
TO: Mayor and Members of the City Council
FROM: Paul Kelley, Economic Development Director
SUBJECT: GRANTING AN EASEMENT TO PACIFIC AND ELECTRIC COMPANY (PG&E) OVER AND ACROSS A PORTION OF 1850 BROADWAY STREET

RECOMMENDATION
Adopt a Resolution granting an easement to Pacific Gas and Electric Company (PG&E) on a parcel of land located at 1850 Broadway Street for the installation of additional electrical and/or natural gas service.

REASONS FOR RECOMMENDATION
1850 Broadway Street has been under a long term lease to SolTrans since 2014 and is expected to continue until January 1, 2042. This easement will allow PG&E to install necessary charging stations that will help SolTrans meet the requirements established by the California Air Resources Board and will have no impact on the current or future use of the land.

BACKGROUND AND DISCUSSION
The California Air Resources Board has mandated that all transit agencies in California have a zero emission fleet by 2040. SolTrans, with Board approval, has planned for the transition of its fleet from diesel to battery electric buses by 2038. SolTrans has accelerated that plan to be 100% electric by 2033, so that the community can benefit by having clean, quiet public transportation. Soltrans began the journey in 2016 when it purchased 2 battery electric buses and purchased another two buses in 2019. As Vallejo is designated as a Disadvantaged Community (DAC), due to its location along the Highway 80 Corridor, SolTrans receives funding to purchase zero-emission buses to service the routes in south Vallejo.

In order to continue on the transition to a battery electric fleet, electric charging infrastructure needs to be built at the Operations and Maintenance Center at 1850 Broadway. In 2019, Soltrans joined the PG&E Fleet ready program. Under the program, PG&E will design the infrastructure, bring in power and install conduit and a transformer to charge 19 battery electric buses that will be purchased in 2023. SolTrans is responsible to build the infrastructure from the meter to the bus chargers. In March 2020, SolTrans contracted with design engineering firm, WSP to design the infrastructure to support a future fleet of 77 electric buses with back-up battery storage and solar panels. Construction is to begin in April 2021.

FISCAL IMPACT
There is no fiscal impact on the General Fund for dedicating a grant deed easements to PG&E. The City did not collect any money for granting this easement and PG&E will be adding facilities.
ENVIRONMENTAL REVIEW
Under section 15305 of CEQA, minor alterations in land use limitation, action on this easement, which potentially will have minor alteration of land, is exempt from the environmental review process.

ATTACHMENTS
1. Easement Deed 1850 Broadway
2. PGE Easement Resolution 1850 Broadway

CONTACT
Justin Peters, Real Property and Asset Manager (707) 648-4343
justin.peters@cityofvallejo.net
CITY OF VALLEJO, a public body of the State of California,

hereinafter called Grantor, hereby grants to PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called Grantee, the right from time to time to construct, reconstruct, install, inspect, maintain, replace, remove, and use facilities of the type hereinafter specified, together with a right of way therefor, within the easement area as hereinafter set forth, and also ingress thereto and egress therefrom, over and across the lands of Grantor situate in the City of Vallejo, County of Solano, State of California, described as follows:

(APN 0052-090-260)

The parcel of land described in the deed from Josephine Bacigalupi who acquired title as Josephine Noceti and Adeline Nettleton to The City of Vallejo dated October 23, 1985 and recorded as Document No. PG104408, Solano County Records.

Said facilities and easement area are described as follows:

Such underground conduits, pipes, manholes, service boxes, wires, cables, and electrical conductors; aboveground marker posts, risers, and service pedestals; underground and aboveground switches, fuses, terminals, and transformers with associated concrete pads; electric vehicle charging supply equipment, bollards and/or curbs or other associated safety equipment, associated signage; and fixtures and appurtenances necessary to any and all thereof, as Grantee deems necessary for the distribution of electric energy and communication purposes located within the strips of land of the uniform width of 10 feet, lying 5 feet on each side of the alignment of the facilities as initially installed hereunder. The approximate location of said facilities are shown upon Grantee’s Drawing Number 31487462 attached hereto and made a part hereof.

Grantee agrees that on receiving a request in writing, it will at Grantor’s expense, survey, prepare and record a “Notice of Final Description” referring to this instrument and setting forth a description of said strips of land.
Grantor further grants to Grantee the right, from time to time, to trim or to cut down any and all trees and brush now or hereafter within said easement area, and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said easement area which now or hereafter in the opinion of Grantee may interfere with or be a hazard to the facilities installed hereunder, or as Grantee deems necessary to comply with applicable state or federal regulations.

Grantor shall not erect or construct any building or other structure or drill or operate any well within said easement area.

Grantor further grants to Grantee the right to assign to another public utility as defined in Section 216 of the California Public Utilities Code the right to install, inspect, maintain, replace, remove and use communications facilities within said easement area (including ingress thereto and egress therefrom).

In the event upon termination of the electric vehicle charging station contract as set forth in said terms and conditions, Grantee shall upon written demand therefor execute and deliver to Grantor a good and sufficient quitclaim of said easement and right of way or such portion thereof conveyed in this document, at Grantor’s expense.

The legal description herein, or the map attached hereto, defining the location of this utility distribution easement, was prepared by Grantee pursuant to Section 8730 (c) of the Business and Professions Code.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

In exercising its easement rights hereunder, Grantee shall not unreasonably interfere with, disrupt, or materially adversely affect Grantor’s business operations or access rights at the property owned by Grantor.

Dated: __________________, ______

CITY OF VALLEJO, a public body of the State of California

By __________________________

I hereby certify that a resolution was adopted on the ___ day of __________, 20___, by the

authorizing the foregoing grant of easement.

By ___________________________
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ____________________________

On ______________________, before me, ____________________________,
Here insert name and title of officer我个人陈述

personally appeared ____________________________,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

________________________________________ (Seal)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER

[ ] Individual(s) signing for oneself/themselves

[ ] Corporate Officer(s) of the above named corporation(s)

[ ] Trustee(s) of the above named Trust(s)

[ ] Partner(s) of the above named Partnership(s)

[ ] Attorney(s)-in-Fact of the above named Principal(s)

[ ] Other ____________________________
Attach to LD: 2403-04-
Area: 7; North Bay Division
Land Service Office: Fresno
Line of Business: Electric Charging Station (95), Electric Distribution (43)
Business Doc Type: Easements
MTRSQ: 24.03.04.01.24
FERC License Number: N/A
PG&E Drawing Number: 31487462
Plat No.: Electric PP3919
LD of Affected Documents: N/A
LD of Cross-Referenced Documents: N/A
Type of interest: Communication Easements (6), Electric Underground Easements (4), Utility Easement (86)
SBE Parcel: N/A
% Being Quitclaimed: N/A
Order or PM: 31487462
JCN: N/A
County: Solano
Utility Notice Number: N/A
851 Approval Application No: N/A; Decision: N/A
Prepared By: LC
Checked By: PRFB
RESOLUTION NO. 20- ____ N.C.

GRANTING AN EASEMENT TO PG&E AT 1850 BROADWAY ST, VALLEJO, CA

WHEREAS, PG&E is requesting the City of Vallejo to grant an easement for the purpose of installation of electric service on a portion of real property situated in the City of Vallejo, County of Solano, State of California, being a portion of APN 0052 090 260 more particularly as follows:

The parcel of land described in the deed from Josephine Bacigalupi who acquired title as Josephine Noceti and Adeline Nettleton to The City of Vallejo dated October 23, 1985 and recorded as Document No. PG104408, Solano County Records.; and

WHEREAS, pursuant to Section 15.06.120 of the Vallejo Municipal Code, easements for a public purpose may be ordered or directed, and otherwise amended by the City Council; and

WHEREAS, pursuant to California Government Code Section 27281, easements upon real estate of a government agency for public purposes shall be accepted by resolution and recorded by grant deed; and

THEREFORE BE IT RESOLVED, by the Council of the City of Vallejo directs the City Manager and City Clerk take all steps necessary to execute and record a Grant Deed of Easement to facilitate PG&E installation of a subsurface transformer.

BE IT FURTHER RESOLVED that the City Clerk is directed to cause to be recorded said Grant Deed of Easement in the Office of the Solano County Recorder, the easement deed as being attached hereto and made a part hereof.

Approved as to form:

By: [Signature]
Randy J. Risner
Interim City Attorney
DATE: November 17, 2020
TO: Mayor and Members of the City Council
FROM: Judy Shepard-Hall, Housing and Community Development Program Manager
SUBJECT: HOME INVESTMENT PARTNERSHIPS PROGRAM LOAN AGREEMENT AND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH VALLEJO PERMANENT SUPPORTIVE HOUSING, L.P.

RECOMMENDATION
Approval of a HOME Investment Partnerships Program Loan Agreement and Amended and Restated Disposition and Development Agreement (DDA) with Vallejo Permanent Supportive Housing (PSH), L.P.

REASONS FOR RECOMMENDATION
The City acquired the property at 2118 and 2134-2136 Sacramento Street (Property) in June 2018, with a combination of Low- and Moderate-Income Housing Assessor Fund (LMIHAF), Community Development Block Grant (CDBG) Program funds, HOME Investment Partnerships Program funds, and the General Fund, with the intention of developing the site as affordable housing. The City through the Housing and Community Development Commission, the Vallejo Housing Authority Board, and the City Council identified housing objectives for the site that included:

- Provide permanent supportive housing
- Help meet community housing needs
- Support the development of transit-oriented revitalization projects in an area near to the site and surrounding areas of the neighborhood.

The draft HOME Program Loan Agreement originally approved in October 2019 has been updated to reflect the amount, and the DDA has been amended to clarify the terms for the withdrawal of funds and replacement of the schedule of performance.

BACKGROUND AND DISCUSSION
Vallejo Permanent Supportive Housing will construct 75 new units of permanent supportive housing for individuals and couples who are homeless, chronically homeless, or at imminent risk of becoming homeless. The project will feature intensive case management and wraparound services to improve housing retention, reduce emergency room visits, and ensure the long-term health and stability of our residents. The project is anticipated to be financed through a mix of 4% tax credits, tax exempt bonds, No Place Like Home funding, Multifamily Housing Program -Supportive Housing funding, City funds, Project-Based Vouchers, and the Community Action Partnership of Solano Joint Powers Authority funding.
Resident services will be guaranteed for a minimum period of 20 years through a Capitalized Service Reserve and No Place Like Home Program Capitalized Operating Subsidy Reserve.

To date the City Council has:

On December 5, 2017, the City of Vallejo acquired these properties in order to complete this project. The total purchase price of the two properties is $1,124,000.

These commercial mixed-use properties would be substantially rehabilitated to create studio units to assist in eliminating barriers to obtaining and maintaining long-term housing for Vallejo’s homeless. The City is currently developing a Request for Qualifications (RFQ) to retain an established affordable housing developer/property manager to design and deliver a project at the site for approximately 38 – but no more than 72 - affordable residential studios, a community room/classroom, an office and living unit for an onsite staff person, and private meeting space. Both properties will be leased and operated by the affordable housing developer. The developer will be responsible for subleasing to the County, under the terms of the Memorandum of Understanding, to assist Vallejo residents experiencing homelessness. The developer would be responsible for ongoing maintenance, including funding for capital replacement costs. An alternative model under consideration would be for the City to retain a developer to create the units, and master lease the units to the County, who would work with a non-profit affordable housing developer to manage the properties.

Eden Housing was selected as the preferred developer after the completion by staff of a competitive RFQ process which began in February, 2018. Federal Community Development Block Grant (CDBG) Program, federal HOME Investment Partnerships Program, and Participatory Budgeting (Measure B) funds have also been allocated to this effort.

In June 2018, through a developer solicitation the City Council selected Eden Housing, Inc. as Developer for the Property. The Housing Authority Board approved a Loan Agreement with Eden Housing, Inc. in the amount of $1.6 million from the Housing Successor Agency Low- and Moderate-Income Housing Asset Fund (LMIHAF) for the development of permanent supportive housing for homeless persons at 2118 and 2134-36 Sacramento Street.

In December 2018, the City Council authorized the City Manager to execute an Exclusive Negotiating Agreement (ENA) with the Developer for the purpose of negotiating a Disposition and Development Agreement (DDA) for a permanent supportive residential housing development.

In February 2019, a Partnership Healthcare grant was awarded.

Between March 2019 and September 2019, City staff worked with the Developer and the City Attorney’s Office to negotiate the proposed Disposition and Development Agreement.

In July 2019, Developer submitted a SB35 permit application.

In March 2020, a No Place Like Home Program grant was awarded.
On September 15, 2020, a Multifamily Housing Program grant application was submitted.

On October 16, 2020, the U.S. Department of Housing and Urban Development authorized the use of the City’s HOME Program funds.

**FISCAL IMPACT**

Associated with the DDA to convey the entitlement of the property at 2118 Sacramento Street and 2134-2136 Sacramento Street to the Developer, the City is granting funding through a HOME Investment Partnerships Program Loan Agreement.

There is no General Fund impact associated with the approval of the loan agreement and amended DDA.

**ENVIRONMENTAL REVIEW**

The City has complied with the requirements of the California Environmental Quality Act (CEQA) and applicable state and local implementing guidelines, pursuant to CEQA Guideline section 15378.

**ATTACHMENTS**

1. Sac Street Home Loan (final) (S0616128xE1EAB) (1) CAO Stamp
2. Sacramento Street DDA Amendment (final) (S0616127xE1EAB) CAO Stamp

**CONTACT**

Judy Shepard-Hall, Housing & Community Development Program Manager (707) 648-4408
judy.shepard-hall@cityofvallejo.net
Approved as to form:

By:
Randy J. Risner
Interim City Attorney

HOME INVESTMENT PARTNERSHIPS PROGRAM
LOAN AGREEMENT

By and Between

THE CITY OF VALLEJO,
a municipal corporation,

and

VALLEJO PSH, L.P.,
a California limited partner,

for

Permanent Supportive Housing Development
[2118 Sacramento Street, and 2134-36 Sacramento Street]
[$2,186,710.00]

Dated as of November __, 2020
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H Governmental Requirements
I Insurance Requirements
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K Schedule of Performance
LOAN AGREEMENT
HOME Investment Partnerships Program
City of Vallejo (Solano County)
2118 Sacramento Street, and 2134-2136 Sacramento Street

THIS LOAN AGREEMENT (the "Agreement") is entered into as of November __, 2020, by and between the CITY OF VALLEJO, a municipal corporation (the "City"), represented by the City Manager, acting by and through the Housing and Community Development Division (the "HCD Division"), and VALLEJO PSH, L.P. a California limited partner (the "Borrower").

RECITALS

A. The City has acquired the real property located at 2118 Sacramento Street, and 2134-36 Sacramento Street, in Vallejo, California (the “Site”). The City desires to use the properties to fund the demolition of the existing buildings on the Site and the construction of up to 74 units of multifamily rental housing, all of which will be affordable to very low- and low-income households (defined as at or below 80 percent of the federal area median income), and one additional unit which will be set aside for a manager’s unit (collectively, the “Units”). The Units as described herein constitute the “Project”.

B. The City has received an allocation of federal HOME Investment Partnerships Program (“HOME”) Program funds from the United States Department of Housing and Urban Development (“HUD”) pursuant to the HOME Investment Partnerships Act as set forth at Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, 42 U.S.C. §12701, et. seq., as amended from time to time, and which created the HOME Program. The City has approved a loan of HOME Program funds to the Borrower to assist with the development of the Project.

C. The City has reviewed the Borrower's project proposal and, in reliance on the accuracy of the statements in that application, has approved a loan of Funds to the Borrower (the "Loan") in an amount not to exceed Two Million One Hundred Eighty-Six Thousand Seven Hundred Ten and No/100 Dollars ($2,186,710.00) (the "Funding Amount") under this Agreement to fund a portion of the construction costs of the Project, including but not limited to a portion of the 25% “Materials Deposit” for the Project’s modular construction units, and furthermore, certain units shall be regulated in accordance with all applicable laws, rules, and regulations regarding the use of HOME Program Funds for the benefit of very low- and low-income income persons.
AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1. DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Accounts" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the City in writing. All Accounts must be maintained in accordance with Article 2.3.

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Annual Monitoring Report" has the meaning set forth in Article 10.3.

“Annual Operating Budget” means an annual operating budget for the Project attached hereto as Exhibit B-2, which may not be adjusted without the City's prior written approval.

“Approved Plans” has the meaning set for in Article 5.2.

“Approved Specifications” has the meaning set forth in Article 5.2.

"Authorization" means any authorization, consent, approval, order, license, permit, exemption or other action by or from, or any filing, registration or qualification with, any Governmental Agency or other person.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company (LLC), a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver, and perform the obligations under the City Documents to which Borrower is a party or by which it is bound.

"Borrower" means VALLEJO PSH, L.P. a California limited partnership, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating
agreement and any LLC certificate or statement. The Charter Documents must be delivered to the City in their original form and as amended from time to time and be accompanied by a certificate of good standing for the Borrower issued by the California Secretary of State and, if the Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than 90 days before the Agreement Date.

"City" means the City of Vallejo, a municipal corporation, represented by the City Manager, acting by and through the Housing and Community Development Division (the HCD Division). Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by the HCD Division unless otherwise indicated.

"City Documents" means this Agreement, the Promissory Note, the Deed of Trust, the Regulatory Agreement, and any other documents executed or delivered in connection with this Agreement.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

"Completion Date" has the meaning set forth in Article 5.6.

"Compliance Term" has the meaning set forth in Article 3.2.

“Construction Contract” has the meaning set forth in Article 5.2.

“Control of the Site” means Borrower’s acquisition of fee ownership in the Site from the City.

“County” means the County of Solano.

"Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower's performance under this Agreement and the Note, in substantially the form and substance attached hereto as Exhibit D.

“Department of Building Inspection” means the Building Division.

"Developer" means VALLEJO PSH, LP. a California limited partner, and its authorized successors and assigns.

"Developer Fees" has the meaning set forth in Article 15.1.
"Development Expenses" means all costs incurred by the Borrower and approved by the City in connection with the development of the Project, including: (a) hard and soft development costs; (b) deposits into required capitalized reserve accounts; (c) costs of converting Project financing, including bonds, into permanent financing; (d) the expense of a cost audit; and (e) allowed Developer Fees.

"Development Proceeds" means the sum of: (a) funds contributed or to be contributed to the Borrower by the Borrower's limited partner as capital contributions, equity or for any other purpose under the Borrower's limited partnership agreement, if any; and (b) the proceeds of all other financing for the Project.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by the City as described in Article 4.

"Distributions" has the meaning set forth in Article 13.1.

“Early Retention Release Contractors” means contractors who will receive retention payments upon satisfaction of requirements set forth in Article 4.7.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.


"Event of Default" has the meaning set forth in Article 19.1.

“Excess Proceeds” means Development Proceeds less Development Expenses.

"Funds" has the meaning set forth in Recital C.

"Funding Amount" has the meaning set forth in Recital C.
“HOME Assisted Units” means the eleven multifamily rental housing units that are required to be occupied by and affordable to very low-income households pursuant to the terms and conditions of this Agreement. The HOME Assisted Units shall be floating units as that term is defined in the HOME Program Regulations.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them; petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"HUD Requirements" has the meaning set forth in Article 9.2(e).

"In Balance" means, from and after the closing date of Borrower’s financing for construction or rehabilitation of the Project, that the sum of undisbursed Funds and any other sources of funds that the Borrower has closed or for which the Borrower has firm commitments will be sufficient to complete the construction of the Project, as determined by the City in its sole discretion.

"Income Restrictions" means the maximum household income limits for Qualified Tenants, as set forth in Exhibit A.

"Indemnify" means, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), that the Indemnitor will be obligated to defend, indemnify, and protect and hold harmless the Indemnitee, its officers, employees, agents, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part,
out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; provided that no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors.

"Indemnitee" has the specific meaning set forth in Article 23.1 and the general meaning set forth in the definition of "Indemnify."

"Indemnitor" has the meaning set forth in the definition of "Indemnify."

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency.

"Loan" has the meaning set forth in Recital C.

"Loss" or "Losses" includes any loss, liability, damage, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of the City's rights or in defense of any action in a bankruptcy proceeding.

"Maturity Date" has the meaning set forth in Article 3.1.

"Median Income" means area median income as determined by HUD for the Vallejo, Solano County area, adjusted for household size.

“Monthly Project Update” has the meaning set forth in Article 10.2.

"Note" means the Promissory Note executed by the Borrower in favor of the City in the original principal amount of the Funding Amount.

"Operating Reserve Account" has the meaning set forth in Article 12.2.

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to the City and its legal counsel, that Borrower is a duly formed, validly existing limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the City Documents and will be bound by their terms when executed and delivered, and that addresses any other matters the City reasonably requests.
"Out of Balance" means that the sum of undisbursed Funds and any other sources of funds that the Borrower has closed or for which the Borrower has firm commitments will not be sufficient to complete the construction of the Project, as determined by the City in its sole discretion.

"Payment Date" means the May 1st following the Completion Date and each succeeding May 1st until the Maturity Date.

"Permitted Exceptions" means liens in favor of the City, real property taxes, and assessments that are not delinquent, and any other liens and encumbrances the City expressly approves in writing in its escrow instructions.

"Project" means the development described in Recital A. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"Project Expenses" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate taxes if applicable, and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages, and any other compensation due and payable to the employees or agents of the Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments, and payment of accounting fees; (c) required payments of interest and principal, if any, on any junior or senior financing secured by the Site and used to finance the Project that has been approved by the City, including but not limited to this Loan; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs, and the fee of any managing agent as indicated in the Annual Operating Budget; (e) required deposits to the Replacement Reserve Account, Operating Reserve Account, and any other reserve account required under this Agreement, the Limited Partnership Agreement of the Borrower or any senior loan documents; and (f) any extraordinary expenses approved in advance by the City (other than expenses paid from any Reserve Account). Project Fees are not Project Expenses.

"Project Fees" means annual partnership management fees in the amount of $25,000 increasing by three and one-half (3.5%) percent per annum, annual asset management fees in the amount of $12,000 increasing by three and one-half (3.5%) percent per annum, and deferred Developer Fees approved by the City.

"Project Income" means all income and receipts in any form received by the Borrower from the operation of the Project, including rents, fees, deposits (other than tenant security deposits, loan proceeds, and capital contributions), any accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established, reimbursements, and other charges paid to the Borrower in connection with the Project. Interest accruing on any portion of the Funding Amount is not Project Income.

"Project Operating Account" has the meaning set forth in Article 11.1.
"Qualified Tenant" means a Tenant household earning no more than the maximum permissible annual income level allowed under this Agreement as set forth in Exhibit A. The term "Qualified Tenant" includes each category of Tenant designated in Exhibit A.

"Regulatory Agreement" means the HOME Program Rent Limitation and Regulation Agreement attached hereto as Exhibit E, that requires the Borrower and the Project to comply with the use restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, or this Agreement terminates.

"Rent" means the aggregate annual sum charged to Tenants for rent and utilities in compliance with Article 7, with utility charges to Qualified Tenants limited to an allowance determined by the Housing Authority of the City of Vallejo.

"Rent Restrictions" means the limitations on Rents set forth in Article 7.3 and Exhibit A.

"Replacement Reserve Account" has the meaning set forth in Article 12.1.

"Residual Receipts" means Project Income remaining after payment of Project Expenses and Project Fees. The amount of Residual Receipts must be based on figures contained in audited financial statements.

"Retention" has the meaning set forth in Article 4.6.

"Section 8/Housing Choice Voucher (HCV)" means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f), or any successor or similar rent subsidy programs.

"Senior Lender" has the meaning set forth in Article 24.1(e).

"Senior Lien" has the meaning set forth in Article 24.1.

"Site" means the real property described in Recital A of this Agreement.

"Table" means: the Table of Sources and Uses.

"Table of Sources and Uses" means a table of sources and uses of funds attached hereto as Exhibit B-1, including a line item budget for the use of the Funding Amount, which table may not be adjusted without the City’s prior written approval.

"TCAC" means the California Tax Credit Allocation Committee.

"Tenant" means any residential household in the Project, whether or not a Qualified Tenant.
"Title Policy" means an American Land Title Association (ALTA) extended coverage lender's policy of title insurance in form and substance satisfactory to the City, issued by an insurer selected by the Borrower and satisfactory to the City, together with any endorsements and policies of coinsurance and/or reinsurance required by the City, in a policy amount equal to the Funding Amount, insuring the Deed of Trust as applicable and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

“Twenty Year Cash Flow Pro Forma” means the Twenty Year Cash Flow projections for the Project attached as Exhibit B-3.

"Unit" means a residential rental unit within the Project.

"VHA" means the City of Vallejo Housing Authority.

“Work Product” has the meaning set forth in Section 24.23.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other City Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months, and years mean calendar days, months, and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific City Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other City Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the City Documents. The language of this Agreement must be construed as a whole according to its fair meaning.
1.3 **Websites for Statutory References.** The statutory and regulatory materials listed below may be accessed through the following identified websites.

(a) CFR provisions: www.access.gpo/nara/cfr

(b) OMB circulars: www.whitehouse.gov/OMB/circular

**ARTICLE 2. FUNDING.**

2.1 **Funding Amount.** The City agrees to lend to the Borrower a maximum principal amount equal to the Funding Amount in order to finance predevelopment and construction costs associated with the Project, including but not limited to funding a portion of the 25% “Materials Deposit” for the Project’s modular construction units. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 **Use of Funds.** The Borrower acknowledges that the City's agreement to make the Loan is based in part on the Borrower's agreement to use the Funds solely for the purpose set forth in Article 2.1, and agree to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses.

The Borrower shall comply with all applicable requirements of the HOME Program including without limitation the regulations promulgated at 24 CFR Part 92 et seq; all other applicable federal and state statutes, rules, and regulations; such additional regulations, order, rulings, interpretations, and directives for the HOME Program, as may be promulgated or issued by HUD from time to time; such policies and procedures of HUD pertaining to the HOME Program; the applicable provisions of this Agreement; and any and all other requirements of the HOME Program. The Borrower acknowledges that it is familiar with such applicable provisions, and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to comply fully with such provisions at its sole cost.

The Borrower shall use the proceeds of the Loan only for eligible HOME Program costs, pursuant to 24 CFR Part 92.206, and subject to all other applicable HOME Program regulations, incurred for work approved by the City, in its sole discretion, conducted in connection with the construction of the Project. Any expenditure, or other use by Borrower, of HOME Program funds that is not authorized by this Agreement or is found to be ineligible under the HOME Program regulations shall be disallowed, and such funds shall be returned by the Borrower to the City within 30 days of discovery by the City or the Borrower of such noncompliance, unless HUD approves in writing an alternative plan for the City to address the concern. The Borrower agrees that it will not use the HOME Program funds, either directly or indirectly, in order to obtain any other federal funds under any other federal program without the prior written approval of the City.

In accordance with the HOME Program regulations, including without limitation this Agreement, the Borrower shall provide adequate security to ensure completion off the Project, by furnishing the City with performance and payment bonds, or such other security of assurances. In a form and an amount acceptable to the City in its reasonable discretion.
2.3 Accounts; Interest. Each Account to be maintained by the Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to the City as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 Records. The Borrower must maintain and provide to the City upon request records that accurately and fully show the date, amount, purpose, and payee of all expenditures from each Account authorized under this Agreement or by the City in writing and keep all estimates, invoices, receipts, and other documents related to expenditures from each Account. In addition, the Borrower must provide to the City promptly following the Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The City may grant or deny any application by the Borrower for additional financing for the Project in its sole discretion.

2.6 Rent Limitation and Regulatory Agreement. Prior to and as a condition precedent to Borrower acquiring Control of the Site, the Borrower shall execute, in recordable form, and deliver to the City, a Regulatory Agreement in substantially the form attached hereto and incorporated herein as Exhibit E, which shall regulate the HOME Assisted Units to ensure that the HOME Assisted Units are occupied by and affordable to very low-income households. The Regulatory Agreement shall be recorded against the Property in the Official Records of the County of Solano (the “County”). The term of the Regulatory Agreement shall commence upon recordation of the Regulatory Agreement and shall remain in full force and effect through and including the date which is fifteen years following the date of such recordation, even if the Loan is repaid or otherwise satisfied before that date (the “Compliance Term”). The Borrower must comply with all provisions of the City Documents relating to the use of the Site and the Project as set forth in the Regulatory Agreement.

ARTICLE 3. TERMS.

The Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. The Borrower must repay all amounts owing under the City Documents on the date that is the fifty-fifth anniversary of the date a Certificate of Occupancy for the Project is issued (the "Maturity Date"), provided however that if Borrower fails to acquire Control of the Site on or before December 31, 2022 (the "Outside Acquisition Date"), the Maturity Date shall be the Outside Acquisition Date. The City may agree to extend the Outside Acquisition Date in its sole and absolute discretion. Notwithstanding the foregoing, if Borrower's failure to acquire Control of the Site by the Outside Acquisition Date is not caused by Borrower's acts or omissions, whether direct or indirect, and if Borrower has acted in good faith and no event has occurred and is continuing that constitutes an Event of Default or, with the passage of
time would become an Event of Default under any of the City Documents, then in such an event, Borrower shall deliver to City all of the Work Product, the Agreement shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligation or liability with respect to this Note and the Loan.

3.2 Intentionally Omitted.

3.3 Interest. The outstanding principal balance of the Loan will bear interest at a rate of three percent per annum, simple interest, as provided in the Note.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Note. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Repayment of Principal. The outstanding principal balance of the Loan will be due and payable on the Maturity Date according to the terms set forth in full in the Note.

3.6 Changes In Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on the Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. The Borrower covenants to give written notice to the City within 30 days of any significant changes in budgeted funding or income set forth in documents previously provided to the City. The City reserves the right to modify the terms of this Agreement based upon any new information so provided, in its reasonable discretion.

3.7 Notification and Repayment of Excess Proceeds. The Borrower must notify the City in writing within 30 days after the Borrower’s receipt of Excess Proceeds. Upon the City’s demand, the Borrower shall repay all Excess Proceeds to the City. The City shall use such Excess Proceeds to reduce the balance of the Loan.

3.8 Borrower Obligations Upon Acquisition of the Site. Borrower shall cause each of the following requirements to be fully satisfied on or before the date it acquires Control of the Site:

   (a) Borrower shall have delivered the Deed of Trust and the Declaration of Restrictions to City, duly executed and acknowledged by Borrower;

   (b) Borrower shall have recorded the Deed of Trust and the Declaration of Restrictions in the Official Records, subject only to the Permitted Exceptions;

   (c) A title company shall have committed to issue the Title Policy to City, and Borrower shall have delivered all documents reasonably required by such title company to issue the Title Policy. Borrower shall pay all amounts charged by the title company for the issuance of the Title Policy; provided that such amounts may be included in a subsequent Expenditure Request;
(d) The Borrower must have delivered to the City insurance endorsements and, if requested by the City, copies of policies for all insurance required under Exhibit I of this Agreement, including performance and completion bonds or other acceptable construction security approved by the City as applicable and meeting the requirements of Exhibit I; provided that as an alternative to performance and completion bonds, Borrower may instead obtain security in the form of commercially reasonable insurance that is standard for the modular construction industry; and

(e) The Borrower must have received all land use approvals required to commence construction of the Project.

ARTICLE 4. CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, the City will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of the Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. In the event Borrower does not satisfy all of the conditions to closing within a reasonable time, as determined by the City in its sole discretion, the City may declare this Agreement to be null and void.

4.3 Conditions Precedent to Disbursement. The City will authorize the disbursement of the Loan funds upon satisfaction of the conditions in this Section.

(a) The Borrower must have delivered to the City fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the City: (i) the Note; (ii) this Agreement (in duplicate); (iii) the Authorizing Resolutions; and (iv) any other City Documents reasonably requested by the City.

(b) The Borrower must have delivered to the City the Borrower's Charter Documents.

(c) The Borrower must have delivered to the City evidence satisfactory to the City in its sole discretion that the Borrower has secured commitments of all outstanding/gap financing sufficient to complete construction of the Project.

(d) The Borrower must have delivered to the City a cost breakdown for the Factory OS modular contract, which must be approved by the City.

(e) The Borrower must have delivered to the City the Factory OS modular contract, which must be approved by the City.
(f) The City must have reviewed and approved a draft guaranteed maximum price construction contract for the Project.

4.4 Disbursements. The City's obligation to approve any expenditure of Funds after Loan closing is subject to the Borrower’s satisfaction of the following conditions precedent.

(a) The Borrower must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) electronic copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) electronic copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request that covers construction costs, the Borrower must have certified to the City that the Project complies with the Federal Labor Standards set forth in Exhibit G.1., as applicable.

4.5 Loan In Balance. From and after the closing date of Borrower’s financing for construction or rehabilitation of the Project, the City may require the Borrower to pay certain costs incurred in connection with the Project from sources of funds other than the Loan at any time the City determines in its reasonable discretion that the Loan is Out of Balance. When the City is satisfied in its reasonable discretion that the Loan is again In Balance, the City will recommence making Disbursements for Expenditure Requests meeting the conditions set forth above.

4.6 Retention. This section will apply only if the Borrower or its affiliate acquires Control of the Site. In addition to the other conditions to Disbursements, the Borrower acknowledges that the amount of hard costs or tenant improvement costs included in any Expenditure Request associated with construction, when added to previously approved costs, may not exceed 90 percent of the approved budgeted costs on a line item basis. The City will retain the remaining ten percent of hard costs or tenant improvement costs associated with construction (the "Retention"). The Borrower may request disbursement of the aggregate amount of the Retention only upon satisfaction of the following conditions, unless otherwise approved in writing by the City: (a) completion of construction of the Project in accordance with the plans and specifications approved by the City, as evidenced by a Certificate of Occupancy or equivalent certification provided by the City's Building Division, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either
expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors, and suppliers who provided labor or materials for the Project. After 50 percent of the construction of the Project is complete as determined by the City, and upon the Borrower’s written request, the City may elect to reduce the amount of Retention withheld to a level of no less than five percent of the hard costs or tenant improvements, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom the City agrees to release the Retention (the “Early Retention Release Contractors”) has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City, and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the City; (c) no liens or stop notices have been filed against the Project and no claims are pending; (d) the City determines that the contingency is in balance and adequate to complete the Project; and (e) the Project is on schedule.

4.7 Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to the Borrower under this Agreement exceed the Funding Amount.

ARTICLE 5. CONSTRUCTION. This Article will apply if the Borrower or its affiliate acquires Control of the Site.

5.1 Selection Requirements. In the selection of all contractors and professional consultants for the Project, the Borrower must comply with HUD’s procurement requirements and procedures as described in 2 CFR Part 200.

5.2 Plans and Specifications. Before starting any construction on the Site, the Borrower must have delivered to the City, and the City must have reviewed and approved, Plans and Specifications, and the Construction Contract for the Project entered into between the Borrower and the Borrower’s general contractor (the “Construction Contract”). The plans approved by the City must also be approved by the City of Vallejo’s Building Division (collectively, the “Approved Plans”) prior to the start of any demolition or construction on the Site. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the “Approved Specifications”) must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. After completion of the Project, the Borrower must retain the Approved Plans as well as "as-built" plans for the Project, and the Approved Specifications, and the Construction Contract, all of which the Borrower must make available to the City upon request.
5.3 Change Orders. The Borrower may not approve or permit any change orders to the Approved Plans and Approved Specifications without the City's prior written consent unless change orders by the Borrower are $25,000 individually and $100,000 in the aggregate. The Borrower acknowledges that the City's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless the City agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose.

5.4 Insurance, Bonds, and Security. Before starting any demolition or construction on the Site, the Borrower must deliver to the City insurance endorsements and bonds or other construction assurance documents as applicable or as described in Exhibit I; provided that as an alternative to performance and completion bonds, Borrower may instead obtain security in the form of commercially reasonable insurance that is standard for the modular construction industry which shall be subject to the approval of City. At all times, the Borrower must take prudent measures to ensure the security of the Site.

5.5 Notice to Proceed. No demolition or construction may commence until the Borrower has issued a written notice to proceed with the City's approval.

5.6 Commencement and Completion of Project. Unless otherwise extended in writing, commencement and completion of the Project shall be performed in accordance with the Schedule of Performance in the Disposition and Development Agreement entered into by City and Borrower, as such schedule may be amended from time to time by mutual agreement by City and Borrower.

5.7 Construction Standards. All construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City, and in accordance with all applicable codes. All newly constructed Units must meet the requirements of the CA Building Code Title 24. Ten percent of the units must meet the accessibility requirements under 24 CFR part 8, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the design and construction requirements under 24 CFR § 100.205, and implementing the Fair Housing Act (42 U.S.C. §§ 3601-3619.

ARTICLE 6. MARKETING. This Article will apply if the Borrower or its affiliate acquires Control of the Site.

6.1 Initial Marketing Plan. Not later than six months before the Completion Date, the Borrower must deliver to the City for the City's review and approval an affirmative marketing plan and a written Tenant selection procedure for marketing and renting the Units in compliance with the restrictions set forth in Exhibit A, all in form and substance acceptable to the City. The Borrower may request the City's approval of reasonable alterations to the marketing plan. The Borrower must market the Units in the manner set forth in the marketing plan approved by the City. Before marketing any Units, the Borrower must provide the City with updated implementation and contact information.
6.2 **Affirmative Marketing Elements.** The Borrower's marketing plan must include as many of the following elements as are appropriate to the Project, as determined by the City:

(a) The marketing plan must include a reasonable accommodations policy that indicates how the Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying for vacant Units, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

(b) The Borrower must advertise vacant Units in local neighborhood newspapers, community-oriented radio stations, and other media that are likely to reach low-income households. All advertising must display the Equal Housing Opportunity logo.

(c) The Borrower must provide notice of vacant Units to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.

(d) The Borrower must provide notice of vacant Units to VHA.

(e) To the extent practicable, and subject to all applicable fair housing, tax credit, and funding program requirements, the Borrower must work with the City to develop a program that will give preferences to potential tenants that are included on the Vallejo Housing Authority Project Based Voucher wait list. The Borrower shall work collaboratively with the City to develop such a preference program, and the final program shall be subject to review and written approval by the City and the other Project lenders and Borrower’s tax credit investor.

6.3 **Ongoing Marketing.** The Borrower must keep a written plan for ongoing Tenant selection that describes all relevant procedures, including grievance procedures, on file at the Project at all times.

6.4 **Marketing Records.** The Borrower must keep records of: (a) activities implementing the affirmative marketing plan; (b) advertisements; and (c) other community outreach efforts.

**ARTICLE 7. AFFORDABILITY AND OTHER LEASING RESTRICTIONS.** This Article will apply if the Borrower or its affiliate acquires Control of the Site.

7.1 **Rental Agreement.**

(a) Leases of HOME Program Assisted units must comply with all applicable HOME Program regulations, including without limitation 24 CFR 92.253. as summarized below:
(i) Tenant leases must be for an initial term of not less than one year unless by mutual agreement between the tenant and the Borrower.

(ii) Any termination of tenancy or refusal to renew a lease must be preceded by 30 days’ written notice specifying the grounds for the action by the Borrower.

(iii) Leases shall be in writing and may not contain the following prohibited clauses:

1. Agreement by the Tenant to be sued.
2. Statement that the Borrower can confiscate Tenant’s property.
3. Statement excusing the Borrower from legal responsibility.
4. Statement that the Borrower does not have to give notice when instituting a lawsuit.
5. Agreement by the Tenant to waive rights to a jury trial.
6. Agreement by the Tenant to waive rights to appeal a court decision.
7. Agreement by the Tenant to pay attorneys’ fees if the Tenant wins a court case.
8. Agreement by the Tenant to waive rights to a civil court proceeding to defend eviction.

7.2 Term of Leasing Restrictions. The Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect: (a) for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of a Deed of Trust; (b) for any Unit that has been subject to a Regulatory Agreement with TCAC, for a period ending three years after the date of any transfer of the Project by foreclosure or deed-in-lieu of foreclosure; and (c) with respect to any Unit occupied by a Qualified Tenant at expiration of either the Compliance Term or the three year period referred to in Subsection (b) above, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. The requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

7.3 Borrower’s Covenant.

(a) The Borrower covenants to rent all Units (except one Unit reserved for the manager of the Project) at all times to households certified as Qualified Tenants at initial occupancy, as set forth in Exhibit A.

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in
Article 7.4. After the over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualified Tenants as provided in Article 7.2.

7.4 Rent Restrictions.

(a) The Maximum Rent charged to each Qualified Tenant may not exceed the amounts set forth in Exhibit A, provided that the Maximum Rent for Qualified Tenants or Units for which Housing Choice Voucher/Section 8 assistance is available is the fair market rent established by VHA, HUD or another Governmental Agency with jurisdiction over the rental subsidy program.

(b) intentionally omitted.

(c) Subject to Article 7.4(d), annual Rent increases for Units will be limited as follows:

(i) for Units with HCV/Section 8 or similar rental assistance, annual Rent increases may be up to the maximum amount approved by HUD or the VHA, for as long as rental assistance is available; and

(ii) for all other Units, except as permitted under Article 7.4(c)(iii) and Article 7.4(d) below, annual Rent increases will be limited to the lesser of: (a) the amount which would result in a Rent equal to the Maximum Rent permitted for the unit under Section 7.4(a) or (b) the amount which corresponds to the percentage of the annual increase in Median Income published by HUD; and,

(iii) for Units occupied by over-income Tenants, rent charged may not exceed 30 percent of the over-income Tenant’s adjusted family income.

(d) With the City's prior written approval and in accordance with Maximum Rent limitations set forth in Article 7.4(a) and all applicable restrictions, Rent increases for Units exceeding the amounts permitted under Article 7.4(c)(ii) will be permitted in order to recover increases in Project Expenses, but in no event may single or aggregate increases exceed ten percent per year, unless such an increase is contemplated in a City-approved temporary relocation plan or is necessary due to the expiration of HCV/Section 8 or other rental subsidies. The City’s approval for such rent increases that are necessary to meet all approved project expenses and financial obligations shall not be unreasonably withheld.
7.5 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to the Borrower a certification in the form shown in Exhibit E in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by the City to substantiate the prospective Tenant's income. Certifications provided to and accepted by the VHA will satisfy this requirement.

(b) Each Qualified Tenant in the Project must recertify to the Borrower on an annual basis his/her household income.

(c) Income certifications with respect to each Qualified Tenant who resides in a Unit or resided therein during the immediately preceding calendar year must be maintained on file at the Borrower's principal office, and the Borrower must file or cause to be filed copies thereof with the City promptly upon request by the City.

7.6 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification. The form of lease must also comply with 24 CFR § 92.253.

7.7 Nondiscrimination. The Borrower agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. The Borrower agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

7.8 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable federal regulations, state law, and this Agreement. Any security deposits collected must be segregated from all other funds of the Project in an Account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust Account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.
ARTICLE 8. MAINTENANCE AND MANAGEMENT OF THE PROJECT. This Article will apply if the Borrower or its affiliate acquires Control of the Site.

8.1 Borrower's Responsibilities.

(a) Subject to the rights set forth in Article 8.2, the Borrower will be specifically and solely responsible for causing all maintenance, repair, and management functions performed in connection with the Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs, and replacement of capital items. The Borrower must maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building, and housing codes, California Health and Safety Code 17920.10, the applicable provisions of 24 CFR Part 35, and all applicable federal requirements.

8.2 Contracting With Management Agent.

(a) The Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in Article 8.1(a), subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between the Borrower and the management agent, provided, however, that the arrangement will not relieve the Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing the Borrower to terminate the contract without penalty upon no more than 30 days’ notice. The City hereby agrees that Eden Housing Management, Inc. is an approved management agent.

(b) The City will provide written notice to the Borrower of any determination that the contractor performing the functions required in Article 8.1(a) has failed to operate and manage the Project in accordance with this Agreement. If the contractor has not cured the failure within a reasonable time period (but in all events in not less than 30 days), as determined by the City, the Borrower must exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in Article 8.1(a), subject to the City's approval.

8.3 Borrower Management. The Borrower may manage the Project itself only with the City's prior written approval. The City will provide written notice to the Borrower of any determination that the Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, the City may require the Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in Article 8.1(a).
ARTICLE 9. GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. The Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction or operation of the Project, including those set forth in Exhibit H. The Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Section to Article 23.1, this Article does not prohibit the Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings. Construction-related requirements will not apply until Borrower has acquired Control of the Site.

9.2 Additional Federal Requirements.

(a) Compliance With Laws. The Borrower agrees to abide by all applicable Laws, including HUD regulations, pertaining to this Agreement and to any contracts pertaining to the Project. In the event HUD formally amends, waives or repeals any HUD administrative regulation previously applicable to the Borrower's performance under this Agreement, the City’s Housing and Community Development Division expressly reserves the right, upon giving notice to HUD and the Borrower, to require the Borrower's performance as though the regulation were not amended, waived or repealed, subject only to written and binding objection by HUD.

(b) Drug-Free Workplace. The Borrower acknowledges that under the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et seq.), the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on its premises. The Borrower agrees that any violation of this prohibition by the Borrower, its employees, agents or assigns will be deemed an Event of Default under this Agreement.

(c) Restrictions on Lobbying Activities.

(i) This Agreement is subject to 31 U.S.C. Section 1352, which provides in part that, with specified exceptions, no appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay any person for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

(ii) If the Funding Amount exceeds $100,000.00, the Borrower must file with the City’s Housing and Community Development Division at the beginning of the Compliance Term and promptly after the occurrence of any change in the facts certified or disclosed:
(A) a certification substantially the same as that attached hereto as Exhibit J, and otherwise, in form and content satisfactory to the City and to HUD, that the Borrower, and its employees, officers, and agents have not made, and will not make, any payment prohibited by Subsection (i) above; and

(B) a disclosure form, Federal Standard Form-LLL, "Disclosure of Lobbying Activities," if the Borrower, and its employees, officers or agents have made or agreed to make any payment using funds from a source other than the Funds that would be prohibited under Subsection (i) above if payment were made with the Funds. The City will file the disclosure form with HUD and retain the certification for the City's records as required by Law.

(d) Debarment or Suspension. The Borrower must certify in form and content substantially the same as that attached hereto as Exhibit J that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, the Borrower will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of $100,000.00 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

(e) Other HUD Requirements. The following federal requirements are applicable to all activities funded under this Agreement:

(i) the requirements of OMB Circular A-122, relating to allowable costs chargeable to the Funds, and OMB Circular A-110, relating to contractual requirements for nonprofit organizations, as applicable;

(ii) the provisions of 24 CFR Part 84, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR Part 92, "HOME Investment Partnerships Program"; and

(iii) the provisions of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”.

ARTICLE 10. PROJECT MONITORING, REPORTS, BOOKS, AND RECORDS.

10.1 Generally.

(a) The Borrower understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. The Borrower acknowledges that, if and after Borrower acquires Control of the Site, the City may also conduct periodic on-site inspections of the Project upon reasonable written notice to the Borrower. Notwithstanding the foregoing, nothing in this Article shall be construed to limit the City’s full access to the Site as granted pursuant to Article 5.2 of this Agreement prior to the Completion Date. The Borrower must cooperate with the monitoring by the City and
ensure full access to the Project and all information related to the Project as reasonably required by the City.

(b) The Borrower must keep and maintain books, records, and other documents relating to the receipt and use of all Funds, including all documents evidencing any Project Income and Project Expenses. The Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility, and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) The Borrower must provide written notice of the replacement of its Managing General Partner, as well as the Managing General Partner's Chief Executive Officer, Senior Vice President of Real Estate Development, Vice President of Property Management, or any equivalent position within 30 days after the effective date of such replacement.

10.2 Monthly Reporting. During the construction of the Project, the Borrower must submit monthly reports (the “Monthly Project Update”) describing progress toward developing the Project with respect to: obtaining necessary approvals from other City departments; procuring architects, consultants, and contractors; changes in scope, cost or schedule; and significant milestones achieved in the past month and expected to be achieved in the coming month. The Monthly Project Update must be submitted by email until such time as the Project Completion Report is submitted to the City pursuant to Article 10.5 below.

10.3 Annual Reporting.

(a) The Borrower must file with the City annual report forms (the "Annual Monitoring Report") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Project Fees (if any), Residual Receipts and any Distributions made, evidence of required insurance, and a completed "Management and Maintenance Report" form that includes a description of marketing activities and a rent roll, no later than 120 days after the end of the Borrower's fiscal year. The Annual Monitoring Report must be in substantially the form attached as Exhibit E or as later modified during the Compliance Term.

(b) If the source of Funds is federal, the Borrower must also provide an annual accounting of program income, as defined in applicable federal regulations.

(c) The Borrower must deliver to the City copies of any annual operating and financial reports provided to other lenders for the Project promptly after submittal.

10.4 Capital Needs Assessment. The Borrower must deliver to the City an updated CNA every five years after the Completion Date for approval. The updated CNA must include an analysis of the Borrower's actual expenditures for capital needs compared to the most recently approved CNA, the Borrower's Twenty Year Cash Flow Pro Forma, initial Annual Operating Budget, and its then-current Annual Operating Budget.
10.5 **Project Completion Report.** Within the specific time periods set forth below after the completion of construction, and the lease-up or permanent financing of the Project, as applicable, the Borrower must provide to the City the reports listed below certified by the Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, the Borrower shall provide to the City information or documents reasonably requested by the City to assist in the City’s review and analysis of the submitted reports:

   (a) within 180 days after completion of construction, a cost certification project completion performed by an independent certified public accountant identifying the sources and uses of all Project Funds;

   (b) within 180 days after completion of construction, a report on the use of minority and women owned enterprises including race, ethnicity or gender, the type of work, and the dollar value of such work;

   (c) within 60 days after 75 percent occupancy, and 100 percent occupancy, respectively, a report on the lease-up of the Units including the number of leases by race, ethnicity, and single-headed household by gender, and also indicating the Units by income category; and

   (d) within 180 days after completion of construction, a report demonstrating compliance with all requirements regarding HUD Section 3, including documentation of total labor hours worked on the Project, total Section 3 hours worked, total wages paid, total Section 3 wages paid, and the names of all individuals employed to comply with Section 3 goals, including the total hours worked for each individual and total wages paid to each individual.

10.6 **Response to Inquiries.** At the request of the City, its agents, employees or attorneys, the Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations, and condition of the Project, the status of any mortgage encumbering the Project, and any other requested information with respect to the Borrower or the Project.

10.7 **Delivery of Records.** At the request of the City, made through its agents, employees, officers or attorneys, the Borrower must provide the City with copies of each of the following documents, certified in writing by the Borrower to be complete and accurate:

   (a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board, or the California State Board of Equalization on behalf of the Borrower and any general partner or manager of the Borrower;

   (b) all certified financial statements of the Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to the City; and
(c) any other records related to the Borrower's ownership structure and the use and occupancy of the Site.

10.8 Access to the Project and Other Project Books and Records. In addition to the Borrower's obligations under Articles 2.4, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, and any other obligations to provide reports or maintain records in any City Document, the Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the Compliance Term to monitor the progress of work on the Project and compliance by the Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit, and examine all books, records and other documents the Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under Article 10.9.

10.9 Records Retention. The Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 11. USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) The Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "Project Operating Account") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with the City's approval. The Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees. Withdrawals from the Project Operating Account (including accrued interest) for other purposes may be made only with the City's express prior written approval.

(b) The Borrower must keep accurate records indicating the amount of Project Income deposited into and withdrawn from the Project Operating Account and the use of Project Income. The Borrower must provide copies of the records to the City upon request.
ARTICLE 12. REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing no later than 60 days after the Completion Date, or any other date the City designates in writing, the Borrower must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the fifteenth day of each month following establishment of the Replacement Reserve Account, the Borrower must make monthly deposits from Project Income into the Replacement Reserve Account in the amount required by Borrower’s senior lender and tax credit investor. The Borrower may request adjustments every five years based on its most recently approved CNA. The City may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary.

(b) The Borrower may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project, such as replacing or repairing structural elements, furniture, fixtures or equipment at the Project that are reasonably required to preserve the Project. The Borrower may not withdraw funds (including any accrued interest) from the Replacement Reserve Account for any other purpose without the City's prior written approval.

12.2 Operating Reserve Account.

(a) Commencing no later than 60 days after the Completion Date, or any other date the City designates in writing, the Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "Operating Reserve Account") by depositing funds in an amount equal to 25 percent of the approved budget for Project Expenses for the first year of operation of the Project.

No less than annually after establishing the Operating Reserve Account and continuing until the Compliance Term has expired, the Borrower must make additional deposits, if necessary, to bring the balance in the Operating Reserve Account to an amount equal to three months’ reserve of the prior year’s actual Project Expenses.
(b) The Borrower may withdraw funds from the Operating Reserve Account solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies, and other expenses that vary seasonally or from month to month in the Project. The Borrower may not withdraw funds (including any accrued interest) from the Operating Reserve Account for any other purpose without the City's prior written approval.

In the event that the Borrower withdraws funds from the Operating Reserve Account as permitted by this Article such that the balance of the Operating Reserve Account is less than the initial capitalized amount deposited into the Operating Reserve Account, the Borrower shall fully replace any withdrawals from the Operating Reserve Account using available Project Income prior to the use of such Project Income to pay any deferred Developer Fee, Partnership Management Fee, or Distributions, as applicable, pursuant to this Agreement.

ARTICLE 13. DISTRIBUTIONS.

13.1 Definition. "Distributions" refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to the Borrower or any party having a beneficial interest in the Project, but does not include reasonable payments for property management, asset management, approved deferred Developer Fee, or other services performed in connection with the Project.

13.2 Conditions to Distributions. Distributions for a particular fiscal year may be made only following: (a) City approval of the Annual Monitoring Report submitted for that year; (b) the City's determination that the Borrower is not in default under this Agreement or any other Agreement entered into with the City of Vallejo or the Housing Successor Agency of the City for the Project; and (c) the City's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The City will be deemed to have approved the Borrower's written request for approval of a proposed Distribution unless the City delivers its disapproval or request for more information to the Borrower within 30 business days after the City's receipt of the request for approval.

13.3 Prohibited Distributions. No Distribution may be made in the following circumstances:

(a) when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default has not been cured; or

(b) when the City determines that the Borrower or the Borrower's management agent has failed to comply with this Agreement; or

(c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or
(d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded as required by this Agreement; or

(e) if the Loan is to be repaid from Residual Receipts, the Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or

(f) during the pendency of an uncured Event of Default (including the Borrower's failure to provide its own funds at any time from and after the closing date of Borrower's financing for construction or rehabilitation of the Project that the City determines the Loan is Out of Balance) under any City Document.

13.4 Borrower's Distribution. Beginning in the year of the initial Payment Date, and subject to the limitations in this Article, Borrower may retain as a Distribution a portion of Residual Receipts in an amount equal to fifty percent (50%) of Residual Receipts.

ARTICLE 14. SYNDICATION PROCEEDS.

14.1 Distribution and Use. If the Borrower is a limited partnership or limited liability company, and unless otherwise approved by the City in writing, the Borrower must allocate, distribute, and pay or cause to be allocated, distributed, and paid all net syndication proceeds and all loan and grant funds as specified in the Table of Sources and Uses of Funds attached hereto as Exhibit B. The Borrower must notify the City of the receipt and disposition of any net syndication proceeds received by the Borrower during the term of this Agreement.

ARTICLE 15. DEVELOPER FEES.

15.1 Amount. Unless otherwise agreed to in writing by the City, the maximum cash Developer Fee (net of any general partner capital contributions) that may be paid from development sources shall not exceed the maximum amount allowed under TCAC regulations.

ARTICLE 16. TRANSFERS.

16.1 Permitted Transfers/Consent. The Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in the Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases or occupancy agreements to occupants of Units in the Project; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by the City in its reasonable discretion; (c) transfers of any limited partner interest of the Borrower; (d) transfers of the general partnership or manager's interest in the Borrower to a nonprofit public benefit corporation approved in advance by the City; (e) the grant or exercise of an option agreement between the Borrower and the Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project; or (f) a transfer of the managing general partner of the Partnership or a replacement of the general partner with the limited partner of the Borrower or an affiliate (as defined in the limited partnership agreement) thereof, when such replacement occurs pursuant to the terms of the Borrower's limited partnership agreement.
(“Affiliate”), provided that: (1) no default exists hereunder, (2) the Affiliate agrees in writing to assume all obligations of the Borrower under the Loan Documents, and (3) the Affiliate agrees in writing to seek the City’s prior written approval of any and all of its management or ownership agreements, such approval may only be granted by City Council. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City’s election, constitute an Event of Default under this Agreement. The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

ARTICLE 17. INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, the Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as applicable and as set forth in Exhibit I from the date the Deed of Trust is recorded in the Recorder’s Office of Solano County until the expiration throughout the Compliance Term of this Agreement at no expense to the City.

ARTICLE 18. GOVERNMENTAL APPROVALS.

18.1 Compliance. The Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state, and local governmental approvals required by Law to be obtained for the Project. Subject to Article 23.1, this Article does not prohibit the Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 19. DEFAULT.

19.1 Event of Default. Any material breach by the Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the City Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any City Document will constitute an "Event of Default," including the following:

(a) the Borrower fails to make any payment required under this Agreement within ten days after the date when due; or

(b) from and after the date Borrower acquires Control of the Site, any lien is recorded against all or any part of the Site or the Project without the City's prior written consent, whether prior or subordinate to the lien of the Deed of Trust if applicable or Regulatory Agreement, and the lien is not removed from title or otherwise remedied to the City's satisfaction within 30 days after the Borrower's receipt of written notice from the City to cure the default or, if the default cannot be cured within a 30 day period, the Borrower will have 60 days to cure the default, or any longer period of time deemed necessary by the City, provided that the Borrower commences to cure the default within the 30 day period and diligently pursues the cure to completion; or
(c) the Borrower fails to perform or observe any other term, covenant or agreement contained in any City Document, and the failure continues for 30 days after the Borrower’s receipt of written notice from the City to cure the default or, if the default cannot be cured within a 30 day period, the Borrower will have 60 days to cure the default, or any longer period of time deemed necessary by the City, provided that the Borrower commences to cure the default within the 30 day period and diligently pursues the cure to completion; or

(d) any representation or warranty made by the Borrower in any City Document proves to have been incorrect in any material respect when made; or

(e) from and after the date Borrower acquires Control of the Site, all or a substantial or material portion of the improvements on the Site is damaged or destroyed by fire or other casualty, and the City has determined upon restoration or repair that the security of the Deed of Trust if applicable has been impaired or that the repair, restoration or replacement of the improvements in accordance with the requirements of any Deed of Trust is not economically practicable or is not completed within two years of the receipt of insurance proceeds; or all or a substantial or material portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency or subject to any action or other proceeding instituted by any non-City Governmental Agency for any purpose with the result that the improvements cannot be operated for their intended purpose; or

(f) the Borrower is dissolved or liquidated or merged with or into any other entity; or, if the Borrower is a corporation, partnership, limited liability company or trust, the Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of California for any period of more than 30 days; or, if the Borrower is an individual, the Borrower dies or becomes incapacitated; or all or substantially all of the assets of the Borrower are sold or otherwise transferred except as permitted under Article 16.1; or

(g) without the City's prior written consent, the Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under Article 16.1; or

(h) without the City's prior written consent, the Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in the Borrower or of its right, title or interest in the Project or the Site except as permitted under Article 16; or

(i) without the City’s prior written consent, the Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) from and after the date Borrower acquires Control of the Site, either the Deed of Trust or the Regulatory Agreement ceases to constitute a valid and indefeasible perfected lien on the Site and improvements, subject only to Permitted Exceptions; or
(k) the Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or the Borrower applies for or consents to the appointment of any receiver, trustee or similar official for the Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for 60 days); or the Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to the Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undischarged and unstayed for more than 60 days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of the Borrower and is not released, vacated or fully bonded within 60 days after its issue or levy; or

(l) any material adverse change occurs in the financial condition or operations of the Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

(m) from and after the date Borrower acquires Control of the Site, the Borrower fails to make any payments or disbursements required to bring the Loan In Balance after the City determines that the Loan is Out of Balance; or

(n) After the date Borrower acquires Control of the Site but before a Certificate of Occupancy is issued for the Project, the Borrower ceases construction of the Project for a period of thirty consecutive working days, and the cessation is not excused under Article 19.3; or

(o) the Borrower is in default of its obligations with respect to any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(p) the Borrower is in default of its obligations under any other Agreement entered into with the City of Vallejo, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City Document or at law or in equity. All of the City’s rights and remedies following an Event of Default are cumulative, including:

(a) the City at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which the Borrower expressly waives; or
(b) the City at its option may terminate all commitments to make Disbursements or to release the Site from the Deed of Trust or Regulatory Agreement, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Site from the Deed of Trust or Regulatory Agreement upon terms and conditions satisfactory to the City in its sole discretion; or

(c) the City may perform any of the Borrower's obligations in any manner, in the City's reasonable discretion; or

(d) the City, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action the City deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project the City deems appropriate; or

(e) the City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct the Borrower's noncompliance with this Agreement; and

(f) upon the occurrence of an Event of Default described in Article 19.1(k), the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents will become due and payable automatically; and

(g) all costs, expenses, charges, and advances of the City in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless the Borrower reimburses the City within ten days of the City’s demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of the City or the Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty; and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse the Borrower's performance only in the event that the Borrower has provided notice to the City within 30 days after the occurrence or commencement of the event or events, and the Borrower's performance will be excused for a period ending 30 days after the termination of the event giving rise to the delay.

ARTICLE 20. REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for the City to enter into this Agreement, the Borrower represents and warrants as follows:
(a) The execution, delivery, and performance of the City Documents will not contravene or constitute a default under or result in a lien upon assets of the Borrower under any applicable Law, any Charter Document of the Borrower or any instrument binding upon or affecting the Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting the Borrower.

(b) When duly executed, the City Documents will constitute the legal, valid, and binding obligations of the Borrower. The Borrower hereby waives any defense to the enforcement of the City Documents related to alleged invalidity of the City Documents.

(c) No action, suit or proceeding is pending or threatened that might affect the Borrower or the Project adversely in any material respect.

(d) The Borrower is not in default under any Agreement to which it is a party, including any lease of real property.

(e) None of the Borrower, the Borrower's principals or the Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has the Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency. Further, the Borrower certifies that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, the Borrower will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of $100,000.00 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

(f) All statements and representations made by the Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

ARTICLE 21. NOTICES.

21.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, facsimile (if followed within one business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five days after mailing, provided that any notice that is received after 5:00 p. m. Pacific Standard Time (PST) on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:
To the City: Housing and Community Development Division  
200 Georgia Street  
Vallejo, CA  94590  
Attn: Housing and Community Development Manager

To Borrower: Vallejo PSH, LP.  
22645 Grand Street  
Hayward, CA  94541  
Attn: Director of Real Estate Development

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Article.

21.2  **Required Notices.** The Borrower agrees to provide notice to the City in accordance with **Article 21.1** of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on the Borrower's operation of the Project or ability to repay the Loan.

21.3  **Notice to Limited Partner.** The City agrees to deliver a copy of any notice of default to Borrower's limited partner at the address provided by Borrower’s limited partner at the same time and in the same manner as notice is delivered to Borrower. The City's failure to deliver notice under this Section will not affect or impair the City's right to enforce its rights at law or in equity arising by reason of an Event of Default.
ARTICLE 22. HAZARDOUS SUBSTANCES.

22.1 Borrower's Representations. The Borrower represents and warrants to the City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct except as disclosed in the applicable environmental reports or otherwise in writing: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

22.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, the Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, provided that nothing contained in this Article will prevent the Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; provided further that prior to the date Borrower acquires Control of the Site, compliance under 22.2(a) shall apply only to the actual activities of Borrower or Borrower’s agents, employees, contractors and invitees in connection with the Site and the Project; and (b) deliver to the City notice of the discovery by the Borrower of any event rendering any representation contained in this Section incorrect in any respect promptly following the Borrower’s discovery.

ARTICLE 23. INDEMNITY.

23.1 Borrower's Obligations. The Borrower must Indemnify the City and its respective officers, agents, and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of: (a) any default by the Borrower in the observance or performance of any of the Borrower's obligations under the City Documents (including those covenants set forth in Article 22 above); (b) any failure of any representation by the Borrower to be correct in all respects when made; (c) from and after the date Borrower acquires Control of the Site, injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of the Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, or maintenance or any other condition or otherwise; (d) from and after the date Borrower acquires Control of the Site, any claim of any surety in connection with any bond relating to the
construction or of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Site (from and after the date Borrower acquires Control of the Site) or the Project or any transaction contemplated by, or the relationship between the Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, from and after the date Borrower acquires Control of the Site until the expiration of the Compliance Term, of any Environmental Activity or any failure of the Borrower or any other person to comply with all applicable Environmental Laws relating to the Project or the Site; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring from and after the date Borrower acquires Control of the Site before the expiration of the Compliance Term; (h) any liability of any nature arising from the Borrower’s contest of or relating to the application of any Law, including any contest permitted under Articles 9.1, 18.1, and 22.2; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, provided that no Indemnitee will be entitled to indemnification under this Article for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which the Borrower has indemnified the Indemnitees, upon written notice, the Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at the Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or the termination of this Agreement.

23.2 No Limitation. The Borrower's obligations under Article 23.1 are not limited by the insurance requirements under this Agreement.

ARTICLE 24. GENERAL PROVISIONS.

24.1 Subordination. The Deed of Trust and/or Regulatory Agreement shall be subordinated to other financing secured by and used for the development of the Project (in each case, a "Senior Lien"), but only if all of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide construction and/or permanent financing for the Project.

(b) The terms of the proposed Senior Lien and any Subordination Agreement must be reviewed and approved by the City and approved as to form by the City Attorney's Office.
(c) The proposed lender (each a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with the Borrower or any of the Borrower’s affiliates, other than as a depositor or a lender.

(d) The Borrower must demonstrate to the City's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Project, including the operation of the Project as affordable housing, as required by the City Documents. To satisfy this requirement, the Borrower must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination.

(e) The Subordination Agreement(s) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, any Subordination Agreement must provide the City with adequate rights to cure any defaults by the Borrower, including: (i) providing the City or its successor with copies of any notices of default within a reasonable period and in the same manner as provided to the Borrower; and (ii) providing the City with a cure period at least equal to that provided to the Borrower to cure any default.

(f) The subordination(s) described in this Article may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City and for any refinancing of the Senior Loan provided that such refinancing is for not more than the then-outstanding amount due under the Senior Loan.

(g) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure.

(h) Following review and approval by the City and approval as to form by the City Attorney's Office, the City’s Housing and Community Development Division Program Manager or his/her successor or designee will be authorized to execute the approved Subordination Agreement/s without the necessity of any further action or approval.

24.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of a third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and the Borrower or the Borrower's agents, employees or contractors.

24.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the City by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. The Borrower must include this requirement as a provision in any contracts for the development of the Project.
24.4 **Entire Agreement.** This Agreement and its Exhibits incorporate the terms of all agreements made by the City and the Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the City or the Borrower.

24.5 **City Obligations.** The City's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to the Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents.

24.6 **Borrower Solely Responsible.** The Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance contemplated under this Agreement. The Borrower is solely responsible for: (a) its own acts and those of its agents, employees, and contractors and all matters relating to their performance, including compliance with Social Security, withholding, and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by the Borrower, any of its contractors or subcontractors, and the City and its officers, representatives, agents, and employees on account of any act, error or omission of the Borrower in the performance of this Agreement or any other City Document and the development and operation of the Project; and (c) all costs and expenses relating to the Borrower's performance of obligations under the City Documents, the delivery to the City of documents, information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing, and/or recording of any City Document or document required under any City Document.

24.7 **No Inconsistent Agreements.** The Borrower warrants that it has not executed and will not execute any other Agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

24.8 **Inconsistencies in City Documents.** In the event of any conflict between the terms of this Agreement and any other City Document, the terms of this Agreement control unless otherwise stated; provided, however, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

24.9 **Governing Law.** This Agreement is governed by California law without regard to its choice of law rules.

24.10 **Joint and Several Liability.** If the Borrower consists of more than one person or entity, each is jointly and severally liable to the City for the faithful performance of this Agreement.
24.11 **Successors.** Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This provision does not relieve the Borrower of its obligation under the City Documents to obtain the City's prior written consent to any assignment or other transfer of the Borrower's interests in the Loan, the Site or the ownership interests of the Borrower.

24.12 **Attorneys' Fees.** If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of a suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of Vallejo in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

24.13 **Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

24.14 **Time.** Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

24.15 **Further Assurances.** The Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by the City from time to time to confirm or otherwise carry out the purpose of this Agreement.

24.16 **Binding Covenants.** The provisions of the City Documents constitute covenants running with the land and will be binding upon the Borrower and the Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants), in or to any part of the Property, except that the same will terminate and become void automatically at the expiration of the Compliance Term of this Agreement. Any attempt to transfer any right, title or interest in the Property in violation of these covenants will be void.

24.17 **Consent.** Except as expressly provided otherwise, whenever consent or approval of a party is required in any City Document, that party agrees not to withhold or delay its consent or approval unreasonably.

24.18 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which will constitute but one Agreement.
24.19 **Borrower’s Personnel.** The Project shall be implemented only by competent personnel under the direction and supervision of the Borrower.

24.20 **Borrower’s Board of Directors.** The Borrower shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in the Borrower’s bylaws and other governing documents, and shall adhere to applicable provisions of federal, state, and local laws governing nonprofit corporations. The Borrower’s board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by the Borrower of its obligations under this Agreement.

24.21 **Exhibits.** The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS

A Schedule of Income and Rent Restrictions  
B-1 Table of Sources and Uses of Funds  
B-2 Annual Operating Budget  
B-3 Twenty Year Cash Flow Pro Forma  
C Form of HOME Program Loan Note  
D Form of HOME Program Deed of Trust  
E Form of HOME Program Rent Limitation and Affordability Agreement  
F Form of Annual Monitoring Report  
G Section 3 Requirements and Numerical Goals  
H Governmental Requirements  
I Insurance Requirements  
J Lobbying/Debarment Certification Form  
K Schedule of Performance  

24.22 **City's Recourse.** The City's recourse against the Borrower following an Event of Default is limited as set forth more specifically in the Note.

24.23 **Ownership of Results.** Any interest of Borrower or any sub-borrower, in the modular units, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the services to be performed under this Agreement, or acquired through the use of any Loan proceeds (“Work Product”), is hereby pledged to City as security for Borrower's obligations under this Agreement and the Note, and upon an Event of Default, shall become the property of and be promptly transmitted by Borrower to the City. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities.

This Agreement constitutes a security agreement under the California Uniform Commercial Code, as it may be amended from time to time, and Borrower authorizes City to file
any financing statements City elects and deems necessary to perfect its security interest in the Work Product.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Vallejo, California as of the date first written above.

**THE CITY:**

CITY OF VALLEJO, a municipal corporation

By: ________________________________
    Greg Nyhoff, City Manager

Date: ________________________________

**ATTEST:**

By: ________________________________
    Dawn G. Abrahamson, City Clerk

(BCity Seal)

**Approved as to insurance requirements:**

By: ________________________________
    Carmen Valdez, Interim Risk Manager

**Approved as to form:**

By: ________________________________
    Veronica Nebb, City Attorney

**Approved as to content:**

By: ________________________________
    Judy Shepard-Hall, Housing and Community Development Division Program Manager

BORROWER: Vallejo PSH, L.P., a California limited partnership

By: Vallejo PSH LLC, a California limited liability company, its general partner

By: Eden Development, Inc., a California nonprofit public benefit corporation, its sole member/manager

By: ________________________________
    Andre H. Madeira, Senior Vice President of Real Estate Development

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EXHIBIT A
Schedule of Income and Rent Restrictions
EXHIBIT B-1
Table of Sources and Uses of Funds

TO BE PROVIDED BY THE BORROWER.
EXHIBIT B-2
Annual Operating Budget

TO BE PROVIDED BY THE BORROWER.
EXHIBIT B-3
Twenty Year Cash Flow Pro Forma

[This Pro Forma must include the same line items as the Annual Operating Budget shown in Exhibit B-2.]

TO BE PROVIDED BY THE BORROWER.
THE CITY OF VALLEJO (“Payee” or “City”), a principal sum not to exceed Two Million One Hundred Eighty-Six Thousand Seven Hundred Ten Dollars and No Cents ($2,186,710.00), or so much of such principal as may be advanced, with interest at the rate of three percent per annum. Interest shall be simple interest only.

1. Purpose. This Note is made and delivered pursuant to and in implementation of that certain Loan Agreement entered into between the City and the Borrower, dated ________________, 2020 (the “Loan Agreement”), which provides for the term “Site” means that real property located at and described as 2118 Sacramento Street, and 2134-2136 Sacramento Street, Vallejo, California 94590.

2. Housing Project. The Maker will plan, develop, construct, and operate a 75-unit permanent supportive housing community on the Site (the “Project”). The 75 units that are contained in the Project are referred to herein as the “Housing Units”.

3. Maturity Date. The Note shall be due and payable in full 55 years after the date the Project obtains its final Certificate of Occupancy (the “Maturity Date”), provided however that if Borrower fails to acquire Control of the Site on or before December 31, 2022 (the "Outside Acquisition Date"), the Maturity Date shall be the Outside Acquisition Date. The City may agree to extend the Outside Acquisition Date in its sole and absolute discretion. Notwithstanding the foregoing, if Borrower's failure to acquire Control of the Site by the Outside Acquisition Date is not caused by Borrower's acts or omissions, whether direct or indirect, and if Borrower has acted in good faith and no event has occurred and is continuing that constitutes an Event of Default or, with the passage of time would become an Event of Default under any of the City Documents, then in such an event, Borrower shall deliver to City all of the Work Product, the Agreement shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligation or liability with respect to this Note and the Loan.

4. Payment. Beginning at the end of the Maker’s first fiscal year immediately following the date the Project obtains its final Certificate of Occupancy, the
Maker shall make annual payments of principal and interest to the Payee in an amount equal to the “City Share of Residual Receipts”, hereinafter defined from the Payee’s preceding fiscal year. Payment shall be made within 150 calendar days of the end of each fiscal year of the Maker.

“Residual Receipts” shall mean the sum of money computed as follows:

All rents, revenues, consideration or income (of any form but excluding capital contributions, tenants’ security deposits, loan proceeds, financing or refinancing proceeds, partner advances, or similar advances) derived by the Maker in connection with or relating to the operation of the residential units of the Housing Project, including any revenue derived from any refinancing of the Housing Project, less all of the following:

On an annual basis, Debt Service (as defined below); all costs and expenses reasonably and actually incurred for operation, maintenance, and administration of the Housing Project, including but not limited to: premiums for property damage and liability insurance; utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and others; any annual license or Certificate of Occupancy fees required for the operation of the Housing Project; general administrative expenses, including but limited to advertising and marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and others; supportive services fees paid to the supportive services provider; asset management fees paid to the limited partner of the Maker (the “Limited Partner”) in a total amount not to exceed $12,000 annually, increasing 3.5% percent annually; partnership management fees in a total amount not to exceed $25,000 annually, payable to the general partners, increasing 3.5% percent annually; deferred development fees to the developer(s); repayment of any advances made by the managing general partner of the Maker, the co-general partner of the Maker, or the Limited Partner of the Maker under the terms of the partnership agreement governing the Maker (the “Partnership Agreement”); payment of any “Adjustment Amount” to the Limited Partner that is required under the Partnership Agreement; property management fees and reimbursements including on-site manager expenses, in an amount not to exceed fees and reimbursements which are standard in the industry and are pursuant to a management contract approved by the Limited Partner and the City; cash deposited into reserves required by lenders, tax credit investor/s, or by the terms of the Partnership Agreement; and capital replacements of Project Improvements. Expenses shall also not include the following: depreciation, amortization, depletion, or other non-cash expenses. Project Fees are not Project Expenses.

As used herein, “Debt Service” means regularly scheduled mandatory payments of principal and interest made in a calendar year pursuant to the
financing approved pursuant to Article 2.1 of the Loan Agreement which has been obtained for the development of the Housing Project, but excluding payments made pursuant to this Note.

Beginning with the first year of operation of the Project by the Maker after the Project obtains its final Certificate of Occupancy, the Maker shall deliver to the Payee each year an annual audited financial statement in order to determine the amount of Residual Receipts. The Payee shall have the right to inspect and audit the Maker’s financial books and records concerning the calculation of Residual Receipts upon reasonable notice and during regular business hours. Any amount owed under this Note and not paid due to insufficient Residual Receipts shall be carried over to the next year and added to the amount owed for the following year, but shall not be compounded. Payments made from the Maker shall be credited first to pay interest, and then to pay principal.

Each year until all principal and interest hereunder is paid in full, 50 percent of the Residual Receipts shall be paid for the repayment of this Note, to be shared pro rata with any other Residual Receipts loans provided in accordance with the approved Project Financing (“the City HOME Program Share of Residual Receipts”).

5. Payment Location. Payment shall be made in lawful money of the United States to Payee, care of the City of Vallejo Housing and Community Development Division, 200 Georgia Street, Vallejo, California 94590. The place of payment may be changed from time to time as the Payee may from time to time designate in writing.

6. Default. The occurrence of any of the following shall constitute an event of default under this Note:

   a. the Maker fails to pay any amount due hereunder within 30 days of its due date; or
   b. any default by the Maker under this Note, any City Deed of trust, the HOME Program Loan Agreement, or any Affordability Agreement recorded against the Site after the expiration of all applicable cure periods; or
   c. any default by the Maker under any other obligation of the Maker recorded against the Site after the expiration of all applicable cure periods.

   The Maker shall not be considered in default under this Note until the expiration of all notice and cure periods provided to the maker. Any cure of any default made or tendered by one of the Maker’s Limited Partners, as approved by the City, shall be deemed to be a cure by the Maker and shall be accepted or rejected on the same basis as if made or tendered by the Maker.

   Upon the occurrence of any uncured event of default, or at any time thereafter, at the option of the Payee hereof, the entire unpaid principal and interest owing on this Note
shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one of more installments thereafter shall not constitute a waiver of the Payee’s option. The Payee’s failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. The Payee’s failure to exercise any other right or remedy hereunder or under any other Agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. **Default Interest Rate.** At all times when the Maker is in default hereunder by reason of the Maker’s failure to pay the principal due under this Note within applicable cure periods, the interest rate on the sums as to which the Maker is in default (including the principal, if the Payee has elected to declare it immediately due and payable), shall be at the highest rate then allowed by law as of the date of the default, or ten percent, whichever is lower.

8. **Waivers.** The Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, and any such extension or release as may be made without notice to any of said parties, and without in any way affecting or discharging this liability.

9. **Costs.** The Maker agrees to pay immediately upon demand all costs and expenses of the Payee, including reasonable attorneys’ fees, if:

   a. after default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection; or
   b. after a default hereunder or under any City Deed of Trust or Loan Agreement and after the expiration of all notice and cure periods the Payee funds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against the Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, any City Deed of Trust, the HOME Program Loan Agreement or any other loan document executed in connection with this Project; or
   c. the Payee seeks to have the Site abandoned or be reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note, or prohibiting the enforcement of any City Deed of Trust, or any other Agreement evidencing or securing this Note lifted by any bankruptcy or other court.

   If the Payee shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Site or the title thereto or the interest of the Payee under any City Deed of Trust including, without limitation, any form of condemnation or eminent domain proceeding, the Payee shall be
reimbursed by the Maker immediately upon demand for all costs, charges, and reasonable attorneys’ fees incurred by the Payee in any such case, and the same shall be secured by any City Deed of Trust as a further charge and lien upon the Site.

10. Notices. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

11. Successors. This Note shall be binding upon the Maker, its successors, and assigns.

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

13. Severability. If any provision of this Note shall be determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

14. Nonrecourse. This Note is a nonrecourse obligation of the Maker. Neither the Maker nor any of its officers, directors or general and limited partners shall have any personal liability for repaying the principal or interest of this Note. In any action to enforce the obligations of the Maker under this Note, any City Deed of trust or any other instrument or Agreement evidencing, securing or relating to the indebtedness evidenced by this Note, the judgement or decree shall be enforceable against the Maker solely and only to the extent of its interest in the property described in this Note or any City Deed of Trust or its interest in any other security loaned by the Maker as security for this Note, and the Payee shall not seek any deficiency judgement against the Maker. The foregoing provisions shall not prevent recourse to the collateral security for the Loan or constitute a waiver, release or discharge of or otherwise affect the obligation to pay any indebtedness evidenced by the loan documents executed in connection with this Project, or limit the right of any person to name the Maker or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the loan documents executed in connection with this Project, so long as no deficiency judgement shall be sought against the Maker.

The foregoing limitation shall not apply to any and all loss, damage, liability, action, case of action, cost or expense (including, without limitation, reasonable attorney’s fees and expenses), to the extent incurred by the Payee as a result of any:

a. fraud or material misrepresentation under or in connection with the loan or any loan document executed in connection with this Project; or
b. intentional bad faith waste of the Site by the Maker; or
c. losses resulting from the Maker’s failure to maintain insured as required by this Note or any Deed of Trust; or

d. misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds by the Maker derived from any collateral security.

If any of the events listed in the foregoing (a) through (d) occurs, the Payee shall have the right to proceed directly against the Maker at the time the event giving rise to the recourse liability occurred to recover any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys’ fees and expenses), incurred by the Payee.

15. Nonliability of Maker and Payee Officials and Employees.

a. No member, official or employee of the Payee shall be personally liable to the Maker in the event of any default or breach by the City or on any obligations under the terms of this Note.

b. No member, official or employee of the Maker shall be personally liable to the Payee in the event of any default or breach by the Maker or for any amount which may become due to the Payee or on any obligations under the terms of this Note.

Vallejo PSH, L.P.,
a California limited partnership

By: Vallejo PSH LLC,
a California limited liability company,
its general partner

By: Eden Development, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: Andre H. Madeira, Senior
Vice President of Real Estate Development
HOME PROGRAM RENT LIMITATION AND REGULATORY AGREEMENT

This Rent Limitation and Regulatory Agreement (this “Agreement”) is made as of ______________, by and between the City of Vallejo (hereinafter called the “City”) and VALLEJO PSH, L.P. a California limited partner (hereinafter called the “Borrower”).

WITNESSETH:

In consideration of a loan in the amount of TWO MILLION ONE HUNDRED EIGHTY-SIX THOUSAND FOUR HUNDRED FORTY-EIGHT THOUSAND SEVEN HUNDRED TEN DOLLARS AND NO CENTS ($2,186,710.00) (the “Loan”) from the
City pursuant to the HOME Investment Partnerships Program ("HOME Program") and of promises hereinafter contained, the City and the Borrower, for itself and its successors and assigns, covenant and agree as follows:

1. PURPOSE.

1.1. This Agreement is made in implementation of that certain HOME Investment Partnerships Program Loan Agreement (the "Loan Agreement"), dated ____________, 2019, between the City and the Borrower.

1.2. Pursuant to the Loan Agreement, the City has provided the Loan to the Borrower as evidenced by a promissory note (the "Note") executed by the Borrower in favor of the City regarding real property (the "Site") located in the City of Vallejo, State of California, described in Attachment A attached hereto and incorporated herein by reference. The HOME Program Loan is conditioned upon, among other requirements, the Borrower’s execution and delivery to the City of this Rent Limitation and Regulatory Agreement, and the Borrower’s express agreement that the Borrower, and its successors and assigns, shall comply with this Agreement.

1.3. The Loan funds provided by the City for the development and construction of the Property as described in the Loan Agreement are funds allocated to the City under the HOME Program, for purposes of expanding the community’s supply of decent, safe, sanitary, and affordable housing with primary attention to rental housing for very low-income households as defined at 24 CFR Part 92,1., et seq.

1.4. The City approved the HOME Program Loan on the basis that the Borrower shall develop on the Site up to a 76-unit multi-family housing development, and that eleven of the Project’s Units (the "Assisted Units" or "HOME Assisted Units") shall be rented at an affordable rent to and occupied by very low-income households (as such terms are defined herein), all in accordance with this Agreement and the HOME Program Regulations (as defined herein).

1.5. As an inducement to the City to make the Loan, the Borrower has agreed to enter into this Agreement in accordance with the terms, conditions, and covenants set forth below, and consents to be regulated and restricted by the authority as herein provided and as provided for in the HOME Program Regulations any and all as the same may be amended and supplemented from time to time, and as applicable.

2. FURTHER COVENANTS.

2.1. The Borrower shall not, without the prior written approval of the City:

(a) Convey, transfer, or encumber, or permit the conveyance, transfer or Encumbrance of the Project or the Site (collectively, the "Property"), unless such assignee, transferee, or encumbrance has agreed in writing and inform suitable for
recordation, to be bound by the terms of this Agreement, and receive written approval from the City pursuant to Section 8.1. below.

(b) Add to, reconstruct, or demolish any part of the Property or improvements thereon, except as provided by the Loan Agreement.

(c) Permit the use of the Assisted Units for any purpose except those set forth in this Agreement.

(d) Rent any Assisted unit for less than one year, unless otherwise mutually agreed to in writing by the Borrower and the Tenant in accordance with the HOME Program Regulations.

(e) Enter into any contracts or agreements that, to the best of the Borrower’s knowledge, would result in a conflict of interest between any of the parties to such contracts and its City, its elected and appointed officials, officers, employees, agents, or members of their immediate families.

2.2. Compliance with Program Requirements. The Borrower agrees that at all times, and at its sole cost and expense, the Borrower and the Project shall comply with all provisions of the HOME Investment Partnerships Act as set forth in Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, 42 U. S. C. §12701 et seq., as amended from time to time (the “Act”); and regulations promulgates at 24 CFR Part 92, et seq. (the “Regulations”); all other applicable federal and state statutes, rules, and regulations; such additional regulations, orders, rulings, interpretations, and directives for the HOME Program as may be promulgated by HUD from time to time; such policies and procedures of HUD pertaining to the HOME Program; the applicable provisions of the HOME Program Loan Agreement; and any and all other requirements of the HOME Program (the “HOME Program Regulations”). The Borrower acknowledges and agrees that its familiar with all applicable provisions of the HOME Program Regulations and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to fully comply with such provisions. To the extent that there are any conflicts or inconsistencies between the provisions of this Agreement and the HOME Program Regulations, the HOME Program Regulations shall govern.

3. AFFORDABILITY AND LEASE REQUIREMENTS.

3.1 The Borrower agrees that the Project shall contain at all times not less than eleven HOME Assisted Units. The Assisted Units shall bear rents no greater than the HOME Rent Limits set forth in 24 CFR Part 92.252. The Assisted Units’ rents shall be reviewed and approved by the City. The Borrower, for and on behalf of itself and its successors and assigns, agrees and shall ensure that all Assisted Units shall be rented and occupied as follows:

(a) Not less than eleven Units in the Project shall be rented to and occupied
households whose gross monthly income is at or below 50 percent ("Very Low Income Households") of the area median income for the area in which the Project is located, as determined by HUD from time to time and adjusted for family size ("Area Median Income"). For those Assisted Units to be occupied by Very Low Income Households, the rents shall not be greater than 30 percent of the adjusted income of a household whose gross income equals 50 percent of the Area Median Income.

(b) The Assisted Units shall be floating Units as permitted under the HOME Program Regulations. The Units designated as Assisted Units may be changed from time to time, provided that: (1) at all times there shall not less than eleven Units that qualify as Assisted Units in the Project, and (2) each substituted Unit is comparable in terms of size, features, and number of bedrooms to the originally designated Assisted Unit.

3.2 The Borrower shall not raise rents for the Assisted Units, except as follows:
One year following the initial occupancy of the Assisted Units, and annually thereafter, the Borrower shall review and recertify the incomes and rents of the Tenants occupying each of the Assisted Units, except that the parties acknowledge that any Assisted Units that have been allocated low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986 shall be subject to the rent restrictions pursuant to Section 42 as set forth in 24 CFR Part 92.252(i)(2). The Borrower may raise the rents of the Assisted Units upon such review and recertification, provided that the new rents do not exceed the maximum HOME rent limits allowed under 24 CFR Part 92.252, as it may be amended from time to time.

3.3 A holder of a Certificate of Family Participation under 24 CFR Part 887 (Rental Certification Program) or a Rental Voucher under 24 CFR Part 982 (Rental Voucher Program), or a hold of a comparable document evidencing participation in a HOME tenant-based assistance program, shall not be refused for leasing because of the status of the prospective Tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document. All of the Assisted Units shall be made available to holders of Certificates of Family Participation or a Rental Voucher.

3.4 The Borrower agrees that the leases between the Borrower and the Tenants of the Assisted Units shall not be less than one year unless by mutual agreement between the Tenant and the Borrower, and shall comply with the provisions of 24 CFR Part 92.253(b) and (c), as it may from time to time be amended.

3.5 The Borrower shall maintain and manage the Project, and each of the Assisted Units to be constructed within the Project, in accordance with written tenant selection policies and criteria that comply with 24 CFR Part 92.253(d), as it may from time to time be amended. Upon execution hereof and annually thereafter, the Borrower shall provide the City copies of such written policies and criteria.

3.6 The Project may receive Project Based Section 8 vouchers or other rental subsidies (the "Rental Subsidies") throughout the term of this Agreement. If, during the term of this Agreement, any change in federal law occurs or any action (or inaction) by
Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidies, such that the rental subsidy projected on the budget for the Project is reduced or no longer available, Borrower may request to increase the rents on one or more of the HOME Assisted Units during the remainder of the Term up to 60% AMI, provided Borrower demonstrates to the satisfaction of the City that such rental increase is necessary to maintain the financial stability of the Project and no alternative rental subsidies are available.

4. MANAGEMENT.

4.1 Borrower’s Responsibilities. Subject to the rights set forth in Section 4.3, the Borrower will be specifically and solely responsible for causing all maintenance, repair, and management functions performed in connection with the Project, including the selection of tenants, the recertification of income and household size, evictions, the collection of rents, routine and extraordinary repairs, and the replacement of capital items. The Borrower must maintain or cause to be maintained the Project, including the Units and the common areas, in a safe and sanitary manner in accordance with local health, building, and housing codes; California Health and Safety Code 1792010; the applicable provisions of 24 CFR Part 35; and all applicable federal requirements.

4.2 The Borrower must take prudent measures to ensure the security of the Site. These measures may include erecting a fence; covering and securing all openings in any vacant building; and hiring security guards, as appropriate for the circumstances.

4.3 Contracting with Management Agent.

(a) The Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in Subject 4.1, subject to the City’s prior written approval of both the management agent and, at the City’s discretion, the management contract between the Borrower and the management agent, provided, however, that the arrangement will not relieve the Borrower of responsibility for the performance of those duties. Any management contract must contain a provision allowing the Borrower to terminate the contract without penalty upon no more than 30 days’ notice. The City hereby agrees that Eden Housing Management, Inc. is an approved management agent.

(b) The City will provide written notice to the Borrower of any determination that the Management agent performing the functions required in Section 4.1 has failed to operate and manage the Project in accordance with this Agreement. If the management agent has not cured the failure within a reasonable time period, as determined by the City, the Borrower must exercise its right of termination immediately, and make immediate arrangements for continuous and continuing performance of the functions required in Section 4.1 to the City’s approval.
4.4 **Borrower Management.** The Borrower may manage the Project itself only with the City’s prior written approval. The City will provide written notice to the Borrower of any determination that the Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case of the Borrower does not cure the deficiencies within a reasonable period of time, the City may require the Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in Section 4.1.

5. MONITORING REQUIREMENTS.

5.1 Each year during the term of this Agreement, the Borrower shall provide to the City, for the City’s approval, a written report which contains the following:

(a) The rental rate for each of the Assisted Units.

(b) The income of each household residing in each of the Assisted Units, and the Borrower’s recalculation of the maximum monthly rent to be paid by each tenant household.

(c) The family size of each household residing in each of the Assisted Units.

(d) The monthly allowances proposed by the Borrower for utilities and services to be paid by the tenants of each of the Assisted Units.

5.2 Each year, with not less than 48 hours’ prior written notice to the Borrower, the City may conduct an on-site monitoring of the Assisted Units to ensure that the Units meet HUD’s minimum Housing Quality Standards (HQS), and applicable local codes and zoning ordinances. The Borrower agrees, promptly and diligently, to make required corrections of a result of this monitoring.

6. MAINTENANCE.

The City and the Borrower anticipate that the Project will be subject to certain maintenance reserve requirements established under other affordable housing financing programs applicable to the Project. To the extent any such maintenance reserve requirements are applicable to the Project, and so long as the Borrower fully complies with such maintenance reserve requirements, the Borrower shall be deemed to be in compliance with the requirements of this Section 6.

7. NONDISCRIMINATION.

The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on
the basis of race, color, creed, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

8. RESTRICTIONS ON SALE, ENCUMBRANCE, AND OTHER ACTS.

8.1 The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance or transfer in any form of all or any part of, or any interest in, the Project or the Property, or remove, replace or transfer the interests of the managing general partner, except with the prior written approval of the City, which shall not be unreasonably withheld. The City hereby approves the following transfers: (i) a transfer to the managing general partner of the Partnership or a replacement of the general partner with the administrative limited partner of the Borrower or an affiliate (as defined in the limited partnership agreement) of ______________, when such replacement occurs pursuant to the terms of the Borrower’s limited partnership agreement (“Affiliate“), provided that: (1) no default exists hereunder, (2) the Affiliate agrees in writing to assume all obligations of the Borrower under the Loan Documents, and (3) the Affiliate agrees in writing to seek the City’s prior written approval of any and all of its management or ownership agreements, which approval shall not be unreasonably withheld; (ii) the granting of easements or permits to facilitate the development of the Project; (iii) transfers of any limited partner interest of the Borrower; (iv) the leasing of Units after construction of the Project is complete; (v) transfers of the general partnership or manager’s interest in the Borrower to a nonprofit public benefit corporation approved in advance by the City; or (vi) the grant or exercise of an option agreement between the Borrower and the Borrower’s general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project. The City’s approval of a sale, transfer or conveyance maybe based on conditions imposed by the City, in its reasonable discretion, including without limitation the following:

(a) the Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Agreement;

(b) the successor-in-interest to the Borrower agrees to assume all obligations of the Borrower pursuant to this Agreement and the HOME Program;

(c) the successor-in-interest demonstrates to the City’s satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements; and

(d) any terms of the sale, transfer, or conveyance shall not threaten the City’s security or the successor’s ability to comply with all HOME Program requirements.

8.2 Any such grant of City approval for a sale, transfer or conveyance shall be further subject to terms and conditions as may be necessary to ensure compliance with HOME Program requirements.
9. TERM OF AGREEMENT; COVENANTS RUN WITH PROJECT.

9.1 The covenants, conditions, restrictions, and agreements set forth in this Agreement (collectively, the “Obligations”) shall be deemed to run with, bind, and burden the Project, and shall be deemed to bind the Borrower and all of the successors, assigns, and any other future owners of the Project, and the holder of any legal, equitable or beneficial interest therein for the Affordability Period (as hereinafter defined). The “Affordability Period” shall mean a period of fifteen years from the date that the Agreement is recorded in the land records of the County of Solano (the “County”). In the event of a foreclosure or a deed in lieu of foreclosure relating to any other loan encumbering the Project, the City shall have the right, subject to any Senior loan or foreclosure, but not the obligation, to acquire the Project prior to such foreclosure or deed in lieu of foreclosure to preserve affordability, in accordance with 24 CFR Part 92.252.

9.2 It is hereby expressly acknowledged by the Borrower that the undertakings, covenants, and agreements by the Borrower stated in this Agreement are given to induce the City to make the Loan and that, notwithstanding that the Loan may be repaid prior to the expiration of the Affordability Period, the Borrower’s undertaking to perform the Obligations for the period set forth in Paragraph 9.1 above is a condition precedent willingness of the City to make the Loan. This Agreement shall remain in full force and effect, notwithstanding that the Loan may be repaid prior to the expiration of the Affordability Period.

10. AMENDMENT.

This Agreement shall not be altered or amended except in writing, executed by the parties hereto. The parties agree to modify or amend this Agreement if such modification or amendment is determined by the City to be necessary to comply with the HOME Program requirements.

11. PARTIAL INVALIDITY.

If any portion of this Agreement shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12. BINDING ON SUCCESSORS.

This Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors-in-interest, and assigns, and notwithstanding the foregoing, the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City.

13. RECORDING AGREEMENT.
This Agreement, and all amendments thereto, shall be executed by each of the parties. This Agreement, and all amendments thereto, shall be recorded against the Property in the Official Records of the County.

14. HOLD HARMLESS.

Absent the gross negligence or willful misconduct of the City, the Borrower, and its successors-in-interest agree to indemnify, defund, and hold harmless the City and its respective agents, employees, and officers from any and all claims, losses, liabilities, or causes of action (including reasonable attorneys' fees) arising from or in connection with the Project.

15. WAIVER.

No waiver by the City of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

16. CAPTIONS.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

17. GOVERNING LAW.

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

18. NOTICE.

Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the addresses shown below:

Borrower: Vallejo PSH, L.P.
22645 Grand Street
Hayward, CA  94541
Attn: Director of Real Estate Development

City:        City of Vallejo
200 Georgia Street
Vallejo, CA  94590
Attn: Housing and Community Development
    Program Manager
19. ATTORNEYS’ FEES.

The prevailing party in any action to enforce this Agreement shall be entitled to reasonable attorneys’ fees as determined by the trier of facts in that forum.

[Signature Page Follows]
IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement as of the date first set forth above.

THE CITY:

CITY OF VALLEJO

By: ____________________________
    Greg Nyhoff, City Manager

APPROVED AS TO FORM:

By: ____________________________
    Veronica Nebb, City Attorney

ATTEST:

By: ____________________________
    Dawn G. Abrahamson, City Clerk

(City Seal)

THE BORROWER:

Vallejo PSH, L.P.,
a California limited partnership

By: Vallejo PSH LLC,
a California limited liability company,
    its general partner

By: Eden Development, Inc.,
a California nonprofit public benefit corporation,
    its sole member/manager

By: ____________________________
Name: ____________________________
Its: ____________________________
ACKNOWLEDGEMENT

TO BE INSERTED.
ATTACHMENT A

to
RENT LIMITATION AND AFFORDABILITY AGREEMENT

LEGAL DESCRIPTION OF THE SITE

TO BE INSERTED.
**EXHIBIT F**  
Form of Annual Monitoring Report

<table>
<thead>
<tr>
<th>ANNUAL REPORT PROJECT SPONSOR’S RATING</th>
<th>CITY OF VALLEJO HOUSING AND COMMUNITY DEVELOPMENT DIVISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Attach additional pages if necessary)</td>
<td></td>
</tr>
</tbody>
</table>

Project Name: ____________________________ Contract: ________________

Prepared By: ____________________________ Date: ___________________

Management Company: ________________ Phone Number: __________

**Physical Condition:**

1. The Project grounds are in:

   excellent condition: ___ average condition: ___ poor condition: ___

2. The building exterior has:

   NO deferred maintenance (DM): ___ some DM: ___ significant DM: ___

3. The building systems (heating/cooling/electrical/plumbing systems) have:

   NO deferred maintenance (DM): ___ some DM: ___ significant DM: ___

4. The common areas (meeting room/s, laundry room/s, trash collection area/s; group homes and small projects; common kitchen/s, bath/s have:

   NO deferred maintenance (DM): ___ some DM: ___ significant DM: ___

5. The units are inspected: Annually: ___ Semiannually: ___ Other: ___

6. Explain any answer indicating poor condition or significant DM:

   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________
7. What, if anything, may impact the physical condition of the property in the coming year?


8. Describe any notices or citations for housing code violations.


9. Describe any major repair, replacement, or maintenance work needed.


Financial:

1. Are you aware of any special risks to the short or long term fiscal condition of the Project? If “YES”, please explain:


2. Was any loan or loans on the property paid off in the last year? If “YES”, please identify loan or loans paid off.


3. Was there any new debt added? If “YES”, identify the sources and the amounts, and attach the loan documents.


Management:

1. Indicate the last date of staff training concerning the correct qualification of tenants and the correct setting of rents to ensure rents are compliant with City requirements:

Date: ___________________
Frequency: Month: ___________ Year: __________

2. Indicate the date of the last meeting between property management and the project sponsor:
   Date: ______________
   Frequency: Month: ___________ Year: __________

3. Are Liability and Property Insurances current?
   Expiration Date/s: __________

4. Has Management prepared and submitted budgets and reports to the City on time?

5. Has Management made deposits to Reserve Accounts as required by the City?

6. Are property taxes paid current?

7. Management responds to tenant maintenance requests within ______ hours.

8. Is a waiting list being used?
   If “YES”, how many names are on the waiting list? ______

9. Was City approval obtained prior to making Replacement Reserve Account withdrawals?

10. Explain any “NO” answer.

11. The vacancy rate is _____ percent.
12. The collection rate (percentage of actual rent due) is _____ percent.

13. The annual turnover rate is _____ percent.

14. The average vacancy turnover time (move out to move in) is _____ days.

15. How many evictions occurred in the last year? _____ Please identify the reasons for the evictions and the unit numbers.

16. Describe any problems in filling vacancies and the steps taken to address them.

17. Describe any additional management problems, and the steps taken to solve those problems.

18. Have you had any changes in property management staff responsible for the Project? If “YES”, please identify new staff.

Project Sponsor’s Signature_________________________ Date: ___________

Title: __________________________
ANNUAL REPORT
RESERVE BALANCES AND SUPPLEMENTAL INFORMATION
(Attach additional pages if necessary)

Project Name: ________________________________  Contract: ________________

Prepared By: _________________________________  Date: ____________________

REPORT OF RESERVE AND OTHER ACCOUNT BALANCES
FOR FISCAL YEAR: __________

Please complete the following section with the appropriate amounts for each individual account:

<table>
<thead>
<tr>
<th>Account Numbers:</th>
<th>Operating Reserve Amounts</th>
<th>Replacement Reserve Amounts</th>
<th>Transition Reserve Amounts</th>
<th>Other Reserve Amounts</th>
<th>Tenant Security Deposit Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A. Balance at beginning of FY

Required Deposits for Year

Other Deposits (Explain below)

Tenant Security Payment Deposits

Interest Earned for Year
<table>
<thead>
<tr>
<th>Subtotal,</th>
<th>Section A</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Withdrawals</th>
<th>(Insert Date/s below)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Security Deposit Amounts Deducted for Tenant Account Receivables</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Bank Charges/ Fees Paid for Year</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td>Other Debits (Explain below)</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest paid upon move out, if any</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Security Deposits Returned to Tenants</th>
<th></th>
</tr>
</thead>
</table>


Subtotal, Section B

C. Balance at end of FY

Explanation of Other Deposits:

Explanation of Other Withdrawals:
ADDITIONAL REQUESTED INFORMATION FOR FY:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>YES</th>
<th>NO</th>
<th>DATES PAID AND COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Operating Reserves: Funded monthly? If not, how often?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>2. Replacement Reserves: Funded monthly? If not, how often?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>3. Security Deposit Account: Balance equal to or greater than security deposit liability including interest? If “NO”, explain:</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>4. Taxes: Paid current, on time, and no late fees incurred?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>5. a. Insurance: Is coverage in place according to the Loan Agreement?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>b. Paid current and the renewal policy paid on time?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>6. Required Debt Service: Paid current and always paid by the due date?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>7. Debt: Has additional indebtedness been incurred? If “YES”, explain what, when, and with whom?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>8. Other Reserve Accounts: Name other reserve accounts, how funded, who controls them, and their purpose.</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
<tr>
<td>9. Account Insurance: Are all accounts insured by the federal government?</td>
<td>___</td>
<td>___</td>
<td>________________________</td>
</tr>
</tbody>
</table>
EXHIBIT G
Section 3 Requirements and Numerical Goals

The Borrower's use of Funds triggers the following requirements imposed by HUD's Section 3 program.

1. Section 3 Requirements.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing, to the greatest extent feasible.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and to post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date work will begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment, or suspension from future HUD assisted contracts.

2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

   (a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)). Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as 30 percent of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of 30 percent of total work hours for the entire project.

   (b) Contracts with Section 3 Business Concerns (24 CFR § 135.30). Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

      (i) At least ten percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing construction and other public construction; and

      (ii) At least three percent of the total dollar amount of all other Section 3 covered contracts.
EXHIBIT H
Governmental Regulations

1. **Prevailing Wages.** If and to the extent applicable, every contract for the construction of housing that includes twelve or more assisted with Funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), as supplemented by Department of Labor regulations (29 CFR part 5) to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), as supplemented by Department of Labor regulations (29 CFR part 5). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units.


3. **Conflict of Interest.**

   (a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the Borrower or the City who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, the Borrower must incorporate, or cause to be incorporated, in all contracts, subcontracts, and Agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. The Borrower will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, the Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

   (b) The Borrower represents that it is familiar with the provisions of 24 CFR § 84.42, Governmental Conduct Code, and Sections 1090 through 1097 and 87100 et seq. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. The Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify the City immediately if the Borrower at any time obtains knowledge of facts constituting a violation.

   (c) In the event of any violation of the conflict of interest prohibitions, the Borrower agrees that the City may refuse to consider any future application for funding from the
Borrower or any entity related to the Borrower until the violation has been corrected to the City's satisfaction, in the City's sole discretion.

4. **Disability Access.** The Borrower must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). The Borrower is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, the Borrower must provide to the City a written reasonable accommodations policy that indicates how the Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. **Lead-Based Paint.** The Borrower must satisfy the requirements and regulations of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.* and implementing regulations at 24 CFR part 35. The Borrower must also comply with the provisions contained in 17 CCR 350000 *et seq.*, 8 CCR 1532.1, and all other applicable Laws governing lead-based hazards.

6. **Non-Discrimination in City Contracts.**
   (a) **Borrower May Not Discriminate.** In the performance of this Agreement, the Borrower agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with the Borrower, in any of the Borrower's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by the Borrower.

7. **False Claims.** Any borrower, grantee, contractor, subcontractor or consultant who submits a false claim will be liable to the City for three times the amount of damages the City sustains because of the false claim and for the cost, including attorneys' fees and costs, of a civil action brought to recover any of those penalties or damages. In addition, the City may obtain a civil penalty of up to $10,000 for each false claim. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant:
   (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval;
   (b) knowingly makes, uses or causes to be made or uses a false record or statement to get a false claim paid or approved by the City;
   (c) conspires to defraud the City by getting a false claim allowed or paid by the City.
(d) knowingly makes, uses or causes to be made or uses a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is the beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.


(a) The Borrower understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Borrower hereby authorizes the City to disclose any records, information, and materials submitted to the City in connection with this Agreement as required by Law. Further, the Borrower specifically agrees that any meeting of the governing body of its general partner/manager that addresses any matter relating to the Project or to the Borrower's performance under this Agreement will be conducted as a public meeting.
EXHIBIT I
Insurance Requirements

TO BE PROVIDED BY THE BORROWER ON THE DATE BORROWER ACQUIRES
CONTROL OF THE SITE.

The Borrower shall assume all responsibility for damage to property or injuries to persons caused
by any equipment furnished by the Borrower under this Agreement or operation thereof.

On the date Borrower acquires Control of the Site, the Borrower shall procure and maintain for
the duration of this Agreement insurance against claims for injuries to persons or damages to
property which may arise from or in connection with the performance of the work hereunder by
the Borrower, its agents, representatives, employees, or subcontractors. Such insurance shall not
be construed to relieve the Borrower, its agents, representatives, employees, or subcontractors of
any liability in excess of such coverages.

Minimum Scope of Insurance:

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability form CG 0001 (“occurrence”
   form).
2. Insurance Services Office form number CA 0001 (Ed. 12/92) covering Automobile
   Liability, code 1 (any auto).
3. Workers’ Compensation Insurance as required by the State of California and Employer’s
   Liability Insurance.
4. Professional Liability/Errors and Omissions Liability Insurance appropriate to the
   Borrower’s profession.

Minimum Limits of Insurance:

The Borrower shall maintain insurance limits no less than:

1. General Liability: $5,000,000.00 per occurrence for bodily injury and property damage.
   If Commercial General Liability Insurance or other form with a general aggregate limit is
   used, the aggregate shall be twice the per occurrence amount.
2. Automobile Liability: $1,000,000.00 per occurrence for bodily injury and property
   damage.
3. Employer’s Liability: $1,000,000.00 per accident for bodily injury or disease.
4. Professional Liability/Errors and Omissions Liability: $1,000,000.00 per claim.

Deductibles and Self-Insurance Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. If the
deductible or self-insured retention is unacceptable to the City, at the City’s Risk Manager’s
option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as

{Client
Files/01082/1/K/S0616128.DOC}
respects the City, its officers, officials, employees, and volunteers; or the Borrower shall procure a bond guaranteeing of losses and related investigations, claim administration, and defense expenses.

**Other Insurance Provisions:**

The General Liability and Automobile Liability policies must contain, or be endorsed to contain, the following provisions:

1. The Borrower, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to the liability, including defense costs, arising out of (a) work or operations by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations, (b) premises owned, occupied or used by the Borrower, and (c) automobiles owned, leased, hired or borrowed by or on behalf of the Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

2. For any claims related to this Project, the Borrower’s insurance coverage/s shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the City, its officers, officials, employees, and volunteers shall be excess of the Borrower’s insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the Borrower’s policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, and volunteers.

4. The Borrower’s insurance coverage/s shall apply separately to each insured against whom a claim is made or suit brought, except with respect to the limits of the insurer’s liability.

5. Each insurance policy required by this Exhibit shall be endorsed to state that coverage shall not be cancelled by either party, or reduced in coverage or in limits, except after 30 days’ prior written notice by certified mail, return receipt requested, has been given to the City; or ten days’ prior written notice by certified mail, return receipt requested for the non-payment of premium.

**Acceptability of Insurers:**

Insurance is to be placed with insurers with a current A. M. Best rating of no less than A:VII, unless otherwise accepted by the City.

**Verification of Coverage:**

The Borrower shall furnish the City with an original Certificate of Insurance and amendatory Endorsements effecting coverage required by this clause. The Endorsements should be on forms provided by the City or on other than the City’s forms, provided those Endorsements or policies conform to the requirements stated in this Exhibit. The Certificate of Insurance and all Endorsements must be signed by a person authorized by the insurer to bind coverage.
on its behalf. All Certificates and Endorsements are required to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including Endorsements effecting coverage required by these Exhibits at any time. All insurance documents are to be sent to:

City of Vallejo  
Attention: Risk Manager  
555 Santa Clara Street  
Vallejo, CA  94590

**Contractors and Subcontractors:**

The Borrower shall include all contractors and subcontractors as insureds under its insurance policies, or shall furnish separate Certificates and Endorsements for each contractor and subcontractors. All insurance coverages for contractors and subcontractors shall be subject to all the requirements stated in this Exhibit.
EXHIBIT J
Lobbying/Debarment Certification Form

ACCEPTABLE ALTERNATIVE WORKSHEET FOR CONTRACTOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIBILITY, AND VOLUNTARY EXCLUSION (LOWER-TIER PARTICIPANT) FOR HUD PROGRAMS COVERED BY 24 CODE F FEDERAL REGULATIONS, PART 24.510(b) AND HUD HANDBOOK 1300.13, REV-1, (EXCLUDING PUBLIC AND INDIAN HOUSING PROGRAMS)

1. By signing and submitting this Certification, the prospective lower-tier participant certifies that neither its, or its principals or affiliates, is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Loan Agreement by any federal department or agency. Further, the participant provides the Certification set out below:

2. The Certification in this Exhibit is a material representation of fact upon which reliance was placed when this Loan Agreement was entered into. If it is later determined that an erroneous Certification was rendered, in addition to other remedies available to the federal government, the City may pursue available remedies.

3. Further, the participant shall provide immediate written notice to the person to whom this Loan Agreement s submitted if at any time the participant learns that this Certification was erroneous when submitted, or has become erroneous by reason or changed circumstances.

4. By submitting this Certification, it is agreed that should the proposed covered transaction be entered into, the participant will not knowingly enter into a lower-tiered covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the City.

5. It is further agreed that by submitting this proposal, the participant will include this Certification, without modifications, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

Contractor Name ______________________________________  Date _________________  
Title ___________________________________  Address ___________________________  
City _______________________ State ____________________ Zip ___________________  
Contractor Signature _________________________________________________________  

NON-CERTIFICATION:  As the prospective lower-tier participant, I am unable to certify to (the) statements in this Certification as explained in the attachment to this Exhibit.

Contractor Name ______________________________________  Date _________________  
Title ___________________________________  Address ___________________________  
City _______________________ State ____________________ Zip ___________________  
Contractor Signature _________________________________________________________  

The penalty for making false statements in this document is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001.
AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

This Amendment to Disposition and Development Agreement (the “Amendment”) is made and entered into as of November ___, 2020, by and between Vallejo PSH, L.P., a California limited partnership (“Vallejo PSH, L.P.”), and the City of Vallejo, a municipal corporation (the “City”).

RECITALS

A. The City and Vallejo PSH, L.P. entered into that certain Disposition and Development Agreement dated December 18, 2019 (the “Agreement”), pursuant to which the City agreed to convey, subject to the terms and conditions set forth therein, the property located at 2118 and 2134-2136 Sacramento Street, Vallejo (the “Property”) to Vallejo PSH, L.P., upon which Vallejo PSH, L.P. intends to construct approximately 75 units of affordable and/or Permanent Supportive Housing (PSH) and one manager unit, interior amenities for residents that are not less than 40,000 square feet of floor area, and an additional minimum 6,000 square feet of floor area that will be used for resident-serving and/or community services (the “Project”). Capitalized terms not defined herein shall have meaning given to them in the Agreement.

B. In connection with the Agreement, the City also agreed to loan Vallejo PSH, L.P. $1,600,000 in Low and Moderate Income Housing Asset Funds (the “LMIHAF Loan”) and $2,186,710 in HOME Investment Partnership funds (the “HOME Loan”) for predevelopment and construction costs related to the Project.

C. Vallejo PSH, L.P. now intends to pursue modular construction for the Project, and desires to use LMIHAF Loan funds and HOME Loan funds for the initial modular deposits necessary to commence modular unit production. Accordingly, the parties desire to amend the Agreement as described below.

NOW, THEREFORE, the City and Vallejo PSH, L.P. mutually agree to amend the Agreement as follows:

AGREEMENT

1. Section 7.3 shall be amended by adding the following as subsection (h):

“(h) Notwithstanding the foregoing, Vallejo PSH, L.P. may use up to $400,000 of LMIHAF Agreement funds to pay the 5% “Assembly Deposit” for the modular construction units, prior to satisfaction of any of the conditions set forth in this
section 7.3. In addition, Vallejo PSH, L.P. may use the remaining $200,000 of LMIHAF Agreement funds to pay a portion of the 25% “Materials Deposit” for the modular construction units, prior to satisfaction of any of the conditions set forth in this section 7.3, provided that Vallejo PSH, L.P. satisfy the following conditions precedent: (i) delivery of a cost breakdown for the Factory OS modular contract, which must be approved by the City; (ii) delivery of a draft guaranteed maximum price construction contract; (iii) delivery of the Factory OS modular contract, which must be approved by the City; and (iv) delivery of satisfactory evidence that Vallejo PSH, L.P. has secured all commitments and/or awards for the Project Financing.

2. Section 7.4 shall be amended by adding the following at the end of subsection (c):

   “Notwithstanding the foregoing, this condition shall not apply to the LMIHAF Agreement funds used to pay both the 5% Assembly Deposit and the 25% Materials Deposit.”

3. Section 7.5 shall be amended by adding the following at the end of subsection (e):

   “Notwithstanding the foregoing, Vallejo PSH, L.P. may use the HOME Loan funds to pay a portion of the 25% “Materials Deposit” for the modular construction units, prior to satisfaction of this condition.”

4. Upon execution of this Amendment, Exhibit C (the LMIHAF Agreement) shall be amended by incorporating that certain First Amendment to Amended and Restated Loan Agreement dated November ___, 2020.

5. Upon execution of this Amendment, Exhibit D (the HOME Loan Agreement) shall be deleted and replaced in its entirety by that certain HOME Loan Agreement executed by Developer and City and dated November ___, 2020.

6. In the event of a conflict between this Amendment and the Agreement, the terms and provisions of this Amendment shall control.

7. In all other respects, the Agreement shall remain unchanged and shall remain in full force and effect.

[Signatures on following page.]
IN WITNESS WHEREOF, the City and Vallejo PSH, L.P. have executed this Amendment as of the date written on the first paragraph of this Amendment.

Vallejo PSH, L.P.:

Vallejo PSH, L.P.,
a California limited partnership

By: Vallejo PSH LLC,
a California limited liability company,
it’s general partner

By: Eden Development, Inc.,
a California nonprofit public benefit corporation,
it’s sole member/manager

By: ______________________
    Andre H. Madeira, Senior
    Vice President of Real Estate Development
CITY:

CITY OF VALLEJO,

a municipal corporation

By: __________________________
    Greg Nyhoff
    City Manager

DATE: _________________________

ATTEST: _______________________

By: ____________________________
    Dawn Abrahamson
    City Clerk

APPROVED AS TO CONTENT:

______________________________
Judy Shepard Hall
Housing and Community Development Program Manager

APPROVED AS TO FORM:

_________________________
Veronica Webb
City Attorney
DATE: November 17, 2020  
TO: Mayor and Members of the City Council  
FROM: Katelyn M. Knight, Assistant City Attorney  
SUBJECT: CONSIDERATION OF RESOLUTION ADOPTING CELLULAR SITE SIMULATOR POLICY

RECOMMENDATION
Staff recommends that the City Council approve a resolution adopting the revised usage and privacy policy for the cell site simulator previously acquired by the City of Vallejo.

REASONS FOR RECOMMENDATION
The City Council directed that the privacy and usage policy for the Vallejo Police Department’s cellular site simulator be revised to include certain provisions and presented to City Council for approval at its meeting on November 17, 2020. The City Attorney’s Office worked with the Vallejo Police Department and individuals at the ACLU, EFF, and Oakland Privacy to revise the usage and privacy policy to include the provisions requested by City Council.

BACKGROUND AND DISCUSSION
In March of 2020, the City Council authorized the acquisition of a radio frequency detector/cellular site simulator and preparation and implementation of a privacy and usage policy. The radio frequency detector/cellular site simulator operates by detecting, triangulating and measuring cellular phone radio frequencies and is used by the Vallejo Police Department Crime Reduction Team (CRT) to quickly locate missing victims and injured persons, and apprehend violent and high-risk offenders. The Vallejo Police Department implemented the statutorily-required privacy and usage policy and took possession of the equipment over the summer.

As required by the law, the Radio Frequency Detector/Cellular Site Simulator is only to be used in conjunction with a valid search warrant issued by a judge, or where a permissible exception to the warrant requirement exists combined with a concurrent application for a warrant. The equipment does not retain data and is not capable of intercepting and listening to calls, text messages, dialed numbers or any other such content.

The law imposes requires the usage and privacy policy to address the following:

- The authorized purposes for using cellular communications interception technology and for collecting information using that technology.
- A description of the job title or other designation of the employees who are authorized to use, or access information collected through the use of, cellular communications interception technology. The policy shall identify the training requirements necessary for those authorized employees.
- A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws,
including laws providing for process and time period system audits.

- The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
- The purpose of, process for, and restrictions on, the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
- The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

When a local agency chooses to acquire cellular communications interception technology, the governing body must approve a resolution or ordinance authorizing the acquisition of such technology and a usage and privacy policy at a regular meeting. (Gov. Code § 53166(c)(1).) Additionally, use of the Radio Frequency Detector/Cellular Site Simulator is subject to the requirements of Penal Code Section 1546.1.

Pursuant to City Council’s authorization, the Vallejo Police Department implemented a usage and privacy policy meeting these requirements. A legal challenge was subsequently raised on the grounds that the policy itself was not itself reviewed and approved by Council and to some of the policy language. In the interests of resolving the matter, the City Attorney’s Office prepared a revised policy and presented that policy to City Council for approval on October 27, 2020.

On October 27, 2020, City Council adopted an ordinance approving the policy, however several councilmembers identified additional provisions that they would like to include in the policy. City Council directed that staff prepare a revised policy including the modifications discussed and present the revised policy for City Council’s consideration on November 17, 2020. The City Attorney’s Office worked with the Vallejo Police Department and individuals at the ACLU, EFF, and Oakland Privacy to develop the revised usage and privacy policy now being presented to City Council for review and approval.

**FISCAL IMPACT**
There is no fiscal impact associated with adoption of this resolution.

**ENVIRONMENTAL REVIEW**
This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

**ATTACHMENTS**

1. Final Policy 610 - 11.09.20
2. Resolution Cell Site Simulator - 11.09.20

**CONTACT**
Shawny K. Williams, Chief of Police (707) 648-4540
shawny.williams@cityofvallejo.net
Cellular Site Simulator Usage and Privacy

610.1 PURPOSE AND SCOPE
The purpose of this policy is to set guidelines and requirements pertaining to cellular site simulator technology usage and privacy. Any changes to this policy - including authorized uses of the cellular site simulator technology by the Vallejo Police Department - will be made in compliance with California Government Code Section 53166.

610.2 POLICY
It is the policy of the Vallejo Police Department to respect the privacy rights and civil liberties of individuals and to follow the Constitution, particularly the First and Fourth Amendments, the California Constitution, and all applicable laws.

610.3 BASIS FOR POLICY
Government Code § 53166(b) requires all law enforcement organizations that use cellular communications interception technology, including cellular site simulator technology, to:

(a) Maintain reasonable security procedures and practices, including operational, administrative, technical and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification or disclosure.

(b) Implement a usage and privacy policy to ensure that the collection, use, maintenance, sharing and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties. The usage and privacy policy shall be available in writing to the public, and, if the local agency has an internet website, the usage and privacy policy shall be posted conspicuously on that internet website. The usage and privacy policy shall, at a minimum, include all of the following:

1. The authorized purposes for using cellular communications interception technology and for collecting information using that technology

2. A description of the job title or other designation of the employees who are authorized to use or access information collected through the use of cellular communications interception technology

3. A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits
4. The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.

5. The purpose of, the process for, and restrictions on the sharing of information gathered through the use of communications interception technology with other local agencies and persons.

6. The length of time information gathered through the use of communications interception technology will be retained and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall use only department-approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws.

610.4 HOW THE TECHNOLOGY WORKS

Cellular site simulator technology relies on the use of cellular site simulators. Cellular site simulators, as governed by this policy, function by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identifies the device in the same way that they would a networked tower. **Cellular site simulator technology does not capture nor receive any content such as text messages, voicemails, applications, multimedia messages, etc. It does not have the capability of listening to phone calls. The City of Vallejo will not add software or otherwise modify the equipment in any way to enable these capacities.**

A cellular site simulator receives signals and uses an industry-standard unique identifying number assigned by a device manufacturer or cellular network provider to distinguish between the incoming signals until the targeted device is located. Once the cellular site simulator identifies the specific cellular device for which it is looking, it will obtain the signaling information relating only to that particular phone, rejecting all others.

When used in a mass casualty event, the cellular site simulator will obtain signaling information from all devices in the simulator's target vicinity for the limited purpose of locating persons in need of assistance or to further recovery efforts. Any information received from the cellular devices during this time will only be used for these limited purposes and all such information received will be purged at the conclusion of the effort in accordance with this policy. A mass casualty incident is a natural disaster such as an earthquake or fire; a terrorist attack; or any event resulting in imminent loss of life or injury.

610.4.1 INFORMATION OBTAINED

By transmitting as a cell tower, cellular site simulators acquire identifying information from cellular devices. As employed by the Vallejo Police Department, this information is limited. Cellular site simulators employed by the Vallejo Police Department will be limited to providing only:
Cellular Site Simulator Usage and Privacy

(a) Azimuth (an angular measurement in a spherical coordinate system)

(b) Signal strength

(c) Device identifier for the target device when locating a single individual or all device identifiers for a mass casualty incident

Cellular site simulators do not function as GPS locators, as they will not obtain or download any location information from the device or its applications.

**Cellular site simulators used by the Vallejo Police Department shall not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3121 (c).**

Cellular site simulators employed by the Vallejo Police Department shall not capture emails, texts, contact lists, images or any other data contained on the phone. In addition, the cellular site simulators shall not be used by the Vallejo Police Department to collect subscriber account information (for example, an account holder's name, address or telephone number).

### 610.5 AUTHORIZED PURPOSES

The authorized purposes for using cellular communications interception technology and for collecting information using that technology are to:

(a) Locate missing persons

(b) Locate at-risk individuals

(c) Locate victims of mass casualty incidents

(d) Assist in felony investigations

(e) Apprehend fugitives

The cellular site simulator shall not be used to target First Amendment activities, such as protests and gatherings at places of worship. The cellular site simulator also shall not be used for immigration enforcement purposes, including the sharing of information derived from the equipment with federal immigration authorities including Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

### 610.5.1 LEGAL AUTHORITY

**Cellular site simulator technology may only be used by the Vallejo Police Department with a search warrant or for an identified exigency, with a concurrent application for a search warrant.** A search warrant application shall be made no later than 72 hours after use in an identified exigency. When using cellular site simulator technology to assist in an investigation, Vallejo Police personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement unless used for a mass casualty incident.

When making any application to a court, members of the Vallejo Police Department shall disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Search warrants for the use of a cellular site simulator must include sufficient information to ensure that the courts are aware that the technology is being used. An
Cellular Site Simulator Usage and Privacy

application for the use of a cellular site simulator shall inform the court about how law enforcement intends to address the deletion of data not associated with the target phone.

If cellular site technology is used based on exigency, then the above requirements will be met by applying for a search warrant concurrently with the use of the device whenever possible and no later than 72 hours after use. An exigency is defined as an emergency involving danger of death or serious physical injury.

610.6 JOB TITLES, DESIGNATIONS AND TRAINING REQUIREMENTS

The Vallejo Police Department's cellular site simulator shall be operated and maintained by Vallejo Police Department detectives assigned to the investigations division surveillance unit, currently known as the Crime Reduction Team (CRT). Personnel shall be specifically trained in such technology and authorized for its use by the Chief of Police or his designee. Such personnel shall be limited to designated detectives. No other personnel shall be allowed to use this technology or access information collected through the use of this technology. The Chief of Police may withdraw authorization for use of the technology as a consequence of a disciplinary proceeding, or as appropriate under any circumstances consistent with law.

Training requirements for the above employees include completion of training by the manufacturer of the cellular communications interception technology or appropriate subject matter experts as identified by the Vallejo Police Department. Such training shall include and follow applicable State and Federal laws, including California privacy laws. Detectives assigned to CRT at the time of the approval of this policy shall be trained by the manufacturer regarding use of the cellular site simulator. Prior to its use by subsequent detectives assigned to CRT, those detectives shall receive instruction from an individual previously trained by the manufacturer and designated by the Investigations Division Commander. The Investigations Division Commander shall maintain a record of individuals who have completed training and are authorized to use the cellular site simulator.

610.7 AGENCY MONITORING AND CONTROLS

The Vallejo Police Department will monitor its use of cellular site simulator technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits. Prior to approving use of the cellular site simulator, the Investigations Division Commander or their designee shall ensure that the proposed use complies with all applicable laws and this policy. The Investigations Division Commander or their designee shall quarterly review all deployment logs for compliance with applicable laws and policy, and shall conduct any further audits required by law. The Investigations Division Commander, or their designee, shall ensure that process and time period system audits are conducted in accordance with law and this policy.

610.7.1 DEPLOYMENT LOG

Prior to deployment of the technology, the use of a cellular site simulator by the Vallejo Police Department must be approved by the Investigations Division Commander or their designee. Each use of the cellular site simulator device requires the completion of a log by the user. The log shall include the following information at a minimum:
Cellular Site Simulator Usage and Privacy

(a) The name of the search warrant affiant/operator

(b) The reason for each use (fugitive, investigation, etc.), list authorized use

(c) Whether the target phone was located or not, and if not the reason the search was unsuccessful or incomplete

(d) Whether the equipment was used pursuant to a warrant or legally permissible exigency with a warrant subsequently obtained

610.7.2 ANNUAL REPORT

The Cellular Site Simulator Program Coordinator shall provide the Chief of Police with an annual report that contains all of the above information. The report shall also contain the following information for the preceding 12-month period:

(a) The number of times cellular site simulator technology was used

(b) The number of times the Vallejo Police Department used the cellular site simulator for another agency

(c) The number of times the equipment was deployed:
   1. To make an arrest or attempt to make an arrest
   2. To locate an at-risk person
   3. To aid in search and rescue efforts
   4. For any other reason
   5. The effectiveness of each deployment

The deployment log will be made available to the public and posted online on a quarterly basis with redaction of information related to any ongoing investigations or other exempt material.

610.8 INTER-AGENCY COOPERATION

Any request from an outside agency to use the Vallejo Police Department’s cellular site simulator must be approved by the Investigations Division Commander or their designee. Prior to the device being used on behalf of the requesting agency, there must be a written agreement between the requesting agency and the Vallejo Police Department. The requesting agency must agree to adhere to this policy, which shall be provided to them. The cellular site simulator will be operated by trained members of the Vallejo Police Department. No outside agency members shall operate the cellular site simulator.

Upon approval, the cellular site simulator will be utilized for the requesting agency pending availability and only for the purposes authorized under Section 610.5.

Should there be simultaneous requests from outside agencies to utilize the cellular site simulator, the Investigations Division Commander or their designee will determine which agency incident has priority.
610.9 SHARING OF INFORMATION
The Vallejo Police Department will share information gathered through the use of cellular site simulator technology with other law enforcement agencies that have a right to know and a need to know the information requested. A right to know is the legal authority to receive information pursuant to a court order, statutory law or case law. A need to know is a compelling reason to request information such as direct involvement in an investigation.

Information will be shared only with agencies in accordance with a lawful purpose and limited to a court order, search warrant or identified exigency on the part of the agency. The Vallejo Police Department will not share information outside of the legal parameters necessary for the lawful purpose. All requests for information shall be reviewed by the Cellular Site Simulator Program Coordinator or other individual as designated by the Chief of Police.

The agency with which the information is shared ("recipient agency") shall be designated as the custodian of such information. The recipient agency shall be responsible for observance of all conditions of the use of the information including the prevention of unauthorized use, retention of information and destruction of information.

610.10 RETENTION AND DISPOSAL OF INFORMATION
The Vallejo Police Department may keep captured data as evidence for use in a felony criminal investigation only when specifically authorized in a search warrant and in accordance with applicable state laws regarding search warrants and electronic information. The storage of this information shall be documented in a Vallejo Police Department crime report.

In all other circumstances where it is not specifically authorized by a search warrant, the Vallejo Police Department shall destroy all information intercepted by the cellular site simulator equipment as soon as the objective of the information request is accomplished in accordance with the following:

(a) When the cellular site simulator equipment is used to locate a known cellular device, all data shall be deleted upon locating the cellular device and no fewer than once daily for a known cellular device

(b) When the cellular site simulator equipment is used in a search and rescue operation, all data must be deleted as soon as the person or persons in need of assistance have been located, and in any event no less than once every ten days

(c) Prior to deploying the cellular site simulator equipment for a subsequent operation, ensure the equipment has been cleared of any previous operational data

(d) No data derived or recorded by cellular site simulator software or equipment will be stored on any server, device, cloud-based storage system or in any capacity
RESOLUTION NO. 20 - ______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO ADOPTING USAGE AND PRIVACY POLICY

WHEREAS, on October 27, 2020, the City Council adopted Resolution No. 20-133 N.C authorizing Policy 610 entitled Cellular Site Simulator Usage and Privacy, and further authorizing the Chief of Police and City Manager to perform such acts as may be necessary or convenient to implement this Resolution and ensure compliance with Government Code § 51366;

WHEREAS, on October 27, 2020, several members of the City Council proposed additional modifications that they would like made to the policy and directed staff to prepare a revised policy for City Council’s review and approval at the November 17, 2020 City Council meeting;

WHEREAS, staff has presented and City Council has reviewed and considered the revised Policy 610 entitled Cellular Site Simulator Usage and Privacy attached to this resolution;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vallejo as follows:

1. Policy 610 entitled Cellular Site Simulator Usage and Privacy a copy of which is attached to this Resolution, is hereby authorized as required by Government Code § 51366(c)(1).
2. The Chief of Police and City Manager are hereby authorized to perform such acts as may be necessary or convenient to implement this Resolution and ensure compliance with Government Code § 51366.
3. This Resolution shall take effect immediately.

Adopted by the City Council of the City of Vallejo at a regular meeting held on November 17, 2020 with the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
BOB SAMPAYAN, MAYOR

ATTEST:

DAWN ABRAHAMSON, CITY CLERK

Approved as to form:

By:  [Signature]

Randy J. Risner
Interim City Attorney
DATE: November 17, 2020

TO: Mayor and Members of the City Council

FROM: Shawny Williams, Police Chief

SUBJECT: UPDATE ON VALLEJO POLICE DEPARTMENT IMPLEMENTATION PLAN

RECOMMENDATION
Receive and comment on this report and presentation from Chief Williams, covering: 1) the progress and activities associated with the latest crime spike in Vallejo and 2) the OIR Report and Implementation Plan (IP).

The OIR IP update includes the following:

• A summary of citizen input on the IP;
• Changes to it due to that input, as well as from Council;
• Progress to date; and,
• Priorities for next steps.

REASONS FOR RECOMMENDATION
City Council recently adopted an Emergency Proclamation to address three crises. This update will communicate the progress on these three fronts and highlight the fact there is much more work to do.

The first crisis was an unprecedented crime spike in the City. In response, VPD initiated Operation PEACE with law enforcement partners. Progress has been made, but more work is ahead.

Related to VPD’s success in partnering with the community in reducing crime is its perceived trust and legitimacy in the eyes of the community. There is continued work to do in this area. An important City Council and staff priority is the Police reform initiative as articulated in the OIR “Independent Assessment of Operations, Internal Review Systems and Agency Culture” report. It outlines 45 Recommendations for change. Since then, the Chief has initiated a 46th Recommendation, partly due to the citizen input referenced in this report. In order to sustain any reform efforts, the Vallejo Police Department (VPD) needs to clearly articulate and implement a new VPD culture that reflects a revised mission, vision and values and embraces the changes outlined in the OIR IP.

The third crisis is a financial one. Given the plethora of claims against the City and the current hardening of the liability insurance market, the City needs to take action to change this unsustainable claims trend. This is inextricably tied to progress in the OIR IP.

In order to “keep our eye on the ball” and reinforce VPD’s legitimacy and trust within Vallejo stakeholders, a key pillar in the previous President of the United States 21st Century Policing Model, it is important to have
periodic public discussions on these efforts, successes and the work ahead.

**BACKGROUND AND DISCUSSION**

**Operation PEACE and Crime**

As Council may recall, VPD has formed a strategic partnership with fellow law enforcement agencies at the federal, state and local level. This consists of law enforcement partnerships to conduct criminal investigations to apprehend prolific offenders who are responsible for the increase shootings, homicides and violent crime in the community of Vallejo.

Council will receive a more thorough briefing on this topic at your November 17th meeting. Discussing crime trends and tying it directly to just law enforcement efforts is fraught with challenges. Meaningful trends can only be valuable over an extended period of time given the ebb and flow of them. Finally, any level of crime is unacceptable; thus, the City must be cautious when celebrating a downward trend in crime.

Given the above admonishments, it is clear that certain categories are down when compared to last year. Crimes like, robbery burglary, larceny, stolen vehicles and property crimes are down, for some crimes extremely so, for September and October when compared to last year. However, other violent crimes (homicides, aggravated assaults and other violence) are still up when compared to last year.

As a result, the department is using analytics to identify the small portion of our community that is the source of violence. The department plans to roll out focused interventions with this population. We also plan to provide enhanced services to the victims of violent crime through partnerships located inside of our new police building. We hope this effort will turn the trend in violent crimes with a focus of building strong community partnerships while suppressing violent crime.

**OIR Implementation Plan (IP)**

As the Council is aware, staff presented to Council on June 16th the draft plan to implement OIR’s 45 Recommendations. The IP includes a priority system (1A, 1B, 2 and 3) along with key steps, a rough timeline estimate, the person(s) responsible and other comments. Staff identified which recommendations can be implemented within current resources and those that require an infusion of more funds.

At the June meeting, Council directed that staff make the IP available to the public and community groups and solicit their input over a 60-day period. The Council also recently directed staff to proceed with the implementation of an Interim Police Auditor, as well as a number of study sessions in partnership with Common Ground, to explore police oversight models.

**Community Input on the IP**

The community input process was successful in that over 1,000 comments were received via Open City Hall, emails and combined social media comments.

A summary of the feedback was tracked and independently summarized by Tripepi Smith, a third-party
vendor, and can be found below.

1. Police Accountability and Independent Oversight

This topic area received the most feedback representing a desire for greater police accountability and support for more civilian oversight.

Example of comments:
“The STARTING point for change should be external investigations of all police involved in past uses of excessive force and the firing of all the police who have killed our fellow community members.”

Implementation Plan Relevance:

Recommendation 45 (create independent oversight model) has been moved up to the top, i.e., Priority 1A. As per Council direction, the City Manager’s Office is hiring an interim and independent Police Auditor accountable to the City Council. A contract will come before the Council on December 17. In early 2021, staff and the Council will convene workshops, in partnership with a local community group, Common Ground, to discuss a more permanent model along with the role of citizens in oversight.

VPD leadership has improved oversight of officer performance via more rigorous administrative reviews and other measures. On one critical incident (an officer involved shooting and death) the department contracted outside for the administrative review. The department has established a Use of Force (UOF) Dashboard to begin tracking UOF activities and trends as per OIR Recommendation 29 (compiling and periodically reporting of complaints, the number of UOF, etc.). The department is currently rolling out new UOF policies as developed by Lexipol, an independent service used by the majority of California police agencies, that tracks changes in state law and best practices.

2. Greater Focus on Community

This topic area included feedback on supporting community policing, including substations, increased walk/bike patrols, etc.

Example of comments:
“Trust needs to be restored which requires VPD getting to know its residents. March with us, join us at worship services, join us at the library, walk with us along the waterfront, talk to people and just ask how their day is going, get to know us so we are personalized and not statistics.”

Implementation Plan Relevance:

This is directly tied to OIR IP Recommendations 7 and 8. It includes implementing a robust community policing model that is encouraged within the 21 Century Policing Model; however, it requires a large infusion of additional resources. The IP highlights this fact. Nonetheless, modest parts of Recommendations 7 and 8 (creation of neighborhood beats) is in the process of being implemented with a new deployment plan. Recommendation 40 (enhance usefulness of VPD website) has recently been completed.

3. Address Departmental Culture (including VPOA)
This topic area included various comments around improving VPOA culture and VPOA communication via social media, and some calling for it to be disbanded.

Example of comments:
“Can we reform if the Mayor and Council continue to do the bidding of VPOA?”

Implementation Plan Relevance:

A 46th Recommendation has been added to the Implementation Plan—Articulate and Reinforce a VPD Organizational Culture Supporting 21st Century Policing (see attached ). The Police Chief has been working with VPD staff and the Chief’s Advisory Board to develop and finalize a revised Mission, Vision and Values.

Additionally, a new Standards of Conduct is in process using the International Association of Chiefs of Police’s best practices. These will be submitted to the State Department of Justice (DOJ) and ultimately the Chief will work with VPOA on these initiatives.

Since the comments were about VPD and POA’s commentary on social media, the Chief has reached out to the POA Board as an attempt to improve collaboration and relationships.

4. Police Staffing and Hiring

This topic area included community members’ support for more staff, more diverse staff and local Vallejo residents as officers.

Example of comments:
“We need more law enforcement and enforcement of city code issues not less.” “I believe our police force should reflect the diversity of our city. That requires intentionality in hiring.”

Implementation Plan Relevance:

Recommendation 5 (improving diversity in its recruitment efforts) was moved up to Priority 1a and has been implemented with outside assistance. The two most recent candidate pools reflect the most diversity ever recorded at the VPD. VPD will also be moving up the timeline for mentoring and training for under-represented officers. VPD has received a federal grant to add 8 staff and is aggressively recruiting to fill vacancies. Depending upon the City’s fiscal position, VPD may be forced to keep some positions vacant to fund other reform initiatives.

5. Less Focus on New Headquarters

This topic area included feedback on reducing the emphasis of a new VPD headquarters and possibly redirect funds to other purposes.

Example of comments:
“Build a new police headquarters? Absolutely not. Not while elementary schools are shuttered.”
Implementation Plan Relevance:

No change suggested in the Plan at this time given the OIR Recommendation 1 encouraged perseverance in completing this project with a focus on citizen accessibility and engagement. To that end, staff convened a meeting with project management to review plans vis-à-vis this recommendation. Staff also plans to examine reinvestment alternatives such as alternative responses to mental health crises.

Summary of OIR IP Progress, Next Steps and other Comments

Even though some of the following was included in response to the citizen input above, this section of this report is a holistic summary of progress in the OIR IP, VPD’s guide for what many refer to as Police Reform.

While valiant efforts were made by various City staff and other resources, the VPD is greatly hampered by its modest and well-documented inadequate funding level. It is critical that the City fill the two requested Deputy Police Chiefs as soon as possible to speed efforts in reform and changing the VPD culture. As an example of the need for these positions, with outside help it was discovered that the department had not rolled out new policies rewritten by third-party expert Lexipol, which is charged with ensuring policies and practices reflect best practices and changes in state law. It is critical that VPD get caught up and trained before new state law goes into effect on January 1. And to effectuate changes in policies and practices, the department needs additional resources to enhance training (including officer overtime) in new practices, enhancing collaboration with the State DOJ, improve administration of the new Body Worn Camera policy and fiscal management capacity.

Summary of Progress to Date and Next Steps

In order to manage the length of this report, the Chief has highlighted all Priority 1A Recommendations, which are in the most sensitive area, i.e., use-of-force (UOF) review and accountability. For the balance of the priorities, staff has highlighted Recommendations where progress has been made or activities are planned in the near future.

Priority 1A OIR Recommendations

• Recommendations 9-11 (Implement a graduated program of officer accountability through the use of body worn cameras--BWCs)

The department is building on the Chief’s requirement that BWCs be turned on and have drafted a new Policy (423) that emphasizes the need for supervisory review of video recordings to evaluate policy compliance, employee performance, training needs and exemplary performance. Also, the requirement was added that the relevant command staff also audit recordings.

Consistent with the collaborative agreement with the California Department of Justice (DOJ), we have submitted the revised policy to DOJ for their comment. Staff will then share and discuss it with VPOA.

• Recommendations 12-13 (after officer involved shootings (OIS)--include an interview prior to end of shift and a “pure statement” before reviewing videos)
While the proposed practices are being followed now, the department needs policies adopted that memorialize and sustain these practices. The draft revised Policy 423 includes that officers should give a statement before reviewing videos (see above comment on next steps). This, along with interviewing before the shift ends will be coordinated with the new Countywide Protocols on OIS events, the new BWC policy and an updated UOF policy—due to be completed very soon.

• Recommendations 14-20 (expand and improve the administrative reviews of critical incidents to provide a timely review of policy and legal compliance, overall performance and training needs.

Currently being revised are a number of policies that involve the Critical Incident Review Board (CIRB) and related administrative reviews commonly referred to as internal affairs. Being added is the importance of timeliness and expanding the breadth of review to go beyond just legal and policy compliance including overall performance and training needs. Unlike the past, written reports will be required. This should be ready for DOJ submittal in a week.

• Recommendations 22-27 (enhancing and regularly reviewing use-of-force (UOF) activities for conformance with law, policy and good performance)

The body worn camera policy (423) referred to above has been rewritten to extensively use this technology in the review of all UOF. The UOF policy has been re-written by Lexipol and the department is rolling it out along with the necessary training.

Supervisors are regularly reviewing all UOF incidents and reporting on them into the new Blue Team software system. The department is tracking all UOF. A policy revision is in process to memorialize this practice.

• Recommendations 34-38 (information sharing protocols after OIS and timely release of video recordings)

An outside vendor has been engaged to assist the department in timely release of videos. We have implemented the new approach with one critical incident. The department needs to develop a policy to expand efforts consistent with the breadth of the Recommendations.

Priority 1B Recommendations

• Recommendation 1 (persevere in efforts to complete new VPD headquarters with emphasis on community access and engagement)

VPD has convened the project managers, the design architects and the Chief’s Advisory Committee and reviewed and commented on internal design to effectuate this recommendation. The department is also pursuing a safe space to interact with domestic violence and abuse victims.

• Recommendation 3 (ensuring proper maintenance and auditing of evidence management)

An independent audit of evidence management and storage, which recommended additional staffing to enhance internal controls and management, has been completed. A budget request has been made but competes with other priorities and the constrained City budget.
• Recommendation 5 (adding diversity in recruitment efforts and the work force)

With outside help, completed two waves of recruitments. The results were an unprecedented level of diversity. Staff is hopeful that candidate selections pass the rigorous background check process, the academy and field training processes.

• Recommendation 21 (clarify the role of legal counsel vis-à-vis rigorous review of officer performance and remedial measures)

This is an understated but largely impactful issue that has been addressed. VPD, the City Manager’s Office and the City Attorney have reached agreement on everyone’s respective role in police management and reform.

Priority 2 Recommendations
• Recommendations 7-8 (improving citizen engagement, community policing and assigning officers to beats)

As mentioned in the IP, a community policing and problem-solving deployment strategy will require a substantial infusion of new resources and staffing to the VPD. However, the department is on course to test a modest new deployment strategy of City beats. The Chief is in the process of soliciting officer bidding on this new deployment plan.

• Recommendation 29 (produce and publish administrative reviews, complaints and uses of force activity)

This has been partially implemented with the inclusion of UOF data on the VPD website. It has an interactive Police Force Analysis System dashboard which tracks various aspects of UOF activities including location, tactics, etc. This is a work in process and is being populating with more useful data and ultimately with complaints, administrative review activity, etc.

• Recommendation 45 (create independent oversight)

This was moved up to Priority 1A. City staff has presented a work plan to effectuate this Recommendation. An interim Police Auditor has been identified and a contract will be submitted to Council in December. The City Manager will facilitate Council workshops to review and decide on a permanent model of oversight. Due to the start-up time requirements, an interim auditor was approved to produce independent oversight ASAP.

Priority 3 Recommendations

• Recommendation 39 (consider less contentious ways of dealing with critics)

This has been addressed and implemented with the Chief’s first outreach and apology to a citizen that was the recipient of inappropriate behavior from an officer. The previously mentioned efforts to change the VPD culture and the proposed new Standards of Conduct will help effectuate this Recommendation.

This will be the benchmark for the future.
• Recommendation 40 (Enhance clarity and accessibility of VPD’s website)

This has been completed with a wholesale recrafting of our website.

• Recommendation 41-44 (engage the community on hiring and promotional decisions, overall VPD performance, when considering major policy changes, etc.

The community is now involved in the selection process for new hires. The department has expanded our outreach in the community in various ways e.g. “Faith in Blue”, citizen comments via our website, the community input process summarized above, presence at the MLK parade, virtual town hall meetings, etc.

Resource Constraints

As mentioned in the OIR Implementation Plan, future success in implementing all these Recommendations is heavily resource dependent in many areas. Priority 1A Recommendations, for the most part, can be implemented within current resources, but will require adequate project management capacity. If one reviews the OIR IP document, each Recommendation has identified a position responsible for its accomplishment. And in almost every case, there is listed a member of the command staff as the person responsible. This can only be addressed by filling and approving two Deputy Chief positions and extra contract resources.

With respect to the OIR Recommendations involving enhanced review and assessment of all uses of force, the department is set for improvement in this area with policy changes and the addition of one position to administer the body worn camera video policy. However, given the modest supervisory staffing levels, it can be more robust with more staffing in that area.

OIR’s Recommendation 2 which encourages creation of civilian positions to assist in making officers and the department more effective in the community is largely restricted by the current budget.

OIR’s Recommendations 7 and 8 (community policing and problem solving) which will make huge strides in building the relationships between VPD and the community is the most resource constrained of all the Recommendations. The department cannot make huge gains in community policing without substantial new resources.

**FISCAL IMPACT**

N/A - this item is an informational update for the City Council.

**ENVIRONMENTAL REVIEW**

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

**ATTACHMENTS**

1. Mission, Vision, Values
CONTACT
Shawny Williams, Police Chief
shawny.williams@cityofvallejo.net
Vallejo Police Department
Mission, Vision, Values

**Mission Statement**
The mission of the Vallejo Police Department is to serve the community of Vallejo through fair and impartial policing by reducing crime and the fear of crime while building strong community partnerships for a safer Vallejo.

**Vision Statement**
The vision of the Vallejo Police Department is to deliver exceptional police service to the community of Vallejo. As protectors and champions of the Constitution, we will safeguard the sanctity and dignity of human life by partnering with the community to create and sustain safe places for people to live, work, and play.

**Core Values**

**Empathy:** We demonstrate sensitivity and compassion for others. We cultivate and practice harm reduction in the policing of our community.

**Collaboration:** We dedicate ourselves to working with our stakeholders to find solutions to emerging community and organizational challenges while investing in our youth.

**Diversity and Inclusion:** We embrace the uniqueness of all members of our community and our organization. We recognize, value and leverage diversity to create a work environment where all employees feel welcomed and empowered to contribute to their full potential.

**Safety:** We commit to providing a safe environment through which all can enjoy a high quality of life.

**Respect:** We respect all members of our community and organization. We create an environment that encourages teamwork, innovation, and excellence.

**Integrity:** We pledge to uphold our position of trust by maintaining the highest ethical standards and adhering to the Law Enforcement Code of Ethics.

**Service:** We commit to reducing the levels of crime, fear and disorder through an evidence-based and data-driven approach that is fair, courteous, responsive, efficient and effective.

**Humility:** We recognize our positions in the larger community as servant leaders. We do not consider ourselves more highly than we ought to; but rather, we seek continuous improvement in the service we provide to our community.

**Wellness:** We will care for our staff so they can care for those we serve.

**Courage:** Courage is not the absence of fear but the assessment that something else is more important. We are willing to risk our lives, if necessary, in order to safeguard our society. We commit to moral courage, adhering to a higher standard of personal conduct to lead by example with integrity and to seek truth, compassion and justice despite the cost.
DATE: November 17, 2020
TO: Mayor and Members of the City Council
FROM: Greg Nyhoff, City Manager
SUBJECT: APPROVAL OF PUBLIC SAFETY EMERGENCY ORDERS AND EXTENSION OF PUBLIC SAFETY EMERGENCY

RECOMMENDATION
Adopt the two proposed emergency orders and two resolutions authorizing the City Manager to take the following actions:

- Allocate an unrepresented Deputy Chief position and retitle the existing Assistant Chief position to Deputy Chief, resulting in two Deputy Chiefs.
- Addition of two analyst positions to support the legally required review and maintenance of body camera footage, implementation of the OIR recommendations, and provision of information to the Department of Justice as part of the collaborative agreement.
- Implement 23 Lexipol policy updates for the Vallejo Police Department, many of which are required by state law.
- Allocation of $195,000 for necessary professional services to conduct Internal Affairs investigations, accomplish a comprehensive update of Vallejo Police Department (VPD) policies and procedures consistent with best practices, and additional training for the police department.
- Extend the proclamation of emergency for another 60 days.

Or, in the alternative:

- Direct the City Manager to initiate a feasibility study on policing alternatives to take effect in FY2021-22.

Maintaining the status quo in the Vallejo Police Department is no longer an option. Without the requested resources, reform will not be possible, and the City’s fiscal liability will continue to grow and reach a point that will become unmanageable. The only viable alternative is to begin exploring policing alternatives for the community of Vallejo.

REASONS FOR RECOMMENDATION
As was presented at the October 6 City Council meeting, the City is facing a significant crisis on three fronts.

First, the Vallejo community is experiencing a serious increase in local crime. There have been 226 shootings and 24 homicides in the City since the beginning of the year – putting the City on pace to be the highest in
history for Vallejo. These homicides include an egregious incident in August 2020 where two individuals were murdered and their one-year-old infant shot, and an incident in June 2020 where shooters opened fire at a toddler’s birthday party, killing two and wounding three other people, including a 10-year-old child.

Second the Vallejo Police Department’s (VPD) legitimacy and trust within parts of the community are being challenged because of numerous officer-involved-shootings over many years, investigation of internal scandals such as use of a swastika symbol and officers engaging in “badge bending,” a perception that officers have not been held accountable for many years, and an unprecedented increase in the number of use-of-force lawsuits. VPD’s ability to manage and impact crime rates is related to the public’s willingness to assist the City in that effort. The crisis of legitimacy and trust makes it more difficult to control the crime which has created a public safety emergency endangering the lives and property of Vallejo residents and visitors.

Third, the City’s overall budget is expected to be taxed with outstanding claims and litigation against the City related to police actions. There are currently 24 federal civil rights cases pending against the City of Vallejo and 13 government tort claims arising from police conduct. In the current climate, the estimated total exposure for such claims are estimated to exceed $50 Million. This amount only covers known claims. If this unacceptable trend continues there will be future claims, thus increasing this amount. The City must take swift and decisive action to mitigate these costs to the extent possible or the General Fund budget will be significantly impacted.

The City Council, on October 6, 2020, when presented with this information, unanimously agreed to approve a Proclamation of Emergency, along with a Vallejo Police Reform Initiative. These actions allow the City Manager to take necessary emergency actions to mitigate the crisis.

While the proposed actions could be taken by the City Manager and then ratified after the fact by the City Council, in the interest of full transparency, staff is recommending the City Council approve the proposed emergency orders. We need to fill a number of critical staffing additions that will be focused on implementing necessary reforms in the department. Additionally, there is a critical need for additional funding for professional services, including: contracting outside the department for internal affairs investigations, policy updates and project management; and, training to convert immediate reform efforts in the department into daily actions by our officers. The Chief’s OIR Implementation Plan regularly mentions the need for more resources to effectuate many of the recommendations from that report.

Finally, at the October 6 City Council meeting, there were a number of proposed additions to the Vallejo Police Reform Initiative resolution, and the City Manager was directed to receive any additional suggestions from Council and then report back. Upon review of proposed additions, the City Manager’s comments are attached to this staff report.

BACKGROUND AND DISCUSSION

On October 6, 2020, the City Council unanimously voted to approve a Proclamation of Emergency due to a growing crisis on three fronts. Specifically, an extreme increase in crime, growing concerns regarding the police department’s ability to implement necessary reforms, and rising fiscal liability as it relates to numerous civil rights claims against the City, swift and pointed actions to mitigate the impacts of the crisis is necessary.
Additionally, the Council adopted a resolution outlining the Vallejo Police Reform Initiative, which consists of a number of necessary actions to transform the department (see attached).

As presented at the October 6 City Council meeting, the City has 24 civil rights claims that are anticipated to expose the City to approximately $50 million in total exposure. With each week that goes by without the needed reforms, staffing and oversight required in the department, those costs will continue to rise. This unacceptable trend will continue and will generate more claims and increase the liabilities on current ones. For example, the City’s former excess insurance provider recently settled an officer-involved-shooting (OIS) federal lawsuit for $5.7 million and there are other OIS claims in litigation at the present time that create additional risk to the City. It does not help to have newspaper coverage around other events such as “badge bending”, swastika symbol sharing, etc. Concurrently, there is a “hardening” insurance market that is making it more difficult and more expensive to acquire insurance coverage for public agencies with police departments. Insurance providers are substantially increasing premiums and deductibles. This latter change transfers financial risk back to the City. Continued negative claim trends have already forced the City to seek new excess insurance coverage and the City cannot afford additional cost increases during this unprecedented pandemic-caused recession.

All of this occurring in the context of a community that has lost patience with city hall and demands real and significant change immediately – to the point where members of the City administration have been the recipients of threats and intimidation. Additionally, the City continues to receive record high numbers of public records requests (i.e., over 850 requests in 2020), approximately a third of which are directly related to the police department. The City, by law, must respond to these often complex and involved requests in a timely manner. Needless to say, this atmosphere makes taking the needed steps to make substantive change challenging at best.

The State Department of Justice (DOJ) is conducting a thorough review of VPD practices that requires a huge retrieval of departmental records and a timely interface with their staff and consultants. They too are expecting a timely execution of reforms. This is an additional demand on the department.

Plan for Vallejo Police Department Transformation

As captured in the actions described in the Vallejo Police Reform Initiative, the six-point plan for the transformation of Vallejo Police Department is focused on the following necessary steps:

- Take immediate steps to address significant crime rate increases (e.g., Operation PEACE, assistance from state and federal law enforcement agencies, etc.).
- Focus resources on updating policies and practices in the Police Department in order to facilitate reform (e.g., revisions to body worn camera, use of force, countywide officer involved shooting protocol, internal affairs investigation policies).
- Immediately assign internal affairs investigations to an outside investigator until such time that the internal division is equipped to effectively handle them.
- Stay pointed on transforming the culture in the Vallejo Police Department through improving recruitment practices, updating Mission, Vision, and Values statements of the department, updating Standards of Conduct, etc.
• Work to mitigate risk related costs through close monitoring and management of current claims against the City.
• Add needed management and administrative positions to the department to actively support reform efforts.
• Implement intensive training programs, such as de-escalation training, for Vallejo police officers.

While the department’s needs are many, the City Manager and Police Chief have identified the “must have” resources necessary in order to effectively initiate the first phase of transformation of the Vallejo Police Department. Quite frankly, there were other VPD augmentation requests that are justified during normal times, our finances are precarious. These recommended needs are summarized below.

As has been presented several times now to the Council, the Chief does not have any command staff that are not represented by VPOA, except the recently added Assistant Chief. Further, only one of three Captains is currently working, as the other two Captains are out on leave. The Assistant Chief position is currently vacant. The City Manager and Police Chief are recommending that the one Assistant Chief position be retitled to Deputy Chief, and that another Deputy Chief position be added to the department. Both positions would be unrepresented. One Deputy Chief would be assigned to oversight of operations, while the other would be dedicated to implementation of reform efforts, including oversight of Internal Affairs investigations, recruitment, and professional standards.

In addition to the Deputy Chiefs, the department has an immediate need for analyst level support. Per state law, the police department needs to have a neutral position that monitors and reviews body camera footage. Additionally, as part of the City’s collaborative agreement with the California State Department of Justice (DOJ), there are significant information demands from DOJ that need to be responded to in a timely manner. Additionally, the department has the need for an analyst level position to assist with fiscal management of the department budget. The department is inundated with public records requests, which often require extensive time and resources to compile, redact and respond to. The two proposed analyst positions will be critical for helping to ensure timely responses to these requests. (For example, see attached for a DOJ subpoena requesting an extensive list of documents and an extensive information request from VPOA.) To accommodate these needs, two non-sworn, analyst positions for the department are recommended.

To effectively support needed reform efforts, additional funding for professional services, including contracting for an outside investigator to conduct internal affairs investigations, and outside expertise and resources to provide policy updates consistent with best practices. For example, it was recently discovered that 23 Lexipol policy updates were overdue to be implemented in the VPD, many of which are critical and several are required by state law. This is directly tied to the dearth of command staff in the department. Implementation of these updates are included as part of the proposed emergency order (see attached summary of Lexipol policies). Finally, additional funding for necessary training for police officers is being requested, including training on de-escalation, trauma informed care, and cultural diversity policing.

Alternatively, if the Council is not supportive of the necessary funding for the proposed staffing and reform efforts, staff is then strongly recommending that the Council direct the City Manager to begin looking at the feasibility and costing of policing alternatives should transformation efforts not be achievable due to lack of necessary resources. The police department is not sustainable with the current command structure, and
efforts toward reform will be unsuccessful without the requested resources. This inaction will convert to real threats to the City’s financial wherewithal.

FISCAL IMPACT
The cost of the proposed additional positions is $1.12M per year and is estimated at $560,000 for remainder of this fiscal year. The necessary funds for professional services costs and training for the remainder of this fiscal year is estimated at approximately $195,000.

These additional costs for this fiscal year will be covered through a combination of approximately $330,000 the Police Department Fund 151/SLESF Funds and $300,000 from an anticipated increase in property tax revenues, as well as via 10% decreases in the professional services and training budgets across City departments of approximately $125,000. It should be noted that this latter decrease to departmental budgets will come with a notable impact to all City departments’ professional services and training plans, particularly given $400k was already cut when the budget was adopted.

Given that Measure G did not pass, which included plans to fund up to $7M in various reform efforts, any additional measures that are needed for police reform efforts in this fiscal year will need to come from General Fund reserves or from forced vacancy savings in the VPD. Needless to say, this latter option runs counter to this entire issue and the Chief’s reform plans.

It must be emphasized that these requests are the minimum necessary to make changes. There is still concern that this will not be enough, and additional investments may be necessary as we get further into the reform effort. Reform is not possible without an investment. If the City continues doing the same thing and expecting a different result, the City will continue to pay the price of increasingly costly claims and lack of community trust in the department. The City must invest in the department, as this sort of significant cultural change takes concerted effort and resources. If the Council and community are not willing to make this investment to achieve meaningful change, the only alternative is to be realistic that change will not occur. In which case, the City should explore alternate paths to providing police services.

ENVIRONMENTAL REVIEW
This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

ATTACHMENTS
1. Proclamation of Local Public Safety Emergency_100620
2. 20-121 Police Reform Initiative
3. Vallejo Subpoena.Set 1
4. 201030 KNS to House re VPOA CPRA MMBA Request
5. Vallejo PD Lexipol Updates Pending
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<th>Attachment 1 - Responses to Council Members</th>
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<td>Public Safety Emergency Reaffirmation Reso dy CAO Stamp</td>
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<td>Reso Amending Salary Plan_Add Existing Classification CAO Stamp</td>
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**CONTACT**
Anne Cardwell, Assistant City Manager (707) 648-4579  
anne.cardwell@cityofvallejo.net
CITY OF VALLEJO PROCLAMATION OF A LOCAL PUBLIC SAFETY EMERGENCY BY THE VALLEJO CITY COUNCIL

WHEREAS, the City of Vallejo now faces a serious increase in local crime and a challenge to the Vallejo Police Department's (VPD) legitimacy and trust within parts of the community because of numerous officer-involved-shootings, investigation of internal scandals such as badge bending, a perception that officers are not held accountable, and an unprecedented increase in the number of use-of-force lawsuits; and

WHEREAS, many VPD employees serve Vallejo residents with a high degree of professionalism and rise to the occasion during challenging times; thus, creating a high degree of respect and pride for this group from all parts of City leadership; and

WHEREAS, what VPD has historically done in not holding officers accountable for inappropriate behavior and performance creates an outsized impact on the image of the department and the majority that are providing great services to Vallejo residents; and

WHEREAS, VPD's ability to manage and impact crime rates is related to the public's willingness to assist the City in that effort; thus the crisis of legitimacy and trust makes it more difficult to control the crime which has created a public safety emergency endangering the lives and property of Vallejo residents and visitors; and

WHEREAS, there have been 358 shootings and 22 homicides in the City since the beginning of the year – putting the City on pace to be the highest in history. These homicides include an egregious incident in August 2020 where two individuals were murdered and their one-year-old infant shot, and an incident in June 2020 where shooters opened fire at a toddler’s birthday party, killing two and wounding three other people, including a 10-year-old child; and

WHEREAS, homicides in the City have doubled and rapes and shootings have increased approximately 40% compared to the same time last year; and

WHEREAS, violent crime within the City has been disproportionately perpetuated against African-American and Latino citizens and visitors; and

WHEREAS, over the past decade, there have been a high number of officer-involved-shootings and uses of force against Vallejo residents and visitors causing trauma, grief and fear among segments of our community; and

WHEREAS, the City’s overall budget is expected to be taxed with outstanding claims and litigation against the City related to police actions, as there are currently 24 federal civil rights cases pending against the City of Vallejo and 13 government tort claims arising from police conduct. The estimated total exposure for such claims may exceed $50 Million; and

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WHEREAS, the City’s excess insurance provider recently settled an officer-involved-shooting (OIS) federal lawsuit for $5.7 million and there are other OIS claims in litigation at the present time that create additional risk to the City. Concurrently, there is a “hardening” insurance market that is making it more difficult and more expensive to acquire insurance coverage for public agencies with police departments. Insurance providers are substantially increasing premiums and deductibles. This latter change transfers financial risk back to the City. Continued negative claim trends have already forced the City to seek new excess insurance coverage and the City cannot afford additional penalties or cost increases during this unprecedented pandemic-caused recession; and

WHEREAS, in the summer of 2019, the City of Vallejo commissioned the OIR Group to conduct an independent assessment of the VPD amidst a period of transition after the retirement of former Chief Bidou and search for a new police chief against a backdrop of incidents—including fatal officer-involved shootings—that had prompted public concern and demonstrations; and

WHEREAS, in September 2019, the City hired Police Chief Shawny Williams providing him with a mandate to implement the necessary changes as recommended in the OIR Report and implement 21st century policing policies; and

WHEREAS, Chief Williams has identified multiple issues within VPD that required change; and

WHEREAS, in May 2020, the OIR Group completed its assessment of VPD and issued a comprehensive report ("OIR Report"). The OIR Report was critical of the manner in which VPD was reviewing use-of-force incidents; investigating misconduct allegations; not disciplining officers; and a need for a change in organizational culture; and

WHEREAS, the OIR Report sets forth 45 recommendations intended to ensure that VPD engages in best practices and implements needed reforms, including recommendations that the Department: commit to strengthening its workforce by focusing on diversity in recruiting, find ways to provide promotional opportunities and mentoring for female officers and officers of color, emphasize de-escalation principles, and evaluate its internal investigations and levels of discipline to ensure proper remediation, among other recommendations; and

WHEREAS, in the wake of the nationally publicized killing of George Floyd by Minneapolis Police Officers in May 2020, widespread civil unrest, protests, riots, arson, and looting occurred in the City, suspects set fire to City Hall, and the City imposed a curfew order and requested assistance from the California Army National Guard to protect public safety; and

WHEREAS, the June 2020 officer-involved shooting of Sean Monterrosa sparked mass protests and an outpouring of public comments and criticisms, including calls to defund the police and fire the involved officers, demonstrating a need to repair the public trust; and

WHEREAS, in response to police shootings, reports of misuse of force, and related misconduct across the country, there has been a significant and persistent public outcry for police reform and accountability; and
WHEREAS, the Chief of VPD, City Manager, Mayor, and Council have publicly expressed their commitment to transforming the VPD, improving the level of legitimacy and trust, and ensuring VPD’s accountability and transparency to the public; and

WHEREAS, in June 2020, the California Department of Justice entered into a collaborative agreement with the City to conduct an ongoing review of VPD’s policies and practices and to make further recommendations in addition to the OIR recommendations in order to assist the City in reforming VPD and restoring public trust; and

WHEREAS, the President’s Task Force report on 21st Century Policing and best practices include the pillars of Building Trust and Legitimacy, Policy and Oversight, Community Policing and Crime Reduction and Officer Safety and Wellness, among others. It is this template that is supported by and guiding the work of Chief Williams. The previously mentioned OIR Group report developed a benchmark understanding of VPD and to guide future initiatives and priorities towards the 21st Century Policing model. If the VPD is to be successful in ameliorating the unacceptable levels of crime, it must implement the 45 OIR recommendations as well as additional recommendations by the California Department of Justice, furthering the pillars of 21st Century Policing; and

WHEREAS, Chief Williams has implemented portions of the OIR recommendations including reviewing internal affairs practices, a new body-worn camera policy, a focus on use-of-force practices, recruiting a more diverse officer pool and engagement of the community, but more must be done; and

WHEREAS, in addition to the OIR report, the California Department of Justice entered into a collaborative agreement with VPD and the City to assist VPD in reforms and in developing policies and practices consistent with 21st Century Policing concepts; and

WHEREAS, given high crime rates, the need to ensure the public safety, implement the OIR recommendations and California Department of Justice recommendations, and rebuild public trust, VPD’s current staffing and resources are insufficient; and

WHEREAS, the California Department of Justice will oversee implementation of not only the OIR recommendations but also any further California Department of Justice recommendations as well as overseeing future compliance; and

WHEREAS, VPD currently has 107 sworn officers which is insufficient to address the criminal activity in the City. This amounts to only .87 officers per 1,000 residents and a higher workload per officer than any other city in the Bay Area. According to the U.S. Department of Justice Bureau of Justice Statistics 2016 report of local police departments, local police departments serving populations between 100,000-249,999 employ an average of 1.7 officers per 1,000 residents. The Chief’s Exceptional Service Models call for 1.5 officers per 1,000 residents (i.e., a total of 183 officers); and
WHEREAS, VPD's command staff is functionally non-existent. There is a vacant Assistant Chief position, two out of the three captains are on medical leave and three out of nine lieutenants are either on medical leave or administrative leave; and

WHEREAS, while VPD has 18 officers going through training, it will be approximately 18 months before their field training is complete and they are able to serve without oversight; and

WHEREAS, as a consequence of the COVID-19 crisis, the City of Vallejo has diminished $3 Million of its $17 Million reserve funds; and

WHEREAS, there is a compelling governmental interest to immediately address the need for additional resources for the community as a result of high crime and the need to immediately reform departmental culture; and

WHEREAS, any increase in resources must be tied to real and quantifiable reform in VPD; and

WHEREAS, the citizens of Vallejo demand that talking about reform be changed to actively implementing reforms; and

WHEREAS, continuing business as usual at VPD is unacceptable to the City Council; and

WHEREAS, the City Council affirms its support for the Chief of Police, the City Manager and the City Attorney to take all necessary steps to support reform efforts in the VPD; and

WHEREAS, the City Council is resolved in its effort to meaningfully reform VPD and will zealously challenge all efforts intended to thwart those efforts; and

WHEREAS, the City Council applauds those officers who have stepped forward to embrace cultural change in the department and calls on those who have not to do so now; and

WHEREAS, failure by all to embrace and implement swift reforms will result in further deterioration of legitimacy and trust in VPD and a further increase in crime.

WHEREAS, the California Emergency Services Act, Chapter 7, commencing with Government Code section 8550 confers upon the governing bodies of California cities the emergency powers necessary to protect health and safety and preserve lives and property;

WHEREAS, Government Code section 8630 states that a Local Emergency may be proclaimed only by the governing body of a City or by an official designated by ordinance;

WHEREAS, City of Vallejo Municipal Code ("VMC") section 2.50.060 empowers the Director of Emergency Services to request the Council to proclaim the existence of a Local Emergency when Council is in session or to issue such proclamation himself subject to ratification by the City Council within seven (7) days;
WHEREAS, "emergency" is defined in VMC section 2.50.020 as the "actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this City...;"

WHEREAS, section 502 of the City’s Charter provides the City Manager with broad powers in the event of emergencies menacing life or property, including the power to marshal the forces of the different City departments and deputize or employ without reference to Civil Service all persons necessary for the purpose of protecting the City and its residents.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND PROCLAIMED that a Local Public Safety Emergency now exists and shall continue throughout this City until terminated by the Council.

IT IS FURTHER PROCLAIMED AND ORDERED that during the existence of said Local Emergency the powers, functions, and duties of the Director of Emergency Services and the emergency organization of the City shall be those prescribed by law, ordinance, and resolution, and by the City’s Emergency Operations Plan, as approved by the City Council.

DATED: October 6, 2020

[Signature]

BOB SAMPAYAN
MAYOR
RESOLUTION NO. 20-121 N.C.
ADOPTING THE VALLEJO POLICE REFORM INITIATIVE

WHEREAS, The City Council of the City of Vallejo has determined that, in concert with the Proclamation of a Local Public Safety Emergency, the City Manager and Police Chief are authorized and directed to take the following actions as soon as possible; and

WHEREAS, the City Council authorizes the City Manager to direct the Police Department and Human Resources to continue efforts to review and modify the recruitment process in order to improve diversity and caliber of the candidate pool; and

WHEREAS, the City Manager through the Chief of Police is authorized to hire necessary Command Staff in the Police Department utilizing the emergency powers granted by the Proclamation of a Public Safety Emergency. The officer and management work force should look like Vallejo; and

WHEREAS, the City Council authorizes the City Manager to direct the Police Department and Human Resources to continue efforts to review and modify the recruitment process in order to improve diversity and caliber of the candidate pool; and

WHEREAS, the City Manager through the Chief of Police is authorized to hire necessary Command Staff in the Police Department utilizing the emergency powers granted by the Proclamation of a Public Safety Emergency. The officer and management work force should look like Vallejo; and

WHEREAS, the City Council supports the Chief of Police’s efforts to implement a Police Department Redeployment Plan in order to increase community patrol resources; and

WHEREAS, the City Council directs the City Manager and the Chief of Police to review the Department’s workload, role and outcomes; report back to Council on recommendations to eliminate functions or roles that can be performed by non-sworn personnel, other public or private agencies or other City Departments; and

WHEREAS, the City Council directs the City Manager and Police Department to move forward with the multi-jurisdictional officer involved shooting protocol; and

WHEREAS, City staff is directed to increase administrative resources to improve the Police Department’s data collection for various projects; primarily to respond to the information requests from the California Department of Justice and Solano County Grand Jury, as well as the significant number of ongoing public records requests; and

WHEREAS, the City Council directs the City Manager to work with the League of California Cities and the City’s local and state legislators and return to the City Council with proposed legislative changes to local, state and federal law that would remove barriers to the City’s police reform efforts; and

WHEREAS, the City Council directs the City Manager and the Chief of Police to continue joint mutual aid activities with local, state and federal partners (California Highway Patrol, Bureau of Alcohol, Tobacco, and Firearms, Federal Bureau of Investigation Taskforce, US Marshall, US Attorney) and other agencies as needed; and

WHEREAS, the City Manager and the Chief of Police are directed to discuss ongoing cooperation and support from the Vallejo Police Officers Association (VPOA) for the City’s police reform efforts and report back to Council on its response; and
WHEREAS, the City Manager and the Chief of Police are directed to continue their current efforts to establish and implement a Predictive Enforcement and Community Engagement (P.E.A.C.E) Program with joint nonprofit organization involvement; and

WHEREAS, the Chief of Police is directed to increase trust and transparency related to City and Vallejo Police Department plans and activities, and return to Council with a report back on activities; and

WHEREAS, the City Manager is directed to provide updates during the City Manager’s report at each of the City Council’s regular meetings on the progress of the items in this resolution; and

WHEREAS, the City Manager and Police Chief are directed to report to the Council in open session: 1) a summary of the public’s reaction to the OIR Implementation Plan (IP); 2) an overview of the revised IP as a result of that input; and, 3) a status report of work accomplished to date and next steps to fully implement the 45 recommendations of the OIR Group; and

WHEREAS, the City Attorney is directed to place all threatened litigation and outstanding investigations related to Police Department personnel as a standing item on each closed session scheduled before a regular City Council meeting; and

WHEREAS, the City Council directs the City Manager to return to Council with options for independent oversight and review along with a role for citizens and, given the time required to analyze, discuss, codify and implement such a model, staff should immediately establish a contracted and independent Interim Police Auditor; and

WHEREAS, the City Manager and Chief of Police are directed to return to Council with additional requested actions to ensure that the VPD becomes a model police agency focused on serving the City of Vallejo and its residents by keeping our community safe.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vallejo hereby adopts this Vallejo Police Reform Initiative.
Adopted by the City Council of the City of Vallejo at a special meeting held on October 6, 2020 with the following vote:

AYES: Mayor Sampayan, Vice Mayor Sunga, Councilmembers Brown, Dew, McConnell, Miessner and Verder-Aliga

NOES: None

ABSENT: None

ABSTAIN: None

BOB SAMPAYAN, MAYOR

DAWN G. ABRAHAMSON, CITY CLERK
BEFORE THE DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

In the Matter of the Investigation of:
The Vallejo Police Department

INVESTIGATIVE SUBPOENA
(Set No. 1)
(Gov. Code, § 11180 et seq.)

NOTICE TO THE PERSON SERVED:
You are hereby served on behalf of the City of Vallejo’s Police Department pursuant to California Code of Civil Procedure section 416.50, and California Government Code section 11184, subdivision (a).

Pursuant to the powers conferred by article 2 of chapter 2, division 3, of title 2 of the California Government Code (Gov. Code, § 11180 et seq.), on the Attorney General, as head of the Department of Justice of the State of California, which powers and authority to conduct the above-entitled investigation have been delegated to the undersigned, the Vallejo Police Department is hereby commanded to, within 45 days, produce those documents, books, records, papers, and other items (collectively “Items”) described in Attachment A to this investigative

Investigative Subpoena Issued to the City of Vallejo Police Department (Set No. 1)
subpoena, that are in the Vallejo Police Department's custody, possession, or control, or the
custody, possession or control of the Vallejo Police Department's subsidiaries, affiliates,
predecessors, successors, employees, partners, officers, agents of representatives. The Items shall
be produced to the California Department of Justice, Office of the Attorney General, 1515 Clay
Street, Oakland, California 94612, Attention: Deputy Attorney General Joshua Piovia-Scott.

INSTRUCTIONS FOR COMPLIANCE

1. The Items shall be accompanied by a completed declaration of custodian of records in
compliance with Evidence Code sections 1560, 1561, 1562, and 1271.

2. The Relevant Period of this subpoena is January 1, 2015 through the final response date
of this subpoena unless otherwise expressly stated herein. Requests asking for Items “since
2015” require the production of all responsive Items since January 1, 2015. All responsive Items
created, maintained or altered during the Relevant Period must be produced unless otherwise
expressly stated in Attachment A to this subpoena.

3. If the City of Vallejo and/or the Vallejo Police Department claims that an Item or a
portion of an Item is privileged and withholds it from production for that reason, the City of
Vallejo Police Department must create and submit a privilege log that lists: (1) the author(s) and
their capacities; (2) the recipients (including cc’s and bcc’s) and their capacities; (3) other
individuals with access to the document and their capacities; (4) the type of document; (5) the
subject matter of the document; (6) the purpose(s) for the creation of the document; (7) the date
on the document; and (8) a detailed explanation setting forth the factual and legal basis for the
claim that the document is privileged or otherwise immune from production.

4. All items are to be produced in an electronic format.

Please contact the officer issuing this subpoena to discuss the manner and format in which the
Items are to be produced so as to facilitate the production of full and complete copies in a usable
format. In the absence of an agreement regarding the manner and format of production, the
following instructions shall apply:

   a. The information shall be provided in its original native file format. If that is not
      possible, the information shall be provided in a load file.

Investigative Subpoena Issued to the City of Vallejo Police Department (Set No. 1)
b. The information shall be provided via SFTP if possible. If that is not possible, it may be provided on an external hard drive.

c. The response shall include all documents and computer programs necessary to the accurate conversion, analysis, and review of the electronic data, including but not limited to operating instructions, manuals and user guides, keys, legends, and codes for systems, programs, files, and data fields.

5. Documents provided should be complete and, unless privileged, unredacted and submitted as found in the City of Vallejo Police Department's files.

6. No Item requested herein shall be destroyed or discarded until the Attorney General has made a written determination that the Item in question is not necessary for the purposes of this investigation.

7. When producing Items, identify by number the request(s) on Attachment A to which the Item is responsive.

8. This subpoena has been issued in connection with an investigation and/or proceeding within the scope of California Penal Code sections 131 and 832.7.

DEFINITIONS

For the purposes of this investigative subpoena, the terms set forth below are defined as follows:

1. "CITY" means the political subdivisions known as the City of Vallejo, its officials (elected or otherwise), managers, supervisors, employees, representatives, agents, and any other persons or entities purporting to act on its behalf.

2. "VPD" mean the City of Vallejo Police Department, including its Chief, managers and supervisors, sworn personnel, rank and file employees, representatives, agents, and any other persons or entities purporting to act on its behalf.

3. "COMMUNICATION" or "COMMUNICATIONS" means every disclosure, transfer, exchange or transmission of information, whether oral, written, or electronic, including email, text message, instant message, posting on a message board, or any other form of transmission,
whether face-to-face, by telecommunications, computer, mail, telex, facsimile (fax) machine, or otherwise, including attachments.

4. “DOCUMENT” or “DOCUMENTS” means the original and all non-identical copies and drafts, regardless of origin or location, of any information, writing or data stored in paper, electronic, tape or any other format, including without limitation written or printed matter, video or audiotapes, image-bearing film, photographs and images, and electronically stored information. It further includes without limitation all COMMUNICATIONS (as defined above), letters, telegrams, telexes, facsimiles, correspondence, memoranda, email, text messages, video, voicemail, reports, contracts, studies, calendar entries, minutes, pamphlets, handwritten notes, charts, tabulations, records of meetings, conferences, digital or electronic messages or communications, telephone or other conversations or communications, and tapes or slides, as well as computer files, directories, and programs in whatever form.

5. “TRAINING MATERIALS” means all DOCUMENTS relating to training, including but not limited to lesson plans, PowerPoints or other presentation formats, handouts, supplemental materials, videos, exams, training evaluations and/or summaries, training announcements and training rosters.

6. “RELATING TO” means constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

FAILURE TO COMPLY WITH THIS SUBPOENA WILL SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.

Dated: May 13, 2020

XAVIER BECERRA
Attorney General of California
NANCY A. BENINATI
Supervising Deputy Attorney General
JOSHUA PIOVIA-SCOTT
Deputy Attorney General

MICHAE L L. NEWMAN
Senior Assistant Attorney General

Attorneys for Xavier Becerra
Attorney General of the State of California

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Vallejo Subpoena1.final.docx
ATTACHMENT “A” TO THE INVESTIGATIVE SUBPOENA

The items requested are as follows:

REQUEST NO. 1:

A current organizational chart of the VPD that includes job titles and the names of the people in each position, and an organizational chart containing this information as of January 1 of each year since 2015.

REQUEST NO. 2:

A current VPD roster, including name, race, age, ethnicity, gender, foreign language, date of hire, unit/precinct of assignment, and date of current appointment.

REQUEST NO. 3:

The number of budgeted staff in the VPD (broken down by sworn and civilian) versus allocated staff; and the number of vacancies and their associated titles by unit/precinct.

REQUEST NO. 4:

Job descriptions for all positions with the VPD.

REQUEST NO. 5:

A map of the City of Vallejo with overlays of VPD's patrol districts, divisions, precincts and/or beats.

REQUEST NO. 6:

The current contract with the Vallejo Peace Officers' Association (VPOA).

REQUEST NO. 7:


REQUEST NO. 8:

All policies, procedures, protocols, special orders and/or manuals since 2015 RELATING TO the following topics:

a. Use of force;

b. Review of officer uses of force, including use-of-force investigations, officer-involved-shooting investigations and a use-of-force review board;
c. Weapons, including firearms and less-lethal weapons (including Taser/Electronic Control Device);
d. K9;
e. De-escalation;
f. Crisis intervention;
g. Critical incident response;
h. Practices and oversight;
i. Code of conduct;
j. Citizen and/or public complaints or inquiries;
k. Grievances;
l. Performance appraisals, discipline, remediation and Performance Enhancement Program (PEP) processes;
m. Criminal, internal and/or administrative investigations, including Internal Affairs processes and investigations;
n. Interaction and information sharing with the public;
o. Community policing and/or community engagement;
p. Searches;
q. Vehicle or foot pursuits;
r. Procedural justice and/or bias free policing;
s. Courtesy and demeanor;
t. Crime investigation;
u. Patrol operations;
v. Comp stat;
w. Any early intervention system/early warning system used by the VPD.

REQUEST NO. 9:

All current TRAINING MATERIALS for recruits, In-Service and specialized positions RELATING TO the categories listed in Request No. 8 as well as the following categories:

a. Community policing and problem solving;
b. Fair and impartial policing;
c. PIO and Media relations, including guidelines for information dissemination;
d. Field training officers and field training for recruits; and
e. Supervisory, leadership and/or management development.

REQUEST NO. 10:

Census data for the CITY for the most recent year available at the census, tract, block

group, and census block level if available, as well as a map, that includes the following
information:

a. Total population;
b. Population by race/ethnicity;
c. Socio-economic indicators – unemployment rate, median income, mobility.

REQUEST NO. 11:

A copy of the operative complaint, any dispositions or orders of the court and any
settlement agreements or consent decrees from any lawsuits filed, defended and/or settled since
2015 related to officer use of force, including excessive force, racial profiling, false arrest, and
any deaths in custody.

REQUEST NO. 12:

Blank copies of any report form sets and/or RMS screen shots applicable to the following:

a. Citizen complaint initiation, update and closing information;
b. Internal investigation forms;
c. Use of force forms;
d. Field interview card;
e. Arrest report and supplemental reports;
f. Officer’s daily log;
g. Supervisory logs;
h. Performance evaluation forms for all sworn ranks; and
i. Any other formal reporting mechanism that addresses the focus areas of the
collaborative review.
REQUEST NO. 13:

A roster of call codes and protocols related to how calls for service are categorized by the VPD (e.g., priority).
DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name:  In the Matter of the Investigation of: The Vallejo Police Department

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 13, 2020, I served the attached INVESTIGATIVE SUBPOENA by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Randy J. Risner  
Vallejo City Attorney  
City Attorney’s Office  
555 Santa Clara Street, Third Floor  
Vallejo, CA 94590

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 13, 2020, at Oakland, California.

Leticia Martinez-Carter  
Declarant  

Signature
Via Electronic & U.S. Mail

Wendy House
Counsel for the City of Vallejo
Devaney, Pate, Morris & Cameron, LLP
402 W. Broadway, Suite 1300
San Diego, CA 92101
whouse@dpmclaw.com

Re: Renewed Request for Information and Public Records

Dear Ms. House:

This is a renewed request for information and documents on behalf of the Vallejo Police Officers’ Association (“VPOA”) and is made pursuant to the Meyers-Milias-Brown Act (“MMBA”), Article I, section 3(b) of the California Constitution1 and the California Public Records Act (“CPRA”) (Gov. Code §§3500 et seq.; §§6250 et seq.). The request for information and documents was initially made on August 26, 2020. On October 9, 2020, without providing any information, documents or privilege log, the City closed the request. The City treated the request as though it was made strictly pursuant to the CPRA. However, the request was initially made pursuant to the MMBA, CPRA and Cal. Constitution and is renewed under these authorities. The City’s failure and refusal to provide the information is an unfair labor practice as it violates Government Code sections 3502, 3503 and 3505. In addition, it is a violation of the CPRA and subjects the City to liability, including but not limited to attorney fees and costs. Thus, demand is made the City immediately provide the requested information.

An exclusive representative is entitled to all information necessary and relevant to the discharge of its duty and representation. Stockton Unified School District (“Stockton”) (1980) PERB Decision No. 143. PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. California State University (1986) PERB Decision No. 613-H. The association has a right to information relevant to a potential grievance to

1 Proposition 56 was overwhelmingly passed by the citizens of California in 2006 to establish a Constitutional right of access to government information and expanded the rights set forth in the CPRA (Govt. Code §§ 6250 et seq.). Article I, section 3(b)(1) of the California Constitution, states “The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” Section 3(b)(2) states that any authority “shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.”
allow the organization to properly pursue the claim. *Modesto City Schools and High School District* (1985) PERB Decision No. 479. Additionally, the employer's duty to furnish information, like its duty to bargain, extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement. *Burbank City Employees Association* (2008) PERB Decision No. 1988-M. And this obligation applies with as much force to information needed by the union for the effective administration of a collective bargaining agreement already in force as to information relevant in the negotiation of a new contract. *Prudential Ins. Co. of Am. v. N.L.R.B.*, 412 F.2d 77, 81 (2d Cir. 1969). Moreover, when a union requests relevant information, the employer must either fully supply the information or timely and adequately explain its reasons for not doing so, and the employer bears the burden of proof as to any defense, limitation, or condition that it asserts. *Petaluma City Elementary School District* (2016) PERB Decision No. 2485. In applying these principles, PERB has held that an employer violates its duty to bargain in good faith if its delay in providing information is unreasonable under the circumstances, even if the delay causes no prejudice. *Id.* at p. 20. Therefore, the VPOA has a right to information to assist it in collective bargaining and related protocols under CPRA, Article I, section 3(b) of the California Constitution, and the MMBA.

On October 9, 2020, the City failed to properly respond to the first Request for Information and Public Records letter dated August 26, 2020. (see Letter dated August 26, 2020 attached hereto as Exh. 1). In that response, the City claimed that requests numbered 1, 3, and 6 from the letter dated August 26, 2020 were not producible as they constituted attorney-client and attorney work product privilege. However, those requests were for public communications between certain public employees regarding the OIR group. None of the listed public employees are working in an attorney capacity.

Government Code section 954(c) clearly states that the client has a confidential privilege if the privilege is claimed by the person who was “the lawyer at the time of the confidential communication,” but cannot claim the privilege if “there is no holder of the privilege in existence.” *Civ. Proc. Code section 2018.030* requires that the attorney work product be a writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories. Furthermore, attorney-client privilege has limitations. "Knowledge which is not otherwise privileged does not become so merely because that subject matter has been communicated to the attorney." *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 397. PERB has stated that where there is no attorney advice the attorney-client privilege may not apply. *Stationary Engineers Union Local 39* (2004) PERB Decision No. 1686-S. PERB has rejected CPRA provisions as standing alone as a defense to a request for information. *Trustees of the State of California (“Trustees”)* (2004) PERB Decision No. 1591-H. "[W]here privileged information goes to the heart of the claim, fundamental fairness requires that it be disclosed [ …. ]" *Steiny & Co. v. California Electric Supply Co.* (2000) 79 Cal.App.4 285, 292.

The City’s failure to comply with the first Request for Information based on attorney-client and attorney work product privilege is unfounded. It is implausible that all communications regarding the OIR group between these individuals were so intertwined that they are entirely privileged. The information the City provided remains a blanket statement without evidence to
support its conclusion. Furthermore, pursuant to Government Code § 6253(a), any non-exempt part of a record must be made available after any exempt information has been redacted.

The City has also claimed that requests numbered 2, 4, and 5 from the letter dated August 26, 2020 were not producible as they were voluminous making them unduly burdensome. Civ. Proc. Code § 2023.010 states a party may not use a discovery method “in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression or undue burden and expense is one of the examples of misuses of the discovery process.” The City has claimed that the requests were not producible because they were not “sufficiently focused.” The City’s reasoning fails to coincide with the reasoning found in the code. Additionally, the requests were limited and focused by clearly outlining the person’s involved, the specific terms to be included in the communications, and the time period limitation of one-year. (See Exh. 1).

Finally, the City has claimed that request number 9 from the letter dated August 26, 2020 would not be produced as it fell under the deliberative process privilege. However, it has been long established that the deliberative process privilege does not apply to unions.

As stated above, PERB rejects CPRA provisions alone as defenses, which would include the deliberative process privilege. Trustees (2004) PERB Decision No. 1591-H. Defenses to disclosure under CPRA cannot be imported into labor law, because a union has a greater right to information than members of the general public. Sacramento City Unified School District PERB Decision No. 2597. When a union requests relevant information from an employer, the employer benefits only from the more limited privilege that protects both unions and employers from being forced to reveal to the other party their internal collective bargaining strategies or tactics. Stationary Engineers Union Local 39 (2004) PERB Decision No. 1686-S. Therefore, the deliberative process privilege is not a valid defense to a union’s information request. Trustees (2004) PERB Decision No. 1591-H.

As you are aware, the Vallejo Police Department has been participating in County wide officer-involved fatal incident protocol discussions. All of this information is relevant to the Department’s good faith participation in those discussions. Failure to properly comply with this request is a per-se violation of Government Code section 3505, Article I, section 3(b) of the California Constitution and CPRA. The City’s objections in the reply dated October 9, 2020, are unfounded and immaterial.

Therefore, request is renewed and hereby made for the following information and records:

1. All communications and writings\(^2\), including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email address or personal

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\(^2\) As used herein, the term “writing” means handwriting, typewriting, printing, photostatting, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, signs, or symbols or combinations thereof, and any and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punch cards, disks, drums, and other documents.
email addresses, memoranda, reports, or other documents between any employee of the OIR Group and VPD Chief Shawny Williams (“Chief Williams”) in relation to the OIR Group’s report regarding the Vallejo Police Department from October 1, 2019 to present;

2. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document between Chief Williams and Joseph Allio (“Allio”) from October 1, 2019 to present;

3. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email address or personal email addresses, memoranda, reports, or other document between Allio and any employee of the OIR Group;

4. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document between the Vallejo City Manager Greg Nyhoff and Chief Williams from October 1, 2019 to present that contain any of the following words or phrases: “VPOA,” “POA,” “grievance,” “destruction,” “mob,” “contract,” “MOU,” “fired,” “firing,” “investigation,” “DOJ,” “FBI,” “council,” “mayor,” and “BLM”;

5. All communications and writings sent or received by Chief Williams including but not limited to text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document from October 1, 2019 to present that contain any of the following words or phrases: “VPOA,” “POA,” “grievance,” “destruction,” “mob,” “contract,” “MOU,” “fired,” “firing,” “investigation,” “DOJ,” “FBI,” “council,” “mayor,” and “BLM”;

6. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document between the Vallejo City Manager Greg Nyhoff and the OIR Group from January 1, 2019 to present;

7. Any and all of Allio’s expenses for the last 18 months;

8. Any and all of Chief Williams’ expenses for the last 18 months; and

9. Any and all versions, drafts, iterations or changes, whether proposed or accepted, to the Solano County Officer Involved Fatal Incident Protocol.

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3 *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608 [holding employees’ personal accounts are subject to disclosure under the CPRA when used to conduct public business].)
Should you continue refusing to provide the information and records requested herein, please set forth the names, titles, and positions of each person responsible for the denial and the reasons therefor.

Thank you for your prompt attention to this matter. Please direct all future correspondence to my attention and contact me at your earliest convenience to schedule a meeting. I may be reached at 916-491-4296 or kathleen@mastagni.com.

Sincerely,

MASTAGNI HOLSTEDT, A.P.C.

KATHLEEN N. MASTAGNI STORM
Attorney at Law

cc:  Michael Nichelini, VPOA President
     Scott Yates, VPOA Secretary
     Mark Love, Human Resources
     Shawny Williams, Police Chief

Attachments:

(1) Request for Information and Public Records letter dated August 26, 2020
Exhibit 1
August 26, 2020

Via Electronic & U.S. Mail

Shawny Williams, Police Chief
Vallejo Police Department
111 Amador Street
Vallejo, California 94590
shawny.williams@cityofvallejo.net

Re: Request for Information and Public Records

Dear Chief Williams:

This request for information and documents is on behalf of the Vallejo Police Officers’ Association (“VPOA”) and is made pursuant to the Meyers-Milian-Brown Act (“MMBA”), Article I, section 3(b) of the California Constitution and the California Public Records Act (“CPRA”) (Govt. Code §§3500 et seq.; §§6250 et seq.).

An exclusive representative is entitled to all information necessary and relevant to the discharge of its duty and representation. (Stockton Unified School District (“Stockton”) (1980) PERB Decision No. 143.) PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (California State University (1986) PERB Decision No. 613-H.) The association has a right to information relevant to a potential grievance to allow the organization to properly pursue the claim. (Modesto City Schools and High School District (1985) PERB Decision No. 479.) Similarly, the VPOA has a right to information to assist it in collective bargaining. As you are aware, the Vallejo Police Department has been participating in County wide officer-involved fatal incident protocol discussions. This information is relevant to the Department’s good faith participation in those discussions.

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1 Proposition 56 was overwhelmingly passed by the citizens of California in 2006 to establish a Constitutional right of access to government information and expanded the rights set forth in the CPRA (Govt. Code §§ 6250 et seq.). Article I, section 3(b)1 of the California Constitution, states “The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” Section 3(b)(2) states that any authority “shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.”
Request is hereby made for the following information and records:

1. All communications and writings\(^2\), including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses\(^3\), memoranda, reports, or other documents between any employee of the OIR Group and VPD Chief Shawny Williams ("Chief Williams") in relation to the OIR Group's report regarding the Vallejo Police Department from October 1, 2019 to present;

2. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document between Chief Williams and Joseph Allio ("Allio") from October 1, 2019 to present;

3. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email address or personal email addresses, memoranda, reports, or other document between Allio and any employee of the OIR Group;

4. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document between the Vallejo City Manager Greg Nyhoff and Chief Williams from October 1, 2019 to present that contain any of the following words or phrases: "VPOA," "POA," "grievance," "destruction," "mob," "contract," "MOU," "fired," "firing," "investigation," "DOJ," "FBI," "council," "mayor," and "BLM";

5. All communications and writings sent or received by Chief Williams including but not limited to text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document from October 1, 2019 to present that contain any of the following words or phrases: "VPOA," "POA," "grievance," "destruction," "mob," "contract," "MOU," "fired," "firing," "investigation," "DOJ," "FBI," "council," "mayor," and "BLM";

6. All communications and writings, including text messages and emails, whether sent or received on City issued cell phones, personal cell phones, City email addresses or personal email addresses, memoranda, reports, or other document between the Vallejo City Manager Greg Nyhoff and the OIR Group from January 1, 2019 to present;

\(^2\) As used herein, the term "writing" means handwriting, typewriting, printing, photostatting, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, signs, or symbols or combinations thereof, and any and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punch cards, disks, drums, and other documents.

\(^3\) City of San Jose v. Superior Court (2017) 2 Cal.5th 608 [holding employees' personal accounts are subject to disclosure under the CPRA when used to conduct public business].
7. Any and all of Allio’s expenses for the last 18 months; 

8. Any and all of Chief Williams’ expenses for the last 18 months; and 

9. Any and all versions, drafts, iterations or changes, whether proposed or accepted, to the Solano County Officer Involved Fatal Incident Protocol.

Demand is hereby made that within ten (10) days from receipt of this request a determination is made whether the City will produce, in whole or in part, the aforementioned requested public records in your possession. Should you deny providing any of the records requested herein, please set forth the names, titles, and positions of each person responsible for the denial and the reasons therefor.

Please provide these public records in a commercially reasonable format, preferably in electronic format.

Thank you for your prompt attention to this matter. Please direct all future correspondence to my attention and contact me at your earliest convenience to schedule a meeting. I may be reached at 916-491-4296 or kathleen@mastagni.com.

Sincerely,

MASTAGNI HOLSTEDT, A.P.C.

KATHLEEN N. MASTAGNI STORM
Attorney at Law

cc: Michael Nichelini, VPOA President
    Scott Yates, VPOA Secretary
**Summary of 23 Major Lexipol Policy Updates (State and Federal Legislative Changes and Best Practices)**

307 Firearms
Release notes: March 2020 A review of this policy has resulted in an update to one section. Changes to this policy are included in Injured Animals to clarify when an officer should euthanize and animal...etc..

318 Public Alerts
Release Notes: March 2020 This policy is being updated because legislative action impacts its content. The update should be accepted and implemented as soon as possible. 2017CA SB833 authorized the Office of Emergency Services 10 develop guidelines.....

1028 Modified Duty Assignments
Release Notes: March 2020 This policy has been updated for consistency with Lexipol's Custody Manual. Changes to the content has been added in PREGNANCY and unrelated punctuation has been corrected...

1006 Reporting of Employee Convictions
Release Notes: March 2020 This policy is being updated because legislative action impacts its content. This update should be accepted, and implemented as soon as possible. 2015 CA REG TEXT 41 215 9 added a time frame for reporting convictions and State Commission more.....

342 Child and Dependent Adult Safety
Release Notes: March 2020 A review of this policy has resulted in an update to one section. Changes include. Language has been corrected in DEPENDENT WELFARE SERVICES more....

607 Unmanned Aerial Systems (UAS) Operations
Release Notes: June 2020 This policy has been updated to address protected class language. Changes include; Prohibited Uses and additions have been made for consistency that include protected-class language. More...

606 Brady Material Disclosures
Release Notes: October 2020 A review or this policy has resulted in updates to two sections; DISCLOSURE OF INVESTIGATIVE INFORMATION has been updated to clarify examination information that is considered confidential or privileged, and the pe... more
401 Bias Based Policing
Release Notes June 2020 This policy has been updated to address protected class language. Changes include: In DEFINITIONS, additions have been made for consistency with other policies that include protected-class language …more

315 Discriminatory Harrassment
Release Notes: June 2020 This policy has been updated to include current terminology for the list of protected classifications and statuses. The policy’s definition of the supervisors role in relation to discriminatory harassment has been updated …..more

1003 Evaluation of Employees
Release Notes: June 2020 This policy has been updated to address protected-class language. Changes include: In POLICY additions have been made for consistency with other policies that include protected class language and punctuation has been corrected.

1004 Grievance Procedure
Release Notes: June 2020 This policy has been updated to address protected-class language. Changes include; In GRIEVANCE DEFINED, language has been simplified to make discrimination and harassment complaints are not considered grievances….more

311 Domestic Violence
Release Notes: June 2020 This policy has been updated to address protected-class language. Changes Include: In INVESTIGATIONS, additions have been made for consistency with other policies….more

430 First Amendment Assemblies
Release Notes: June 2020 This policy has been updated to address protected-class language. Changes to this policy include: In INFORMATION GATHERING AND ASSESSMENT, additions have been made for consistency with other policies that include protected class language….

100 Law Enforcement Authority
Release Notes: June 2020 A review of this policy has resulted in an update to one subsection. Changes include: Grammar and punctuation have been corrected in ARREST AUTHORITY OUTSIDE THE JURISDICTION OF THE AGENCY. The name...more
413 Immigration Violations
Release Notes: June 2020 This policy has been updated to address protected-class language. Changes Include: VICTIMS AND WITNESSES has been updated for clarity and consistency with other policies t...more

317 Missing Persons
Release Notes: March 2020 A review of this policy has resulted in an update to one section. Changes Include: A citation has been corrected in DETECTIVE BUREAU FOLLOW-UP and punctuation changes have been added. The name of...more

1023 Personal Appearance Standards
Release Notes: June 2020 A review of protected-class language across other policies has resulted in an update to this policy, changes include: TATTOOS has been updated for consistency with other related policies, and punctuation has been corrected...more

801 Property and Evidence
Release Notes: June 2020 This policy has been updated because legislative action impacts its content. Certain sections of 2016 CA SB 746 take effect on July 1, 2020. Generally, the updates to this policy address required conditions for the release of magazines or ammunition...more

341 Public Safety Video Surveillance
Release notes: June 2020 This policy has been updated to address protected-class language. Changes to this policy include Activity and has been updated to add protected-class language for consistency with other polices in the manual....more

1000 Recruitment and Selection
Release Notes: June 2020 This policy has been updated to address protected-class language. Changes Include: In POLICY. additions have been made for consistency with other policies that include protected-class language...

206 Retiree Concealed Firearms
Release notes: June 2020 A review of this policy has resulted in an update of two sections. Changes include: Denial, suspension, or revocation of a California CCW card, a citation has been moved to clarify that the citation authority....more

321 Standards of Conduct
Release Notes: June 2020 This policy has been updated to address protected-class language and Lexipol's current best practice content. Changes Include: Capitalization and punctuation have been corrected and in GENERAL STANDARDS. In DISCRIMINATION, OPPRESSION OR FAV...more
**1024 Uniform Regulations**

Release notes: November 2020, This policy has been updated because of legislative action that impacts in content. 2019 CA SB-1 added a section to the Penal Code that prohibits with certain exceptions a law enforcement agency from authorizing its employees to wear certain military style uniforms….more

**There is also 1 minor policy update pending:**

**Hate Crimes**

Release notes: June 2020 A review of this policy has resulted in update to several sections. Changes include a citation that has been corrected in Initial Response and Investigation...
Responses to Council Members’ Submissions for the Vallejo Police Reform Initiative

At the October 6th meeting, a number of additions to the resolution were proposed as part of the council’s actions. Ultimately it was agreed that the council members would have 72 hours to submit their suggestions, and then the City Manager would review and report back.

Below are the submissions received, followed by the City Manager’s response.

Submissions from Council Member McConnell:

1. **Any and all issuance of emergency orders from the city manager shall be provided to council at the time of those orders are issued.**
   Agreed, this is consistent with how prior emergency orders were handled, i.e., emergency orders are emailed to Council and posted on the City website when executed, and staff intends to continue this practice.

2. **Any emergency orders issued by the city manager shall be made available to and reviewed by the City Council in a period of time not to exceed 7 days. Any extension of the emergency orders shall need to be approved by the Vallejo City Council on a not more than 30-day basis going forward.**
   The proposed emergency already requires, per the City’s code, that any action must come to council within 7 days of the action being signed by the City Manager, as well as that the emergency must be reviewed and approved every 60 days. I take this issue very seriously; thus, justifying the continuation of this emergency takes an extreme amount of resources. I would rather use these limited resources in the implementation of reform efforts, such as ramping up the Interim Police Auditor program.

3. **The city manager shows a report to the City Council of his independent evaluation of changes and needs within the Vallejo Police Department, and any changes that he institutes within the command staff of the Vallejo Police Department. This report will be provided in a time period not to exceed 30 days, and updated as rapidly as possible thereafter. This information shall also be provided to the public.**
   See 11/17/20 Council agenda for an update on the implementation of the 45 recommendations of the independent assessment by The OIR Group, and a proposed 46th recommendation focused on the culture of the VPD.

4. **The city manager shall report to council his independent evaluation of any need for changes to be made within the Vallejo Police Department, including personnel, policy, and financial needs no later than the November 17, 2020. Any additional evaluations shall be provided on a continuously ongoing basis throughout the length of this emergency declaration, not exceed a period of 30 days maximum.**
See #3. Additionally, it should be emphasized that emergencies are very fluid, and circumstances are constantly in flux as we uncover more information. It is critical, as part of this proclamation, that the City be prepared and able to move quickly.

5. All newly hired employees going forward of the Vallejo Police Department shall subscribe to the following oath: “We will not lie, steal or cheat, nor tolerate among us anyone who does” from this time forward, and for all employees no later than the adoption of the new employment contract between the City of Vallejo and the Vallejo Police Officers Association. This oath will also be made a part of the contract between the City of Vallejo and the Vallejo Police Officers Association. Yes, this is a negotiable item and could be accomplished via a side letter to the MOU or contract amendment. Additionally, the Chief is working on a new Code of Conduct which will achieve similar goals.

6. The city manager should provide a detailed and explicit report to the City Council on the impact on the city finances and the current budget no later than 30 days from the adoption of this resolution, and each 30-day period throughout the length of time this emergency declaration is in place. Yes, adding this to the contract would be a negotiable item and could be accomplished via a side letter to the MOU or contract amendment. Additionally, the Chief is working on a new Code of Conduct, which would be a policy subject to meet and confer requirements. This may be able to be achieved through policy sooner than it could be included in the labor contract.

7. The city council will be presented within the next 30 days a request to amend the Vallejo City Budget to provide for and employ an Independent Auditor who will report to the City Council and be a direct employee of the City Council. The Auditor will be assigned tasks to be completed as requested by the City Council. The position can be a contract position if the city council so desires. This item was on the agenda for October 27, 2020 and an interim auditor (The OIR Group) unanimously approved by the City Council. The contract will return to Council for approval in December.

8. The city manager is empowered to expend funds under the emergency declaration from the presently adopted 2020-21 Vallejo City Budget as designated for the Police Department. The City Manager already has this authority. Any necessary budget adjustments requiring Council approval will still be brought to the Council. To the extent any action requires accessing other departments’ funds, the Council will need to ratify that action within seven days, and if not ratified, the budget adjustment will not be made, and an alternative funding source will need to be identified.
9. The city manager shall not use any reserve funds of the City of Vallejo without first obtaining specific authorization from the City Council for specifically identified expenditures. See #8. Again, the nature of an emergency is that staff is able to move in an expedient fashion, with council ratification of any actions within seven days.

10. The city manager shall use his best efforts by use of the presently authorized funds for the Vallejo Police Department to employ personnel who are trained for and capable of addressing many of the social needs of individuals with whom the Vallejo Police Department must daily deal, including but not limited to those with issues of mental health, substance abuse, homelessness, vocational challenges, domestic situations, and situations where de-escalation will be favored and pursued over the use of weapons of a lethal nature, including tasers. See #8.

Submission from Council Member Dew:

1. Equity indicators analysis baseline report commissioned
   This topic is currently agendized on December 8, as a request from Council Member Dew to agendize for council consideration at a subsequent Council meeting.
WHEREAS, on October 6, 2020, the City Council of the City of Vallejo declared a public safety emergency by approving a Proclamation of Public Safety Emergency (the “Proclamation”); and

WHEREAS, the emergency declared in the Proclamation is continuing; and

WHEREAS, one of the purposes of the Proclamation was to ensure that the City Manager can provide adequate resources and personnel to the Vallejo Police Department in order to address the emergency; and

WHEREAS, the Chief of Police has identified an immediate need for two management positions and two non-sworn analyst positions; and

WHEREAS, without the immediate filling of these positions, the Police Department’s reform efforts will be curtailed and may stall; and

WHEREAS, the City Council understands the need for an investment in the Vallejo Police Department given the longstanding reduction in funding for the department and its personnel stemming from the City’s 2008 bankruptcy; and

WHEREAS, the City currently faces approximately $50 million in potential liability resulting from a dramatic increase in section 1983 use-of-force lawsuits against police; and

WHEREAS, unless the City continues on its path to reformation of the Vallejo Police Department and providing necessary resources to the department, reform will not succeed and the City will be forced to consider other policing options.

NOW THEREFORE, it is hereby ordered by the City Council of the City of Vallejo as follows:

1. There is hereby created the position of Deputy Chief of the Vallejo Police Department with two positions allocated.

2. Two additional administrative analysts are hereby authorized for the Vallejo Police Department.
3. The City Manager is hereby directed to take immediate action to hire two deputy chiefs and two administrative analysts as needed by the Chief of Police.

4. These additional costs for this fiscal year will be covered through a combination of approximately $330,000 the Police Department Fund 151/SLESF Funds and $300,000 from an anticipated increase in property tax revenues, as well as via 10% decreases in the professional services and training budgets across City departments of approximately $125,000.

5. This order shall remain in effect until the Proclamation is rescinded by the City Council or until otherwise changed by the City Council.

PASSED AND ADOPTED by the City Council of the City of Vallejo at a regular meeting thereof held on October 6, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

__________________________
Mayor Bob Sampayan

ATTEST:

__________________________
Dawn Abrahamson, City Clerk
RESOLUTION NO. 20-###

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO
REAFFIRMING THE PROCLAMATION OF EMERGENCY BY THE
VALLEJO CITY COUNCIL DATED OCTOBER 6, 2020

WHEREAS, on October 6, 2020, the Vallejo City Council approved and issued a Proclamation of Local Public Safety Emergency by the Vallejo City Council (the "Proclamation"); and

WHEREAS, the purpose of the Proclamation is to protect the health, safety and welfare of the citizens of Vallejo resulting from a dramatic increase in crime as well as to address needed reforms within the Vallejo Police Department that has created a dramatic increase in potential liability as a result of a growing number of police department use-of-force lawsuits; and

WHEREAS, the City is authorized to issue emergency proclamations by Chapter 2.50 of the Vallejo Municipal Code; and

WHEREAS, Chapter 2.50 and Government Code §8630(b) requires that the City Council reaffirm emergency proclamations every 60 days until the emergency is terminated by the City Council; and

WHEREAS, staff is requesting that the City Council reaffirm the Proclamation now because waiting until the 60th day means there will be no available regular City Council meeting at which to consider the reaffirmation; and

WHEREAS, the circumstances requiring the Proclamation have not changed significantly and the health, safety and welfare of the citizens of Vallejo remains at significant risk as well as the continued fiscal viability of the City of Vallejo; and

NOW THEREFORE, the City Council of the City of Vallejo hereby resolves as follows:

1. That the emergency set forth in the October 6, 2020 Proclamation is continuing and that the Proclamation is hereby reaffirmed.

2. That the City Manager/Director of Emergency Services is hereby directed to continue taking all necessary action to abate the emergency and to consider all available options for a permanent resolution of the emergency.
3. The City Manager/Director of Emergency Services shall return to the City Council within 60-days from the date of this resolution to request reaffirmation of the Proclamation if the emergency continues at that time.

PASSED AND ADOPTED by the City Council of the City of Vallejo at a regular meeting thereof held on November 17, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

__________________________
Mayor Bob Sampayan

ATTEST:

__________________________
Dawn Abrahamson, City Clerk
EMERGENCY ORDER NO. 20-###

AN EMERGENCY ORDER OF THE CITY COUNCIL OF THE CITY OF VALLEJO
ORDERING THE HIRING OF VALLEJO POLICE DEPARTMENT PERSONNEL
PURSUANT TO THE PROCLAMATION OF PUBLIC SAFETY EMERGENCY
DATED OCTOBER 6, 2020

WHEREAS, on October 6, 2020, the City Council of the City of Vallejo declared a public safety emergency by approving a Proclamation of Public Safety Emergency (the “Proclamation”); and

WHEREAS, the emergency declared in the Proclamation is continuing; and

WHEREAS, one of the purposes of the Proclamation was to ensure adequate resources for the Vallejo Police Department and to implement urgently needed policies; and

WHEREAS, VPD management has discovered 23 Lexipol policy updates, many of which are mandatory state-law requirements, that have not been implemented by the Department; and

WHEREAS, VPD has an immediate urgent need to fund professional services to conduct Internal Affairs investigations, accomplish a comprehensive update of Vallejo Police Department policies and procedures as well as providing additional training to officers; and

NOW THEREFORE, it is hereby ordered as follows:

1. The City Council orders the City Manager to ensure that the Chief of Police immediately implements all Lexipol policy updates required by state law and to ensure that these policies remain updated and current.

2. The City Council authorizes the expenditure of $195,000 for professional services for Internal Affairs investigations, a comprehensive update of all Vallejo Police Department policies and procedures and additional training for the department.
PASSED AND ADOPTED by the City Council of the City of Vallejo at a regular meeting thereof held on November 17, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Mayor Bob Sampayan

ATTEST:

Dawn Abrahamson, City Clerk
RESOLUTION NO. 20 - ___N.C.

APPROVING A SALARY PLAN AMENDMENT TO RETITLE ASSISTANT POLICE CHIEF TO DEPUTY POLICE CHIEF, ADD ONE FULL-TIME EQUIVALENT POSITION OF DEPUTY POLICE CHIEF, ADD ONE FULL-TIME EQUIVALENT POSITION OF ADMINISTRATIVE ANALYST I, AND ADD ONE FULL-TIME EQUIVALENT POSITION OF ADMINISTRATIVE ANALYST II TO THE POLICE DEPARTMENT

WHEREAS, Vallejo Municipal Code section 2.60.340 requires the City Council adopt an official salary plan through adoption of the annual positions and salaries resolution; and

WHEREAS, City Council has the authority to amend the salary plan via resolution during the Fiscal Year; and

WHEREAS, City Council approved Resolution 20-088 at the beginning of the Fiscal Year, adopting the Salary Plan; and

WHEREAS, the Salary Plan consists of the Full-Time Equivalent Listing and the Salary Schedule; and

WHEREAS, Human Resources is recommending the Salary Plan be amended by retitling the Assistant Police Chief to Deputy Police Chief, adding one Deputy Police Chief, adding one Administrative Analyst I, and adding one Administrative Analyst II to the Full-Time Equivalent Listing for the Police Department, as attached hereto as Exhibit A; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vallejo directs staff to retitle the existing classification of Assistant Police Chief to Deputy Police Chief, add one Deputy Police Chief position, add one Administrative Analyst I position, and add one Administrative Analyst II position to the City’s current Salary Plan contained in Resolution 20-088, adopted concurrently with the FY2020-2021 Budget.

Adopted by the City Council of the City of Vallejo at a regular meeting held on November 17, 2020 with the following vote:

AYES:

ABSENT:

ABSTAIN:

NOES:
BOB SAMPAYAN, MAYOR

ATTEST:

DAWN ABRAHAMSOM, CITY CLERK
### Personnel Summary
**Police Department**

#### GENERAL FUND:

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CITY OF VALLEJO

CAMP

Revised 09/15/2020

Effective

July 1, 2019
### CITY OF VALLEJO

**CAMP**

**Revised 09/15/2020**

**Effective**

**July 1, 2019**

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**Revised 09/15/2020**

**Effective**

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DATE: November 17, 2020
TO: Mayor and Members of the City Council
FROM: Rekha Nayar, Finance Director
SUBJECT: FISCAL YEAR 2019-20 FINANCIAL RESULTS AND FIRST QUARTER BUDGET UPDATE

RECOMMENDATION
Receive the FY 2019-20 and FY 2020-21 First Quarter Financial Reports.

REASONS FOR RECOMMENDATION
This financial report provides a snapshot of the General Fund's budgetary performance for FY 2019-20 and where we stand financially for three-month period ending September 30, 2020. This report is an essential step in the City's financial recovery plan, empowering us to reassess our situation every three months and to adjust accordingly based on actual trends and latest available information.

BACKGROUND AND DISCUSSION
The information in this report is the most accurate and up-to-date information available at the time of publication. However, these results are preliminary and subject to confirmation through the City's annual external audit, which is expected to be completed in December of each fiscal year.

FY 2019-20 Yearend Financial Results ( unaudited)

During the last quarter in FY 2019-20, the worldwide outbreak of the COVID-19 pandemic and Shelter at Home order created a swift economic halt and fiscal uncertainty. During this unprecedented time, City Council and staff evaluated the City's current financial status in order to address the potential negative impacts to the City's budget and overall financial health.

At the time of the FY 2020-21 budget adoption in June 2020, we anticipated the General Fund ending the year with an unassigned fund balance of approximately $17.9 million or 16% of operating expenditures due to the anticipated reduction in revenues because of the pandemic. The unassigned fund balance is the portion of the General Fund balance that has not been committed or assigned to any specific purpose.

While COVID-19 did result in a decline in revenues in FY 2019-20, the General Fund ended with unassigned fund balance of $18.0 million which is $100,000 better than originally projected in June 2020.

General Fund revenues performed better than expected. Actual revenues and transfers in totaled $109.4 million or $3.4 million below the final projection. The budget shortfall is lower than expected mainly due to higher investment earnings and a pre-pandemic nine months of strong revenue performance combined with less severe impacts from COVID-19 than anticipated to some of the City's more consumer sensitive revenues (sales tax, utility users tax). Sales Tax specifically got an unprecedented boost by the passage and
implementation of AB147/ Wayfair Act , earlier in the year.

General Fund expenditure savings also contributed positively to ending the FY 2019-20 on solid footing. As a result of department's diligence in holding non-essential positions vacancies and controlling services and supplies spending, total General Fund expenditures ended the year approximately $4.5 million below budget.

In total, the lower than expected revenue shortfall of $3.4 million offset by the expenditure savings of $4.5 million resulted in net budget surplus of $1.1 million for FY 2019-20.

**FY 2020-21 First Quarter Update**

As part of the FY 20/21 budget adoption, staff recommended providing the council quarterly updates primarily due to the uncertainty in being able to forecast an ever changing negative economy.

**A. General Fund Revenues**

Overall, first quarter revenue trends are steady when compared to the same period last fiscal year at about 9% of the budgeted levels. Although total revenues are only at 9% of budget through the first quarter, this is due to the timing of when some of the General Fund's major revenue sources are remitted to the City. First quarter results provide minimal data to assess what revenues will be by the end of fiscal year because of this timing issue. For example, property tax is the 2nd largest source of General Fund revenue, but these are largely received in the second and third quarters. Another example is sales tax, where revenue received through first quarter only reflects one month's worth of collections, as collections from July and August are attributable to fiscal year 2019-20.

The following discussion provides the status of significant General Fund revenue sources and expenditures as of the first quarter, ending September 30, 2020. Any budget recommendations for adjustments will be brought forth during the FY 2020-21 Midyear budget update.

**Sales Tax**

Given the extreme level of uncertainty surrounding the sales tax activity due to COVID and recommendations provided by HdL, the sales tax is estimated to decrease $3.1 million (10.4%)in the current fiscal year. Staff will continuously monitor sales tax receipts and meet with the City's sales tax consultant's HDL to analyze the level of impact it will have on the City's finances for FY 2020-21. Receipts received till Oct 30th, only reflects the collections for the months of July and August.

**Property tax and Motor Vehicle License Fees in-lieu (MVLF)**

Property tax and MVLF revenues for FY 2020-21 were budgeted consistent with FY 2019-20 adopted budget due to COVID. However, based on Solano County's most recent report these revenues are not affected by the pandemic and county remittance is expected to increase by $1.9 million during the current fiscal year.

Business License and Transient Occupancy taxes are down from last year as anticipated. More data will be available in second quarter and will provide a better idea of of the negative financial impact of Coronavirus to these revenue sources in the current fiscal year.

Due to the continuing pandemic uncertainty, City will be closely monitoring fiscal changes and present another
budget update to council for the quarter October to December 2020.

FISCAL IMPACT
There is no fiscal impact associated with this informational item.

ENVIRONMENTAL REVIEW
This action is not a project as defined by the California Environmental Quality Act and is not subject to CEQA requirements.

ATTACHMENTS
None

CONTACT
Rekha Nayar, Finance Director (707) 648-4592
Rekha.Nayar@cityofvallejo.net