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
   A. PRESENTATION BY SOLANO ANTI-TRAFFICKING COALITION ON THE COALITION’S LATEST PROJECT

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), 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. 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), 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 2.02.310. 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. **APPROVAL OF MINUTES**

Recommendation: Approve minutes for the special and regular meetings of October 13, 2020.

Contact: Dawn G. Abrahamson, City Clerk (707) 648-4528

Dawn.Abrahamson@cityofvallejo.net
B. ASSISTANCE TO FIREFIGHTERS COVID-19 SUPPLEMENTAL GRANT (AFG-S) BUDGET AMENDMENT
Recommendation: Adopt a Resolution to amend the FY 2020-21 Fire Department's General Fund budget to recognize the AFG grant revenues and appropriate funds in the amount of $27,594.39.
Contact: Courtney Schreiner Lee, Administrative Analyst (707) 648-4092 courtney.schreinerlee@cityofvallejo.net

C. ASSISTANCE TO FIREFIGHTERS 2019 GRANT BUDGET AMENDMENT
Recommendation: Adopt a Resolution to amend FY 2020-21 Fire Department's General Fund budget to appropriate funds in the amount of $527,272.27.
Contact: Courtney Schreiner Lee, Administrative Analyst, (707) 648-4092 courtney.schreinerlee@cityofvallejo.net

D. RESOLUTION AUTHORIZING APPLICATION AND RECEIPT OF A GRANT FROM THE ECONOMIC DEVELOPMENT ADMINISTRATION FOR A MARE ISLAND INFRASTRUCTURE STUDY AND ASSESSMENT.
Recommendation: Adopt a Resolution authorizing the City Manager, or designee to submit a grant application to, and receive funds from, the Economic Development Administration in the amount of $960,000.
Contact: Gillian Hayes, Planning and Development Services Director, 707.648.4382 gillian.hayes@cityofvallejo.net
Paul Kelley, Special Economic Advisor, Economic Development Division, 707.649.5452 paul.kelley@cityofvallejo.net
Christina Ratcliffe, AICP, Planning Manager, 707.648.4382 christina.ratcliffe@cityofvallejo.net

E. CONSIDERATION OF APPROVAL OF A LEGAL SERVICES AGREEMENT WITH ANGELO KILDAY & KILDUFF FOR LITIGATION LEGAL SERVICES
Recommendation: The City Attorney's Office recommends that Council approve the Legal Services Agreement with Angelo Kilday & Kilduff.
Contact: Randy J. Risner, interim city attorney (707)648-4545 randy.risner@cityofvallejo.net

F. CONSIDERATION OF APPROVAL OF A LEGAL SERVICES AGREEMENT WITH BOUCHER LABOR & EMPLOYMENT LAW FOR HUMAN RESOURCES ADVISORY AND DISCIPLINARY LEGAL SERVICES
Recommendation: The City Attorney's Office recommends that the City Council approve the agreement with Boucher Labor & Employment Law.
Contact: Randy J. Risner, Interim City Attorney (707) 648-4545 randy.risner @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. ADOPT A RESOLUTION APPOINTING VERONICA NEBB AS CITY ATTORNEY AND AUTHORIZE THE MAYOR TO ENTER INTO AN EMPLOYMENT AGREEMENT WITH VERONICA NEBB TO SERVE AS CITY ATTORNEY

Recommendation: Adopt a Resolution appointing Veronica Nebb as City Attorney and authorizing the Mayor to execute an employment agreement with Veronica Nebb to serve as City Attorney effective no later than November 16, 2020.

Contact: Heather Ruiz, Human Resources Director (707) 648-4317
heather.ruiz@cityofvallejo.net

B. CONSIDERATION OF RESOLUTION ADOPTING CELLULAR SITE SIMULATOR POLICY

Recommendation: Staff recommends that the City Council approve a resolution adopting a 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. POLICE AUDITOR AND OVERSIGHT COMMITTEE OPTIONS AND AUTHORIZATION TO CONTRACT FOR AN INTERIM POLICE AUDITOR

Recommendation:

1. Receive a presentation that provides an overview of various options for police oversight models;
2. Receive a presentation from Common Ground;
3. Authorize the City Manager to contract with The OIR Group for interim police auditor services; and
4. Direct staff to schedule subsequent study sessions to provide an opportunity for more in-depth discussions of the various oversight options.

Contact: Anne Cardwell, Assistant City Manager (707) 648-4579
anne.cardwell@cityofvallejo.net
10. CITY MANAGER’S REPORT
11. CITY ATTORNEY’S REPORT

A. QUARTERLY REPORT FOR FISCAL YEAR 2020/2021, FIRST QUARTER (JULY - SEPTEMBER 2020)
   Recommendation: Informational item only. No action required.
   Contact: Randy Risner, Interim City Attorney (707) 648-4545
   Randy.Risner@cityofvallejo.net

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 First 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, October 22, 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, October 22, 2020.

Dated: Thursday, October 22, 2020

Dawn G. Abrahamson, City Clerk
VALLEJO CITY COUNCIL
SPECIAL MEETING MINUTES
VIA TELECONFERENCE

OCTOBER 13, 2020

1. CALL TO ORDER
The meeting was called to order at 4:05 p.m.

2. ROLL CALL
Present: Mayor Sampayan, Vice Mayor Sunga, Councilmembers Brown, Dew, McConnell, Miessner, and Verder-Aliga (arrived at 4:08 p.m.)
Absent: None
Staff present: City Manager Nyhoff, Interim City Attorney Risner, City Clerk Abrahamson, Assistant City Manager Cardwell, Police Chief Williams, and Human Resources Director Ruiz

The City Council convened into separate Closed Session teleconference at 4:10 p.m.

3. CLOSED SESSION
A. Public Employee Appointment Pursuant to Government Code § 54957
   Title: City Attorney
B. Conference with Labor Negotiators Pursuant to Government Code § 54957.6
   Negotiators: Greg Nelson (Ralph Andersen) and Heather Ruiz, Human Resources Director; Unrepresented Employee: City Attorney
C. Conference with Legal Counsel - Anticipated Litigation
   Significant Exposure to Litigation Pursuant to Paragraph (2) or (3) of Subdivision (d) of Government Code section 54956.9
   Number of Potential Cases: 2

4. ADJOURNMENT
The meeting adjourned at 5:55 p.m.

______________________________
BOB SAMPAYAN, MAYOR

ATTEST:
1. CALL TO ORDER
   The meeting was called to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL
   Present: Mayor Sampayan, Vice Mayor Sunga, Councilmembers Brown, Dew, McConnell (arrived at 7:14 p.m.), and Verder-Aliga
   Absent: Councilmember Miessner
   Staff present: City Manager Nyhoff, Interim City Attorney Risner and City Clerk Abrahamson

   Mayor Sampayan dedicated the meeting in memory of Fred Sessler, real estate icon and lifetime Vallojean and requested a moment of silence.

   Christopher Boucher, legal counsel reported that Council took action on Closed Session Items 3A and 3B and authorized staff to extend a condition offer of employment to Veronica Nebb and to negotiate an employment agreement for council’s approval pursuant to the terms authorized by council. The Agreement, once finalized, will be brought before the City Council in an open meeting for approval.

   Interim City Attorney Risner reported that no action was taken on Closed Session Item 3C.

4. PRESENTATIONS AND COMMENDATIONS
   Action: Presentations were made by Mayor Sampayan.

   A. PRESENTATION OF A PROCLAMATION RECOGNIZING FILIPINO AMERICAN HISTORY MONTH

   B. PRESENTATION OF A PROCLAMATION RECOGNIZING LIFETIME MEMBER STATUS TO Verna Mustico Granted by the Vallejo Chamber of Commerce

   Action: Moved by Vice Mayor Sunga and carried unanimously by councilmembers present, to continue Action Calendar Item 8D to the October 27, 2020 regular City Council meeting (Absent: Miessner).
5. FIRST COMMUNITY FORUM
Speakers: Melissa Swift.

6. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS
Speakers: Robert Schussel requested that Consent Item 7H be removed from the Consent Calendar.

By unanimous consensus of councilmembers present, Consent Item 3H was removed from the Consent Calendar.

Police Chief Williams provided an overview of the background process and responded to questions from Councilmembers.

Speaker: Robert Schussel

Action: Moved by Vice Mayor Sunga, and carried unanimously by councilmembers present, to authorize the City Manager to execute Consultant and Professional Services Agreements with the following vendors for police department pre-employment background services with contract end dates of June 30, 2023: Parodi Investigative Solutions $350,000 and The Gumshoe Group $200,000.

7. CONSENT CALENDAR AND APPROVAL OF AGENDA
Action: Moved by Vice Mayor Sunga and carried unanimously by councilmembers present, unless otherwise noted, approval of the Agenda and the Consent Calendar with the continuation of Action Calendar Item 8D to the October 27, 2020 regular City Council meeting and the removal of Consent Item 7H from the Consent Calendar.

A. APPROVAL OF MINUTES
Recommendation: Approve minutes for the special and regular meetings of September 22, 2020 and the special meetings of October 6, 2020
Contact: Dawn G. Abrahamson, City Clerk (707) 648-4528
Dawn.Abrahamson@cityofvallejo.net
Action: Approved minutes.

B. PAYMENT OF CLAIMS: AUGUST
Recommendation: Ratify the payment of claims for the period August 1, 2020 through August 31, 2020.
Contact: Rekha Nayar, Finance Director (707) 648-4592
Rekha.Nayar@cityofvallejo.net

C. ACCEPT THE ASSISTANCE TO FIREFIGHTERS COVID-19 SUPPLEMENTAL GRANT AND AMEND THE GENERAL FUND
Recommendation: Adopt a resolution accepting the Assistance to Firefighter COVID-19 Supplemental (AFG-S) grant award totaling $27,594.39 and provide a notice of intent to amend the General Fund FY 2020-21 budget to recognize AFG-S revenue in the amount of $27,594.39 and authorize expenditures.
Contact: Courtney Schreiner Lee, Administrative Analyst (707) 648-4092
courtney.schreinerlee@cityofvallejo.net
Action: Adopted Resolution No. 20-122 N.C.

D. ACCEPT THE ASSISTANCE TO FIREFIGHTERS 2019 GRANT AND AMEND THE GENERAL FUND
Recommendation: Adopt a Resolution accepting the 2019 Assistance to Firefighter grant award totaling $527,272.27 and provide a notice of intent to amend the Fiscal Year 2020-21 Fire Department budget to recognize the revenue in the amount of $527,272.27 and authorize expenditures.
Contact: Courtney Schreiner Lee, Administrative Analyst, (707) 648-4092
courtney.schreinerlee@cityofvallejo.net
Action: Adopted Resolution No. 20-123 N.C.

E. AMENDMENT (THIRD) TO CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS, INC.
Recommendation: Authorize the City Manager to execute the Third Amendment to the Consultant and Professional Services Agreement with Raftelis Financial Consultants, Inc. for water rate consulting services to increase the contract amount by $66,850, for a new not-to-exceed amount of $456,758, add services to the scope and supplement prior data to update previous water rate and water department financial modeling, and to include service costing, fee analysis, and bond financing analysis.
Contact: Mike Malone, Water Director (707) 648-4308
Mike.Malone@cityofvallejo.net
Action: Authorized the City Manager to execute the Third Amendment to the Consultant and Professional Services Agreement with Raftelis Financial Consultants, Inc. for water rate consulting services to increase the contract amount by $66,850, for a new not-to-exceed amount of $456,758, add services to the scope and supplement prior data to update previous water rate and water department financial modeling, and to include service costing, fee analysis, and bond financing analysis.

F. REVISED DESIGN PROFESSIONAL AGREEMENTS FOR DEWBERRY ENGINEERS
Recommendation: Authorize the City Manager to execute a revised Design Professional Agreement with Dewberry Engineers, Inc., formerly named Drake Haglan and Associates, Inc. to provide on-call Structural Engineering Services
per executed agreement dated October 9, 2019 through September 30, 2022, in an amount not to exceed $250,000; and provide engineering support for the Sacramento Street Bridge Replacement Project Design Professional Services Agreement per the approved Amendment 5 dated April 28, 2015 through December 31, 2021, in the amount not to exceed $1,028,518.

Contact: Terrance Davis, Public Works Director (707) 648-4301 Terrance.Davis@cityofvallejo.net
Melissa L., Tigbao, Assistant Public Works Director/City Engineer (707) 648-4085 Melissa.Tigbao@cityofvallejo.net

**Action:** Authorized the City Manager to execute a revised Design Professional Agreement with Dewberry Engineers, Inc., formerly named Drake Haglan and Associates, Inc. to provide on-call Structural Engineering Services per executed agreement dated October 9, 2019 through September 30, 2022, in an amount not to exceed $250,000; and provide engineering support for the Sacramento Street Bridge Replacement Project Design Professional Services Agreement per the approved Amendment 5 dated April 28, 2015 through December 31, 2021, in the amount not to exceed $1,028,518.

**G. STATE CARES ACT ALLOCATION BUDGET AMENDMENT**

**Recommendation:** Adopt a Resolution authorizing the Emergency Disaster Fund budget to recognize revenue and authorize expenditures for the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 grant funding of $1,470,087 allocated to the City from the California Department of Finance.

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

**Action:** Adopted Resolution No. 20-124 N.C.

**H. AGREEMENTS WITH PRE-EMPLOYMENT BACKGROUND INVESTIGATORS**

**Recommendation:**

Authorize the City Manager to execute Consultant and Professional Services Agreements with the following vendors for police department pre-employment background services with contract end dates of June 30, 2023.

- Parodi Investigative Solutions $350,000
- The Gumshoe Group $200,000

Contact: Bonnie Mirante, Administrative Manager bonnie.mirante@cityofvallejo.net
Jared Jaksch, Sergeant of Police jared.jaksch@cityofvallejo.net
**Action:** Authorized the City Manager to execute Consultant and Professional Services Agreements with the following vendors for police department pre-employment background services with contract end dates of June 30, 2023: Parodi Investigative Solutions $350,000 and The Gumshoe Group $200,000.

I. **REVISED LEAP GRANT RESOLUTION REPEALING RESOLUTION 20-085 AND ADOPTING A REVISED RESOLUTION**

*Recommendation:* Adopt a revised Resolution repealing Resolution 20-085 (adopted 6/23/2020), and replacing it with a new Resolution authorizing the City Manager, or designee to submit a grant application to, and receive funds from, the California Department of Housing and Community Development (HCD) for the Local Early Action Planning Grant Application (LEAP).

*Contact:* Christina Ratcliffe, AICP, Planning Manager (707) 648.4382 christina.ratcliffe@cityofvallejo.net

*Action:* Adopted Resolution No. 20-125 N.C.

8. **ACTION CALENDAR**

A. **CONTINUED PUBLIC HEARING - 602 GEORGIA STREET PROJECT APPEAL OF ARCHITECTURAL HERITAGE AND LANDMARKS COMMISSION AND PLANNING COMMISSION APPROVALS**

*Recommendation:* Conduct the continued public hearing and upon completion, adopt a Resolution denying the appeals of Kathleen Gaffney, and upholding the decisions of the Architectural Heritage and Landmarks Commission (AHLC) and the Planning Commission to approve the project at 602 Georgia Street.

*Contact:* Gillian Hayes, Planning and Development Services Director, (707) 648-4163 gillian.hayes@cityofvallejo.net

Aaron Sage, Principal Planner, (707) 648-5391 aaron.sage@cityofvallejo.net

Councilmember McConnell recused himself from this item on the grounds that he has 1 or more contributors from 1 or both sides of the applicants and belongs to 1 or more groups with 1 or more members of those applicants and left the remote meeting.

Planning & Development Services Director Hayes provided introductory comments.

Principal Planner Sage reviewed the project timeline, project setting and existing and historic condition, provided the project description and required approvals, discussed the findings for approval in terms of the Certificate of Appropriateness, Variance and minor exceptions, outlined the appeal points,
addressed any new communications received following the publication of the agenda packet, and concluded the presentation by outlining the recommended action.

Mayor Sampayan opened the public hearing.

Mr. Flynn, representing the appellant, and Ms. Gaffney discussed the nature of the appeal and requested that the City Council grant the appeal and deny the decisions of the AHLC and Planning Commission to approve the project at 602 Georgia Street.

Mr. Drolet (Applicant/Property Owner) provided rebuttal comments and requested the City Council to adopt a resolution denying the appeals of Kathleen Gaffney and to uphold the decisions of the AHLC and the Planning Commission to approve the project.

Principal Planner Sage provided rebuttal comments.

Mr. Flynn and Ms. Gaffney provided surrebuttal comments.

**Speakers**: None.

Staff responded to questions from Councilmembers.

There being no further speakers, Mayor Sampayan closed the public hearing.

**Action**: Moved by Vice Mayor Sunga and carried unanimously by councilmembers present, to adopt Resolution No. 20-126 N.C., a resolution denying the appeals of Kathleen Gaffney, and upholding the decisions of the Architectural Heritage and Landmarks Commission (AHLC) and the Planning Commission to approve the project at 602 Georgia Street (Abstain Due to Conflict of Interest - McConnell; Absent- Miessner).

The meeting recessed at 9:12 p.m. and reconvened at 9:19 p.m.

Councilmember McConnell rejoined the remote meeting.

B. **APPOINTMENT OF A REPRESENTATIVE & ALTERNATE FROM THE CITY OF VALLEJO CITY COUNCIL TO SERVE ON THE MARIN CLEAN ENERGY BOARD OF DIRECTORS**

**Recommendation**: 
Council to take one of the following actions:

1. Adopt a resolution selecting a representative and an alternate representative to sit on the Marin Clean Energy (MCE) Board of Directors; or
2. Alternatively, designate its representation to another member of the MCE that has a Director and alternate Director already represented on the MCE Board, provided the member is within Solano County.

Contact: Dawn G. Abrahamson, City Clerk (707) 648-4528
Dawn.Abrahamson@cityofvallejo.net

City Clerk Abrahamson provided an overview of the staff report and outlined the recommendation.

Action: Moved by Vice Mayor Sunga and carried unanimously by councilmembers present to adopt Resolution No. 20-127 N.C., a resolution appointing Councilmember Miessner as the representative and Councilmember Dew as the alternate representative to sit on the MCE Board of Directors (Absent-Miessner).

C. COMMUNITY-IDENTIFIED SPENDING PRIORITIES PLAN
Recommendation: Adopt a resolution outlining the Community-Identified Spending Priorities Plan for Measure G.
Contact: Anne Cardwell, Assistant City Manager (707) 648-4579
anne.cardwell@cityofvallejo.net

City Manager Nyhoff provided an overview of the staff report and proposed Spending Priorities Plan.

Staff responded to questions from Councilmembers. Councilmembers provided comment.

Action: Moved by Vice Mayor Sunga and carried unanimously by councilmembers present to adopt Resolution No. 20-128 N.C. (Absent-Miessner).

D. CONSIDERATION OF RESOLUTION ADOPTING CELLULAR SITE SIMULATOR POLICY
Recommendation: Staff recommends that the City Council approve a resolution adopting a 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


**INFORMATION CALENDAR** – None.

**CITY MANAGER’S REPORT**
City Manager Nyhoff reported on items scheduled for the October 27 regular City Council meeting and recognized the volunteer efforts of community groups and City staff for the clean-up of the community and the Vallejo Police Department for their work on curbing crime rate.

**CITY ATTORNEY’S REPORT**
Interim City Attorney Risner provided an update on the Illegal Dumping Program.

**COMMUNITY FORUM**
Speakers: None.

**REPORT OF THE PRESIDING OFFICER AND MEMBERS OF THE CITY COUNCIL**
City Councilmembers reported on community and constituent matters and events attended.

**CLOSED SESSION** – None.

**ADJOURNMENT**
The meeting adjourned at 10:37 p.m.

BOB SAMPAYAN, MAYOR

ATTEST:

DAWN G. ABRAHAMSON
CITY CLERK
DATE: October 27, 2020
TO: Mayor and Members of the City Council
FROM: Daryl C. Arbuthnott, Fire Chief
SUBJECT: ASSISTANCE TO FIREFIGHTERS COVID-19 SUPPLEMENTAL GRANT (AFG-S) BUDGET AMENDMENT

RECOMMENDATION
Adopt a Resolution to amend the FY 2020-21 Fire Department's General Fund budget to recognize the AFG grant revenues and appropriate funds in the amount of $27,594.39.

REASONS FOR RECOMMENDATION
The acceptance of this grant award will ease the fiscal burden of the City in acquiring Personal Protective Equipment (PPE) for frontline firefighters. The acquisition of PPE for frontline workers will help stop the spread of COVID-19 to the community helped by the frontline responders as well as protect them.

BACKGROUND AND DISCUSSION
In May 2020, the Vallejo Fire Department applied for a supplemental grant from the Assistance to Firefighters Grant (AFG) Program in order to acquire funds for the purchase of PPE and related supplies, including reimbursements, to prevent, prepare for, and respond to coronavirus. Under this grant, PPE purchased after January 1, 2020 through May 29, 2021 are eligible for reimbursement.

This is the second step in a two-step process to amend the FY 2020-21 General Fund budget, following a notice to City Council on October 13, 2020.

FISCAL IMPACT
Approval of this item will amend the FY 2020-21 General Fund Budget to recognize and appropriate the federal grant award of $27,594.39. There is a 10% non-federal match in the amount of $2,759.44. The Fire Department will absorb the non-federal match with already allocated general fund monies.

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. Attachment 1 - Resolution Accepting the 2020 AFG-S (stamped)
CONTACT
Courtney Schreiner Lee, Administrative Analyst (707) 648-4092
courtney.schreinerlee@cityofvallejo.net
RESOLUTION NO. 20-__ N.C.

RESOLUTION ACCEPTING THE 2020 ASSISTANCE TO FIREFIGHTERS GRANT – COVID-19 SUPPLEMENTAL

WHEREAS, in May 2020, the Vallejo Fire Department applied for a supplemental grant from the Assistance to Firefighters Grant (AFG) Program to acquire funds for the purchase of PPE and related supplies, including reimbursements, to prevent, prepare for, and respond to coronavirus.

WHEREAS, the Vallejo Fire Department has subsequently received the 2020 Assistance to Firefighters Grant – COVID-19 Supplemental (AFG-S) from the Federal Emergency Management Agency (FEMA) totaling $27,594.39 to the purchase of Personal Protective Equipment (PPE) and supplies to prevent, prepare for, and respond to coronavirus through May 2021; and

WHEREAS, the grant requires a local match of $2,759.44 from the City of Vallejo.

WHEREAS, the local match will be absorbed the Fire Department’s already allocated general fund monies.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vallejo, does hereby accept the Assistance to Firefighters – COVID-19 Supplemental (AFG-S) in the amount of up to $30,353.83 in total, through May 2021.

Adopted by the City Council of the City of Vallejo at a regular meeting held on October 13, 2020 with the following vote:

AYES:

ABSENT:

ABSTAIN:

NOES:

BOB SAMPAYAN, MAYOR

ATTEST:

DAWN ABRAHAMSON, CITY CLERK

Approved as to form:

[Signature]

Randy J. Risner
Interim City Attorney
DATE: October 27, 2020
TO: Mayor and Members of the City Council
FROM: Daryl C. Arbuthnott, Fire Chief
SUBJECT: ASSISTANCE TO FIREFIGHTERS 2019 GRANT BUDGET AMENDMENT

RECOMMENDATION
Adopt a Resolution to amend FY 2020-21 Fire Department’s General Fund budget to appropriate funds in the amount of $527,272.27.

REASONS FOR RECOMMENDATION
Accepting this grant will reduce the strain on the City to find funds for the purchase of self-contained breathing apparatus units.

BACKGROUND AND DISCUSSION
Current SCBA’s in use by the Department were purchased in 2008, during bankruptcy, and were chosen due to their cost effectiveness. The SCBA’s do not meet current National Fire Protection Agency (NFPA) standards, and only meet NIOSH standards. For most agencies, SCBA’s meet NFPA and NIOSH regulations to ensure maximum safety.

In August, the Department was awarded $572,727 to assist in defraying the cost of purchasing 90 SCBA units. The grant requires a minimum non-federal 10% match of $57,273, for a total grant award of $630,000.

This is the second step in a two-step process to amend the FY 2020-21 General Fund budget.

FISCAL IMPACT
Approval of this item will amend the FY 2020-21 General Fund Budget to recognize the federal grant revenues and appropriate expenditures in the amount of $572,727.27 to cover the costs of 90 SCBA units. There is a 10% non-federal match in the amount of $57,272.73. The City has sufficient funds in the citywide budget to pay the cost of the non-federal match.

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. Attachment 1 - Resolution Amending the General Fund 2019 AFG (step 2) - stamped
CONTACT
Courtney Schreiner Lee, Administrative Analyst, (707) 648-4092 courtney.schreinerlee@cityofvallejo.net
WHEREAS in August 2020, the City Council adopted a budget for Fiscal Year 2020-21; 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, the Vallejo Fire Department has received a 2019 Assistance to Firefighters Grant (AFG) from the Federal Emergency Management Agency (FEMA) totaling $527,272.27 for the purchase of SCBA units; and

WHEREAS, on October 13, 2020, the City Council reviewed the intent to amend the Fire Department’s General Fund Budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vallejo, does hereby recognize the 2019 Assistance to Firefighters (AFG) and amends the City’s budget for the FY 2020-21 by changing certain revenue and expenditures accounts in the amount $527,272.27 to permit the receipt and disbursement of grant funds.

Adopted by the City Council of the City of Vallejo at a regular meeting held on October 27, 2020 with the following vote:

AYES:

ABSENT:

ABSTAIN:

NOES:

__________________________________
BOB SAMPAYAN, MAYOR

ATTEST:

__________________________________
DAWN ABRAHAMSON, CITY CLERK
DATE: October 27, 2020
TO: Mayor and Members of the City Council
FROM: Gillian Hayes, Planning and Development Services Director
SUBJECT: RESOLUTION AUTHORIZING APPLICATION AND RECEIPT OF A GRANT FROM THE ECONOMIC DEVELOPMENT ADMINISTRATION FOR A MARE ISLAND INFRASTRUCTURE STUDY AND ASSESSMENT.

RECOMMENDATION
Adopt a Resolution authorizing the City Manager, or designee to submit a grant application to, and receive funds from, the Economic Development Administration in the amount of $960,000.

REASONS FOR RECOMMENDATION
The City desires to finance the cost of a Mare Island Infrastructure Study and Assessment. This comprehensive study would ascertain the full measure of available above and below ground infrastructure on the former federal lands of Mare Island. This study will serve as a foundational document for future development of the Island.

The U.S. Economic Development Administration (EDA) awards grants on a competitive basis to support strategic investments that encourage economic development, foster job creation, and attract private investment in economically distressed areas of the United States.

If this grant is awarded to the City, the resulting Mare Island Infrastructure Study and Assessment document would aid in the promotion of economic and technological development; encourage regional job growth; and strengthen communities in the greater Vallejo area that have suffered disproportionate economic distress and job losses from the Coronavirus.

BACKGROUND AND DISCUSSION
The Coronavirus Aid, Relief, and Economic Security (CARES) Act, provides the Economic Development Administration (EDA) with $1.5 billion for economic development assistance programs to help communities prevent, prepare for, and respond to coronavirus.

EDA CARES Act Recovery Assistance, which is being administered under the authority of the bureau’s flexible Economic Adjustment Act (EAA) program, provides a wide-range of financial assistance to communities and regions as they respond to and recover from the impacts of the pandemic. Among these programs is a competitive grant geared to non-construction projects.

The City Economic Development Division, Planning and Development Services, Water, and Public Works Departments, in conjunction with Vallejo Sanitation and Flood Control District; collaborated to develop a preliminary scope of work that determines the beneficial purposes and preliminary cost of the Mare Island
Infrastructure Study and Assessment, as well as the support needed to match and manage the grant. The full cost of the infrastructure study is $1,200,000. Matching contribution of Staff time of 20% ($240,000) will be required, if the grant is fully funded.

The proposed study is a comprehensive assessment of the condition of the road infrastructure, stormwater management, sewer, and water systems on Mare Island. This information is key to successful development of the Island.

**FISCAL IMPACT**

It is expected that grant funds in the amount of $960,000 will be received. Should the grant be awarded, the City is required to provide a grant match in Staff time of no less than 20% of total project costs up to $240,000. This match can be accommodated with current Staff.

**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, therefore no further review is required. CEQA review will be conducted for individual projects at the time of project approval.

**ATTACHMENTS**

1. EDA Grant - Vallejo CA City Council Resolution

**CONTACT**

Gillian Hayes, Planning and Development Services Director, 707.648.4382 gillian.hayes@cityofvallejo.net
Paul Kelley, Special Economic Advisor, Economic Development Division, 707.649.5452 paul.kelley@cityofvallejo.net
Christina Ratcliffe, AICP, Planning Manager, 707.648.4382 christina.ratcliffe@cityofvallejo.net
RESOLUTION NO. 20-

A RESOLUTION IN SUPPORT OF AND AUTHORIZING THE APPLICATION TO THE ECONOMIC DEVELOPMENT ADMINISTRATION (EDA), UNITED STATES DEPARTMENT OF COMMERCE’S (DOC) ECONOMIC ADJUSTMENT ASSISTANCE (EAA) PROGRAM FOR A UTILITY AND ROAD INFRASTRUCTURE STUDY AND ASSESSMENT ON MARE ISLAND

WHEREAS, the City of Vallejo (the “City”) desires to finance the cost of a Mare Island Infrastructure Study and Assessment, to complete a comprehensive study and ascertain the full measure of available above and below ground infrastructure on the former federal lands of Mare Island, and

WHEREAS, the U.S. Economic Development Administration (EDA) awards grant funds to support strategic investments on a competitive merit basis to support economic development, foster job creation, and attract private investment in economically distressed areas of the United States, and

WHEREAS, Mare Island has been designated as an Opportunity Zone as created under the Tax Cuts and Jobs Act of 2017 which permits people to invest in distressed areas of the United States and temporarily defer taxes on eligible gains, and

WHEREAS, the City Economic Development Division, Planning and Development Services, Water, and Public Works Departments working with Vallejo Flood and Wastewater District, have collaborated to develop a preliminary scope of work that determines the beneficial purposes of the study and a preliminary cost of the comprehensive study and the support needed to match and manage the grant, and

WHEREAS, the City of Vallejo seeks $960,000 in EDA grant funding to assist with the completion of a comprehensive assessment of the condition of road infrastructure, stormwater management, sewer and water systems on Mare Island, which will serve as a foundation for future development, and

WHEREAS, the City completed a Specific Plan in 1999 for Mare Island and updated the Plan in 2013, and

WHEREAS, the Specific Plan establishes a vision for Mare Island as a vibrant civilian employment center, and

WHEREAS, this project exemplifies all the facets of smart investments of public funds, and will promote economic and technological development; encourage regional job growth; and strengthen communities in the greater Vallejo area that have suffered disproportionate economic distress and job losses from the Coronavirus and are rebuilding to become more competitive in the global economy; and

WHEREAS, the City of Vallejo requires completion of an infrastructure study and assessment in order to effectively plan for commercial and light industrial growth and continued job creation, and support economic development, and

WHEREAS, the City of Vallejo and partners will likely own and maintain all infrastructure on Mare Island; and

WHEREAS, the estimated cost to complete the infrastructure study for Mare Island is expected to be approximately $1,200,000.
NOW, THEREFORE, BE IT RESOLVED that:

SECTION 1. The City of Vallejo supports an application to the EDA's Economic Adjustment Assistance grant and will provide a grant match in Staff time of no less than 20% of total project costs up to $240,000.

SECTION 2. The City Clerk of the City of Vallejo is authorized and directed to attest the Mayor's signature, and that the Council formally resolves as outlined above, to denote their support of the grant application.

SECTION 3. The City Manager, or designee is authorized to execute any and all documents necessary for the successful award of the grant, subject to its approval by the Economic Development Administration.

Adopted by the City Council of the City of Vallejo, California, at a regular meeting held on the 27th day of October, 2020 and approved by me as Mayor on the same day.

AYES: 
NOES: 
ABSENT: 
ABSTAIN: 

BOB SAMPAYAN, MAYOR

ATTEST: 

DAWN G. ABRAHAMSON, CITY CLERK
DATE: October 27, 2020
TO: Mayor and Members of the City Council
FROM: Randy J. Risner, Interim City Attorney
SUBJECT: CONSIDERATION OF APPROVAL OF A LEGAL SERVICES AGREEMENT WITH ANGELO KILDAY & KILDUFF FOR LITIGATION LEGAL SERVICES

RECOMMENDATION
The City Attorney's Office recommends that Council approve the Legal Services Agreement with Angelo Kilday & Kilduff.

REASONS FOR RECOMMENDATION

BACKGROUND AND DISCUSSION
The City of Vallejo utilizes the services of specialized outside counsel for litigation and advisory services. Angelo Kilday & Kilduff provides litigation legal services in situations where we are required by law to represent City employees in litigation in which the City may have a conflict of interest. For example, if the City is in the process of disciplining an employee and the City is also defending a lawsuit against the City and the employee, the City would hire independent counsel for the employee. Currently, Angelo Kilday & Kilduff represents certain police officers that the City is obligated to defend.

FISCAL IMPACT
Because there is ongoing litigation in which Angelo Kilday & Kilduff is providing legal services, staff expects to spend between $80,000 and $120,000 to defend the cases. Staff is not requesting additional funding for this agreement. If approved, the costs will be paid out of the FY 2020-21 General Fund.

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. Master Outside Legal Services Agreement - Angelo, Kilday & Kilduff

CONTACT
Randy J. Risner, interim city attorney (707)648-4545
randy.risner@cityofvallejo.net
Subject: CONSIDERATION OF APPROVAL OF A LEGAL SERVICES AGREEMENT WITH ANGELO KILDAY & KILDUFF FOR LITIGATION LEGAL SERVICES
This Master Outside Legal Counsel Services Agreement (“Agreement”) is made at Vallejo, California, dated for reference this 1st day of October 2020, by and between the CITY OF VALLEJO, a municipal corporation, hereinafter referred to as “City”, and ANGELO, KILDAY & KILDUFF, hereinafter referred to as “Outside Legal Counsel,” who agree as follows:

1. Services. Outside Legal Counsel, through Bruce A. Kilay, a partner at/employee of Outside Legal Counsel shall serve as Outside Counsel, and shall be responsible for the performance of services hereunder, and as described in Exhibit A, “Scope of Work,” and in accordance with Exhibit B, “Compensation.” He shall personally direct all matters except as expressly authorized by the City Attorney, and shall supervise any services performed by other members or employees of Outside Legal Counsel. Outside Counsel’s performance hereunder shall be subject to the review, direction and supervision of the City Attorney. The City Attorney will have primary responsibility for analysis, planning, budgeting, and overall management of the case. To the extent litigation is filed, the City Attorney shall be chief counsel of record for all purposes relating to any litigation.

2. Compensation. City agrees to pay Outside Legal Counsel at the rate(s) as established in Exhibit B and Attachment 1 of Exhibit B.

3. Independent Contractor. Outside Legal Counsel is an independent contractor and shall not represent that it, or any of its agents or employees, are agents or employees of City except as legal representatives pursuant to this Agreement.

4. Communication with the City. The City Attorney or his/her designee is Outside Legal Counsel’s contact for all purposes. During the course of this Agreement, Outside Legal Counsel will keep the City Attorney or his/her designee informed of the progress of the services provided under this Agreement, and provide copies of pleadings, motions, orders, decisions, research memoranda, reports on significant developments, and quarterly status reports to the City Attorney.

5. Conflict of Interest. Outside Legal Counsel warrants and represents that to the best of its knowledge there exists no actual or potential conflict of interest. Outside Legal Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor. In the event that an actual or potential conflict of interest arises during the course of this agreement, Outside Legal Counsel shall immediately disclose such conflict in writing to City.
6. **Ownership of Documents.** Any City documents or other materials entrusted to Outside Legal Counsel must be maintained in confidence by Outside Legal Counsel, and retained pursuant to Outside Legal Counsel’s retention policy or returned to the City at the conclusion of the case/matter. Originals of all pleadings, memos, opinions, reports, records, documents and other materials, whether in hard copy or electronic form, which are prepared by Outside Legal Counsel, shall be the property of City and shall be delivered to City upon termination of this Agreement or upon the earlier request of the City Attorney. Outside Legal Counsel shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder.

7. **Choice of California Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Solano County Superior Court, State of California. Outside Legal Counsel covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8. **Time of Essence.** Time is of the essence in the performance of this Agreement.

9. **Term.** This Agreement shall remain in effect until terminated by either party or until it is superseded by a new agreement. Either party to this Agreement may terminate this Agreement with 30-days written notice to the non-terminating party. Upon receipt of any notice of termination, pursuant to this section, Outside Legal Counsel shall immediately cease all services hereunder except such as may be specifically approved by the City Attorney.

10. **Indemnification.** Outside Legal Counsel shall defend, indemnify and hold harmless the City, its officers, employees, representatives and agents, from and against all actions, suits, proceedings, claims, liability, demands, losses, costs, and expenses, including legal costs and attorneys' fees, arising from or related to performance of services hereunder by Outside Legal Counsel, its officers, employees or agents.
11. **Attorneys’ Fees.** If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs of suit from the losing party.

12. **Insurance.** Outside Legal Counsel shall comply with the following insurance provisions:

   **A. Minimum Limits of Insurance.** Outside Legal Counsel shall maintain limits no less than:

   1. **General Liability:** $2,000,000.00 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

   2. **Automobile Liability:** $1,000,000.00 per accident for bodily injury and property damage.

   3. **Workers’ Compensation and Employer’s Liability:** $1,000,000.00 per accident for bodily injury or disease. If Outside Legal Counsel is not subject to California Workers’ Compensation requirements, Outside Legal Counsel shall file a completed certificate of exemption form which may be obtained from the City prior to commencing any activity authorized hereunder.

   4. **Professional Liability (Errors and Omission):** $2,000,000.00 combined single limit per occurrence, and annual aggregate.

   **B. Deductible and Self-Insured Retention.** Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City of Vallejo, its officers, officials, employees and volunteers; or the Outside Legal Counsel shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

   **C. Other Insurance Provisions.** The general liability and automobile liability policies, as can be provided, are to contain, or be endorsed to contain, the following provisions:

   1. The City of Vallejo, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects liability, including defense costs, arising out of activities performed by or on behalf of the Outside Legal Counsel; products and completed operations of the Outside Legal Counsel; premises owned, occupied or used by the Outside Legal Counsel; or automobiles owned, leased hired or borrowed by the Outside Legal Counsel. The coverage shall contain no special limitations on the scope of protection afforded to the City of Vallejo, its officers, officials, employees, agents or volunteers. The insurance is to be issued by companies licensed to do business in the State of California.

   2. For any claims related to this project, the Outside Legal Counsel’s insurance coverage shall be primary insurance as respects the City of Vallejo, its officers, officials,
employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Vallejo, its officers, officials, employees, agents or volunteers shall be excess of the Outside Legal Counsel’s insurance and shall not contribute with it.

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

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

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII.

E. Verification of Coverage. Outside Legal Counsel shall furnish the City with original endorsements effecting general and automobile liability insurance coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

F. Subcontractors. Outside Legal Counsel shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

G. Adequacy of Insurance. The City may evaluate the adequacy of insurance requirements annually on the anniversary of this Agreement’s execution and may require that Outside Legal Counsel obtain and maintain higher levels of insurance.

13. Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Outside Legal Counsel, or any successor in interest, in the event or any default or breach by City or for any amount which may become due to Outside Legal Counsel or to its successor, or for breach of any obligation of the terms of this Agreement.

14. Notices. All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City: Randy J. Risner
Interim City Attorney
City of Vallejo, City Hall
555 Santa Clara Street, 3rd Floor
If to Outside Legal Counsel: Bruce A. Kilday  
Angelo, Kilday  
601 University Avenue, Suite 150  
Sacramento, CA 9582

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

Routine administrative communications shall be made pursuant to section 1 of Exhibit A.

15. **Integration Clause.** This Agreement, including all Exhibits and Attachments, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

16. **Severability Clause.** Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

17. **Facsimile Signature; Electronic Signature.** This Agreement shall be binding upon the receipt of facsimile signatures or e-mailed by PDF or otherwise. Any person transmitting his or her signature by facsimile or electronically shall promptly send an original signature to the other party pursuant to the notice provision of this Agreement. The failure to send an original shall not affect the binding nature of this Agreement.

18. **Authority.** The person signing this Agreement for Outside Legal Counsel hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Outside Legal Counsel.

19. **Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled “Scope of Work,” including any attachments.  
Exhibit B, entitled “Compensation,” including any attachments.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

ANGELO, KILDAY & KILDUFF,  
Attorneys at Law,  
CITY OF VALLEJO,  
A municipal corporation

By:  
BRUCE A. KILDAY  
Senior Partner  
RANDY J. RISNER  
Interim City Attorney
DATE: _____________________________  DATE: _____________________________

Vallejo Business License No.

(City Seal)

ATTEST:

By: _______________________
   DAWN ABRAHAMSON
   City Clerk
EXHIBIT A
SCOPE OF WORK

1. Services to be Provided.

A. Outside Legal Counsel will perform:

For example:

*Basic Legal Services:* routine legal advice, telephone and personal consultations with the City Council, City Manager, department heads and/or authorized representatives on specific projects, matters and topics as requested by the City Attorney;

*Assistance in the preparation and review of ordinances, resolutions, agreements, contracts, forms, notices, certificates, deeds, and other document as required,*

*Attendance at some City Council regular and special meetings, study sessions and closed sessions, as requested.*

*Litigation Services:* analysis, representation and vigorous defense of the City of Vallejo, its agents, employees and actors in litigation cases assigned to Outside Legal Counsel by the City Attorney, including all required reporting under this Agreement, drafting and filing of pleadings, motions, court appearances, discovery handling, arbitration or mediation (if appropriate), coordination with staff, resolution or Trial, as requested by the City Attorney.

Each legal project shall be set forth in a Legal Assignment signed by the City Attorney.

All settlements involving recipients of Medicare must be properly reported so as to protect the City from future assessments, liens and fines related to the failure to protect Medicare’s interests in the case.

*Adherence to Budget.* In accordance with the City of Vallejo “Compensation” requirements (Exhibit B), Outside Legal Counsel will propose and develop a Legal Project Management Plan. Any significant changes to the Plan, to include any increase in the budget, must be approved by the City Attorney prior to implementation of such changes.
EXHIBIT B
COMPENSATION

1. Legal Project Management Plan. For each matter assigned by the City Attorney, Outside Legal Counsel must prepare a Legal Project Management Plan (“Plan”) within 60 days of retention as the initial report to the City Attorney.

The Plan should include a written statement regarding: (1) the scope of the work; (2) the strategy to be pursued; (3) the staffing required; (4) estimated legal fees and significant expenditures, as outlined in the Budget section of these requirements; (5) the estimated settlement value; and (6) the advisability of alternative dispute resolution. If it appears that a case will go to trial, a separate estimate of trial costs should be prepared no later than the close of discovery or 60 days before trial whichever is later. Any significant changes to the Plan must be approved by the City Attorney before implementation of such changes. The Plan, including the budget, must be updated every six months without exception. Notwithstanding the foregoing, the City Attorney, in his/her discretion, may make routine advisory or transactional assignments to Outside Counsel without the need for a Legal Project Management Plan on a case-by-case basis.

Motions should only be pursued when a stipulated or negotiated resolution of the issue cannot be achieved. Advance approval from the City Attorney is required before undertaking pretrial motions. In all matters, both the City Attorney and Outside Legal Counsel will use a cost-benefit analysis to determine the City’s interests. The analysis will weigh the anticipated benefits of a particular course of action against the estimated costs, discounted by the probability that the benefits will actually be achieved.

2. Budgets. At the discretion of the City Attorney, Outside Legal Counsel shall provide the City Attorney with a written budget setting forth the scope of work for every legal project, as well as the estimated fees and disbursements. This budget shall be a part of the Legal Project Management Plan. The budget shall explain all of the assumptions on which it is based and specify the following: (i) a detailed description of each separate task, such as motions, pleadings, depositions, reports, etc.; (ii) the name and billing rate for each lawyer and legal assistant to be involved; (iii) the amount of time each task is expected to take; and (iv) the budgeted charges for each task, broken down by month. Outside Legal Counsel’s compensation under this Agreement shall not exceed the budgeted amount as agreed upon unless amended with the prior approval of the City Attorney. Outside Legal Counsel must notify the City Attorney promptly in the event unanticipated issues cause the estimated legal fees or disbursements to vary significantly from those projected in the current budget. Outside Legal Counsel shall notify City in writing no later than thirty (30) days prior to the estimated date when Outside Legal Counsel will have billed City the budgeted amount, and Outside Legal Counsel shall provide City with an estimate of the additional compensation required to complete the project. For any matter reported to PRISM, Outside Legal Counsel shall also include on each invoice the amount billed to date toward SIR and amount of SIR remaining.

3. Billable Hourly Rate. Outside Legal Counsel shall provide the City Attorney with a schedule of billing rates for the specified partners, associates, and legal assistants applicable to the Legal Assignment. Outside Legal Counsel’s schedule of billing rates shall be incorporated herein as Attachment 1 to Exhibit B.
At least 60 days written notice must be given to the City Attorney of any proposed changes in billing rates, and approval must be obtained from the City Attorney prior to the implementation of such changes. Hourly rates include all overhead and internal charges. City agrees to pay Outside Legal Counsel, at the rate(s) as established in Attachment 1 of Exhibit B and in accordance with the provisions of Exhibit B. No partner or associate other than those specified in the budget shall work on or bill for time on a Legal Assignment without prior City Attorney approval.

4. **Outside Legal Counsel’s Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual reasonable expenditures of Outside Legal Counsel for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

   a. **Vehicle.** The City authorizes mileage reimbursed at the IRS approved per mile rate (currently $0.58 per/mile) for the use of personal automobiles for business. In addition, all expenditures incurred for parking and tolls will be fully reimbursed when an attorney uses his or her own automobile on City business. Fines for moving and parking violations will not be reimbursed by the City.

   b. **Delivery/Courier.** Standard mail services should be used whenever possible. The preparation of written correspondence and documents should be completed in time to avoid unnecessary use of express mail and delivery services at extra cost. Charges for certified, registered, insured, other special handling or express mail should be billed at the actual cost incurred. Billing should reflect the event that caused the need for urgent delivery. Failure of proper time management on a case is no reason for incurring these changes. Only actual mileage for in-house couriers may be billed at the IRS approved rate with no additional surcharge. Actual charges for outside services may be billed.

   c. **Travel.** Air travel should be coach class, and, if possible, by discounted fares. Actual charges incurred for meals will be reimbursed when Outside Legal Counsel is representing the City on out-of-town travel. Other meal expenses will not be paid.

   All travel expenses require an itemized accounting submitted with Outside Legal Counsel’s bill. This accounting must include detailed information about car rental, hotel, air and train fare, and travel meals, regardless of amount.

   d. **Experts/Specialists.** To retain third parties on behalf of the City, such as expert witnesses or specialists, Outside Legal Counsel must obtain approval in advance from the City Attorney.

5. **Payments to Outside Legal Counsel.** Payments to Outside Legal Counsel shall be made within a reasonable time after receipt of Outside Legal Counsel’s invoice. Bills should be submitted no more than once a month, but no less than every ninety days unless other arrangements have been approved. Outside Legal Counsel shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.
6. **Alternative Fee Arrangement.** An alternative fee arrangement must be the subject of a separate engagement letter or amendment to this Agreement and must be signed and approved by the City Attorney.

7. **Invoices.** All invoices submitted by Outside Legal Counsel shall be submitted no more than once a month but no less than every ninety days, unless other arrangements have been approved. Distinct matters shall be invoiced separately.

A. Each bill should include the following information:
   1. Date of Invoice Issuance;
   2. Sequential Invoice Number;
   3. Amount of this Invoice (Itemize all Reimbursable Expenses);
   4. The name of case and case number, Legal Assignment or matter number assigned by the City, as applicable;
   5. The date of each service performed and a full description of services rendered. A full description should include the activity performed, the names of the individuals involved, and the subject or purpose of the charges;
   6. The name of each partner, associate and legal assistant performing each service and the number of hours worked on each task, billed in .10 hour increments (tasks charged as “block” or multiple item entries are not acceptable);
   7. The hourly rate for each person and the resulting total charge for each service;
   8. Total fees for all professional services rendered during the billing period;
   9. An itemized list of all disbursements (including the per page charge for photocopies and faxes). Receipts may be requested from time to time;
   10. Adjustments for fees and disbursements for discounted non-recoverable matters, capped fees or similarly negotiated reductions;
   11. The combined total for professional services and disbursements for the month or other approved billing period;
   12. Outside Legal Counsel’s identification number or applicable identification number for the attorneys performing the services;
   13. “Statement Enclosed” on the envelope;
   14. An indication of whether the invoice is interim or final;
   15. Total billed to date for all pending Legal Assignments;
   16. If the matter is reported to PRISM, include total billed to date toward SIR and amount of SIR remaining.

B. If the City Attorney expressly authorizes the use of a third party, the format for third party billings must conform to these requirements. Outside Legal Counsel is responsible for seeing that vendors it retains comply with our billing format and guidelines.

C. Any month in which Outside Legal Counsel wishes to receive payment, Outside Legal Counsel shall submit to the City Attorney an invoice no later than the tenth (10th) working day of such month, in the form approved by City Attorney, for services rendered prior to the date of the invoice.

D. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Outside Legal Counsel for correction.
City shall not be responsible for delays in payment to Outside Legal Counsel resulting from Outside Legal Counsel’s failure to comply with the invoice format described above.

**E. Request for payment shall be sent to:**
Deena York  
City Attorney’s Office  
City of Vallejo, City Hall  
555 Santa Clara Street, 3rd Floor  
Vallejo, CA  94590

**8. Accounting Records of Outside Legal Counsel.** Outside Legal Counsel shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the City Attorney to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. The City Attorney shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records. Outside Legal Counsel shall retain all records and books related to performance hereunder for inspection by City for at least three (3) years after receipt of final payment.

**9. Taxes.** Outside Legal Counsel shall pay, when and as due, any and all taxes incurred as a result of Outside Legal Counsel’s compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

**10. Taxpayer Identification Number.** Outside Legal Counsel shall provide City with Outside Legal Counsel’s complete Request for Taxpayer Identification Number and Certification, Form W-9, as issued by the Internal Revenue Service, and any other State or local tax identification number requested by City.

**11. Expenses Not Paid.** The City will not pay any charges that represent the internal costs or overhead of Outside Legal Counsel. If the charge is questionable, Outside Legal Counsel must receive prior approval from the City. The following are some examples of expenses the City will not pay:

1. For more than one attorney to attend a hearing, deposition or trial, conduct a field investigation or interview, or otherwise handle casework requiring an appearance, absent the prior approval of the City Attorney;
2. Secretarial, clerical or word processing charges;
3. Staff overtime charges;
4. Internal messenger or courier services, except where necessary and less costly than outside services. Only actual mileage for in-house couriers may be billed at the IRS approved rate with no additional surcharge;
5. Photocopy charges in excess of $.15 per page. Any unusual photocopying requirements, including copying by outside services, must be approved in advance by the City Attorney;
6. Accounting or bookkeeping charges;
7. Costs of computerized research (e.g., Lexis);
8. Administrative fees or percentages;
9. Ordinary postage;
10. Attempted telephone calls or voicemail messages;
11. Faxes;
12. Staff overtime meals or transportation;
13. For work done to maintain Outside Legal Counsel’s General professional competence;
14. Senior biller, with two exceptions: (1) when each biller is participating in the conference because of his or her unique expertise in a particular field of law; or (2) when a major event has occurred in the matter that must be analyzed by more than one attorney;
15. Administrative and supervisory conferences are not to be charged to the City;
16. Office supplies;
17. Data storage.
DATE: October 27, 2020
TO: Mayor and Members of the City Council
FROM: Randy J. Risner, Interim City Attorney
SUBJECT: CONSIDERATION OF APPROVAL OF A LEGAL SERVICES AGREEMENT WITH BOUCHER LABOR & EMPLOYMENT LAW FOR HUMAN RESOURCES ADVISORY AND DISCIPLINARY LEGAL SERVICES

RECOMMENDATION
The City Attorney's Office recommends that the City Council approve the agreement with Boucher Labor & Employment Law.

REASONS FOR RECOMMENDATION
The City Attorney's Office requires the assistance of Boucher Labor & Employment Law to assist in providing advisory services to Human Resources and to the Vallejo Police Department.

BACKGROUND AND DISCUSSION
The City of Vallejo utilizes specialized outside legal counsel to perform specialized legal services such as litigation and human resources advisory services. Boucher Labor & Employment Law is a firm that has provided human resources advisory and disciplinary legal services for the City over the past several months.

Most of these services are performed by the City Attorney's Office. However, there has been a significant increase in the need for these services over the past several months. In addition, Boucher Labor & Employment Law provides additional legal support for the current police reform efforts as well as police department disciplinary matters.

FISCAL IMPACT
At the time of writing of this staff report, the City has expended nearly $100,000 with Boucher Labor & Employment Law for calendar year 2020. Because of increased need due to police reform activities and an increase in human resources needs, staff expects to spend additional $20,000 before the end of the 2020 calendar year and an additional $50,000 before June 30, 2021. Staff is not requesting for an additional budget as of this time. All of these costs are estimated to be paid out of the FY 2020-21 General Fund budget of the City's Attorney's office.

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. Master Outside Legal Services Agreement - Boucher Law

CONTACT
Randy J. Risner, Interim City Attorney (707) 648-4545
randy.risner@cityofvallejo.net
This Master Outside Legal Counsel Services Agreement ("Agreement") is made at Vallejo, California, dated for reference this 1st day of October 2020, by and between the CITY OF VALLEJO, a municipal corporation, hereinafter referred to as “City”, and BOUCHER LAW, hereinafter referred to as “Outside Legal Counsel,” who agree as follows:

1. **Services.** Outside Legal Counsel, through Christopher Boucher, a partner at/employee of Outside Legal Counsel shall serve as Outside Counsel, and shall be responsible for the performance of services hereunder, and as described in Exhibit A, “Scope of Work,” and in accordance with Exhibit B, “Compensation.” He shall personally direct all matters except as expressly authorized by the City Attorney, and shall supervise any services performed by other members or employees of Outside Legal Counsel. Outside Counsel’s performance hereunder shall be subject to the review, direction and supervision of the City Attorney. The City Attorney will have primary responsibility for analysis, planning, budgeting, and overall management of the case. To the extent litigation is filed, the City Attorney shall be chief counsel of record for all purposes relating to any litigation.

2. **Compensation.** City agrees to pay Outside Legal Counsel at the rate(s) as established in Exhibit B and Attachment 1 of Exhibit B.

3. **Independent Contractor.** Outside Legal Counsel is an independent contractor and shall not represent that it, or any of its agents or employees, are agents or employees of City except as legal representatives pursuant to this Agreement.

4. **Communication with the City.** The City Attorney or his/her designee is Outside Legal Counsel’s contact for all purposes. During the course of this Agreement, Outside Legal Counsel will keep the City Attorney or his/her designee informed of the progress of the services provided under this Agreement, and provide copies of pleadings, motions, orders, decisions, research memoranda, reports on significant developments, and quarterly status reports to the City Attorney.

5. **Conflict of Interest.** Outside Legal Counsel warrants and represents that to the best of its knowledge there exists no actual or potential conflict of interest. Outside Legal Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor. In the event that an actual or potential conflict of interest arises during the course of this agreement, Outside Legal Counsel shall immediately disclose such conflict in writing to City.
6. **Ownership of Documents.** Any City documents or other materials entrusted to Outside Legal Counsel must be maintained in confidence by Outside Legal Counsel, and retained pursuant to Outside Legal Counsel’s retention policy or returned to the City at the conclusion of the case/matter. Originals of all pleadings, memos, opinions, reports, records, documents and other materials, whether in hard copy or electronic form, which are prepared by Outside Legal Counsel, shall be the property of City and shall be delivered to City upon termination of this Agreement or upon the earlier request of the City Attorney. Outside Legal Counsel shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder.

7. **Choice of California Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Solano County Superior Court, State of California. Outside Legal Counsel covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8. **Time of Essence.** Time is of the essence in the performance of this Agreement.

9. **Term.** This Agreement shall remain in effect until terminated by either party or until it is superseded by a new agreement. Either party to this Agreement may terminate this Agreement with 30-days written notice to the non-terminating party. Upon receipt of any notice of termination, pursuant to this section, Outside Legal Counsel shall immediately cease all services hereunder except such as may be specifically approved by the City Attorney.

10. **Indemnification.** Outside Legal Counsel shall defend, indemnify and hold harmless the City, its officers, employees, representatives and agents, from and against all actions, suits, proceedings, claims, liability, demands, losses, costs, and expenses, including legal costs and attorneys' fees, arising from or related to performance of services hereunder by Outside Legal Counsel, its officers, employees or agents.
11. **Attorneys’ Fees.** If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs of suit from the losing party.

12. **Insurance.** Outside Legal Counsel shall comply with the following insurance provisions:

A. **Minimum Limits of Insurance.** Outside Legal Counsel shall maintain limits no less than:

1. **General Liability:** $2,000,000.00 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** $1,000,000.00 per accident for bodily injury and property damage.

3. **Workers’ Compensation and Employer’s Liability:** $1,000,000.00 per accident for bodily injury or disease. If Outside Legal Counsel is not subject to California Workers’ Compensation requirements, Outside Legal Counsel shall file a completed certificate of exemption form which may be obtained from the City prior to commencing any activity authorized hereunder.

4. **Professional Liability (Errors and Omission):** $2,000,000.00 combined single limit per occurrence, and annual aggregate.

B. **Deductible and Self-Insured Retention.** Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City of Vallejo, its officers, officials, employees and volunteers; or the Outside Legal Counsel shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. **Other Insurance Provisions.** The general liability and automobile liability policies, as can be provided, are to contain, or be endorsed to contain, the following provisions:

1. The City of Vallejo, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects liability, including defense costs, arising out of activities performed by or on behalf of the Outside Legal Counsel; products and completed operations of the Outside Legal Counsel; premises owned, occupied or used by the Outside Legal Counsel; or automobiles owned, leased, hired or borrowed by the Outside Legal Counsel. The coverage shall contain no special limitations on the scope of protection afforded to the City of Vallejo, its officers, officials, employees, agents or volunteers. The insurance is to be issued by companies licensed to do business in the State of California.

2. For any claims related to this project, the Outside Legal Counsel’s insurance coverage shall be primary insurance as respects the City of Vallejo, its officers, officials,
employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Vallejo, its officers, officials, employees, agents or volunteers shall be excess of the Outside Legal Counsel’s insurance and shall not contribute with it.

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

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

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII.

E. Verification of Coverage. Outside Legal Counsel shall furnish the City with original endorsements effecting general and automobile liability insurance coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

F. Subcontractors. Outside Legal Counsel shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

G. Adequacy of Insurance. The City may evaluate the adequacy of insurance requirements annually on the anniversary of this Agreement’s execution and may require that Outside Legal Counsel obtain and maintain higher levels of insurance.

13. Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Outside Legal Counsel, or any successor in interest, in the event or any default or breach by City or for any amount which may become due to Outside Legal Counsel or to its successor, or for breach of any obligation of the terms of this Agreement.

14. Notices. All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City: Randy J. Risner
Interim City Attorney
City of Vallejo, City Hall
555 Santa Clara Street, 3rd Floor
Vallejo, CA  94590

If to Outside Legal Counsel: Christopher Boucher
Boucher Law
2081 Center Street
Berkeley, CA  94704

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

Routine administrative communications shall be made pursuant to section 1 of Exhibit A.

15. **Integration Clause.** This Agreement, including all Exhibits and Attachments, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

16. **Severability Clause.** Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

17. **Facsimile Signature; Electronic Signature.** This Agreement shall be binding upon the receipt of facsimile signatures or e-mailed by PDF or otherwise. Any person transmitting his or her signature by facsimile or electronically shall promptly send an original signature to the other party pursuant to the notice provision of this Agreement. The failure to send an original shall not affect the binding nature of this Agreement.

18. **Authority.** The person signing this Agreement for Outside Legal Counsel hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Outside Legal Counsel.

19. **Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled “Scope of Work,” including any attachments.
Exhibit B, entitled “Compensation,” including any attachments.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

BOUCHER LAW,
A limited liability partnership

By: ________________________________
CHRISTOPHER BOUCHER
Attorney at Law

CITY OF VALLEJO,
A municipal corporation

RANDY J. RISNER
Interim City Attorney
EXHIBIT A
SCOPE OF WORK

1. Services to be Provided.

A. Outside Legal Counsel will perform:

For example:

**Basic Legal Services**: routine legal advice, telephone and personal consultations with the City Council, City Manager, department heads and/or authorized representatives on specific projects, matters and topics as requested by the City Attorney;

**Assistance in the preparation and review of ordinances, resolutions, agreements, contracts, forms, notices, certificates, deeds, and other document as required,**

**Attendance at some City Council regular and special meetings, study sessions and closed sessions, as requested.**

**Litigation Services**: analysis, representation and vigorous defense of the City of Vallejo, its agents, employees and actors in litigation cases assigned to Outside Legal Counsel by the City Attorney, including all required reporting under this Agreement, drafting and filing of pleadings, motions, court appearances, discovery handling, arbitration or mediation (if appropriate), coordination with staff, resolution or Trial, as requested by the City Attorney.

Each legal project shall be set forth in a Legal Assignment signed by the City Attorney.

All settlements involving recipients of Medicare must be properly reported so as to protect the City from future assessments, liens and fines related to the failure to protect Medicare’s interests in the case.

**Adherence to Budget**. In accordance with the City of Vallejo “Compensation” requirements (Exhibit B), Outside Legal Counsel will propose and develop a Legal Project Management Plan. Any significant changes to the Plan, to include any increase in the budget, must be approved by the City Attorney prior to implementation of such changes.
EXHIBIT B
COMPENSATION

1. Legal Project Management Plan. For each matter assigned by the City Attorney, Outside Legal Counsel must prepare a Legal Project Management Plan (“Plan”) within 60 days of retention as the initial report to the City Attorney.

The Plan should include a written statement regarding: (1) the scope of the work; (2) the strategy to be pursued; (3) the staffing required; (4) estimated legal fees and significant expenditures, as outlined in the Budget section of these requirements; (5) the estimated settlement value; and (6) the advisability of alternative dispute resolution. If it appears that a case will go to trial, a separate estimate of trial costs should be prepared no later than the close of discovery or 60 days before trial whichever is later. Any significant changes to the Plan must be approved by the City Attorney before implementation of such changes. The Plan, including the budget, must be updated every six months without exception. Notwithstanding the foregoing, the City Attorney, in his/her discretion, may make routine advisory or transactional assignments to Outside Counsel without the need for a Legal Project Management Plan on a case-by-case basis.

Motions should only be pursued when a stipulated or negotiated resolution of the issue cannot be achieved. Advance approval from the City Attorney is required before undertaking pretrial motions. In all matters, both the City Attorney and Outside Legal Counsel will use a cost-benefit analysis to determine the City’s interests. The analysis will weigh the anticipated benefits of a particular course of action against the estimated costs, discounted by the probability that the benefits will actually be achieved.

2. Budgets. At the discretion of the City Attorney, Outside Legal Counsel shall provide the City Attorney with a written budget setting forth the scope of work for every legal project, as well as the estimated fees and disbursements. This budget shall be a part of the Legal Project Management Plan. The budget shall explain all of the assumptions on which it is based and specify the following: (i) a detailed description of each separate task, such as motions, pleadings, depositions, reports, etc.; (ii) the name and billing rate for each lawyer and legal assistant to be involved; (iii) the amount of time each task is expected to take; and (iv) the budgeted charges for each task, broken down by month. Outside Legal Counsel’s compensation under this Agreement shall not exceed the budgeted amount as agreed upon unless amended with the prior approval of the City Attorney. Outside Legal Counsel must notify the City Attorney promptly in the event unanticipated issues cause the estimated legal fees or disbursements to vary significantly from those projected in the current budget. Outside Legal Counsel shall notify City in writing no later than thirty (30) days prior to the estimated date when Outside Legal Counsel will have billed City the budgeted amount, and Outside Legal Counsel shall provide City with an estimate of the additional compensation required to complete the project. For any matter reported to PRISM, Outside Legal Counsel shall also include on each invoice the amount billed to date toward SIR and amount of SIR remaining.

3. Billable Hourly Rate. Outside Legal Counsel shall provide the City Attorney with a schedule of billing rates for the specified partners, associates, and legal assistants applicable to the Legal Assignment. Outside Legal Counsel’s schedule of billing rates shall be incorporated herein as Attachment 1 to Exhibit B.
At least 60 days written notice must be given to the City Attorney of any proposed changes in billing rates, and approval must be obtained from the City Attorney prior to the implementation of such changes. Hourly rates include all overhead and internal charges. City agrees to pay Outside Legal Counsel, at the rate(s) as established in Attachment 1 of Exhibit B and in accordance with the provisions of Exhibit B. No partner or associate other than those specified in the budget shall work on or bill for time on a Legal Assignment without prior City Attorney approval.

4. **Outside Legal Counsel’s Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual reasonable expenditures of Outside Legal Counsel for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

   A. **Vehicle.** The City authorizes mileage reimbursed at the IRS approved per mile rate (currently $0.58 per/mile) for the use of personal automobiles for business. In addition, all expenditures incurred for parking and tolls will be fully reimbursed when an attorney uses his or her own automobile on City business. Fines for moving and parking violations will not be reimbursed by the City.

   B. **Delivery/Courier.** Standard mail services should be used whenever possible. The preparation of written correspondence and documents should be completed in time to avoid unnecessary use of express mail and delivery services at extra cost. Charges for certified, registered, insured, other special handling or express mail should be billed at the actual cost incurred. Billing should reflect the event that caused the need for urgent delivery. Failure of proper time management on a case is no reason for incurring these changes. Only actual mileage for in-house couriers may be billed at the IRS approved rate with no additional surcharge. Actual charges for outside services may be billed.

   C. **Travel.** Air travel should be coach class, and, if possible, by discounted fares. Actual charges incurred for meals will be reimbursed when Outside Legal Counsel is representing the City on out-of-town travel. Other meal expenses will not be paid.

   All travel expenses require an itemized accounting submitted with Outside Legal Counsel’s bill. This accounting must include detailed information about car rental, hotel, air and train fare, and travel meals, regardless of amount.

   D. **Experts/Specialists.** To retain third parties on behalf of the City, such as expert witnesses or specialists, Outside Legal Counsel must obtain approval in advance from the City Attorney.

5. **Payments to Outside Legal Counsel.** Payments to Outside Legal Counsel shall be made within a reasonable time after receipt of Outside Legal Counsel’s invoice. Bills should be submitted no more than once a month, but no less than every ninety days unless other arrangements have been approved. Outside Legal Counsel shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.
6. **Alternative Fee Arrangement.** An alternative fee arrangement must be the subject of a separate engagement letter or amendment to this Agreement and must be signed and approved by the City Attorney.

7. **Invoices.** All invoices submitted by Outside Legal Counsel shall be submitted no more than once a month but no less than every ninety days, unless other arrangements have been approved. Distinct matters shall be invoiced separately.

A. Each bill should include the following information:
   1. Date of Invoice Issuance;
   2. Sequential Invoice Number;
   3. Amount of this Invoice (Itemize all Reimbursable Expenses);
   4. The name of case and case number, Legal Assignment or matter number assigned by the City, as applicable;
   5. The date of each service performed and a full description of services rendered. A full description should include the activity performed, the names of the individuals involved, and the subject or purpose of the charges;
   6. The name of each partner, associate and legal assistant performing each service and the number of hours worked on each task, billed in .10 hour increments (tasks charged as “block” or multiple item entries are not acceptable);
   7. The hourly rate for each person and the resulting total charge for each service;
   8. Total fees for all professional services rendered during the billing period;
   9. An itemized list of all disbursements (including the per page charge for photocopies and faxes). Receipts may be requested from time to time;
   10. Adjustments for fees and disbursements for discounted non-recoverable matters, capped fees or similarly negotiated reductions;
   11. The combined total for professional services and disbursements for the month or other approved billing period;
   12. Outside Legal Counsel’s identification number or applicable identification number for the attorneys performing the services;
   13. “Statement Enclosed” on the envelope;
   14. An indication of whether the invoice is interim or final;
   15. Total billed to date for all pending Legal Assignments;
   16. If the matter is reported to PRISM, include total billed to date toward SIR and amount of SIR remaining.

B. If the City Attorney expressly authorizes the use of a third party, the format for third party billings must conform to these requirements. Outside Legal Counsel is responsible for seeing that vendors it retains comply with our billing format and guidelines.

C. Any month in which Outside Legal Counsel wishes to receive payment, Outside Legal Counsel shall submit to the City Attorney an invoice no later than the tenth (10th) working day of such month, in the form approved by City Attorney, for services rendered prior to the date of the invoice.

D. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Outside Legal Counsel for correction.
City shall not be responsible for delays in payment to Outside Legal Counsel resulting from Outside Legal Counsel’s failure to comply with the invoice format described above.

E. Request for payment shall be sent to:
   Deena York
   City Attorney’s Office
   City of Vallejo, City Hall
   555 Santa Clara Street, 3rd Floor
   Vallejo, CA  94590

8. Accounting Records of Outside Legal Counsel. Outside Legal Counsel shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the City Attorney to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. The City Attorney shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records. Outside Legal Counsel shall retain all records and books related to performance hereunder for inspection by City for at least three (3) years after receipt of final payment.

9. Taxes. Outside Legal Counsel shall pay, when and as due, any and all taxes incurred as a result of Outside Legal Counsel’s compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

10. Taxpayer Identification Number. Outside Legal Counsel shall provide City with Outside Legal Counsel’s complete Request for Taxpayer Identification Number and Certification, Form W-9, as issued by the Internal Revenue Service, and any other State or local tax identification number requested by City.

11. Expenses Not Paid. The City will not pay any charges that represent the internal costs or overhead of Outside Legal Counsel. If the charge is questionable, Outside Legal Counsel must receive prior approval from the City. The following are some examples of expenses the City will not pay:

   1. For more than one attorney to attend a hearing, deposition or trial, conduct a field investigation or interview, or otherwise handle casework requiring an appearance, absent the prior approval of the City Attorney;
   2. Secretarial, clerical or word processing charges;
   3. Staff overtime charges;
   4. Internal messenger or courier services, except where necessary and less costly than outside services. Only actual mileage for in-house couriers may be billed at the IRS approved rate with no additional surcharge;
   5. Photocopy charges in excess of $.15 per page. Any unusual photocopying requirements, including copying by outside services, must be approved in advance by the City Attorney;
   6. Accounting or bookkeeping charges;
   7. Costs of computerized research (e.g., Lexis);
   8. Administrative fees or percentages;
   9. Ordinary postage;
10. Attempted telephone calls or voicemail messages;
11. Faxes;
12. Staff overtime meals or transportation;
13. For work done to maintain Outside Legal Counsel’s General professional competence;
14. Senior biller, with two exceptions: (1) when each biller is participating in the conference because of his or her unique expertise in a particular field of law; or (2) when a major event has occurred in the matter that must be analyzed by more than one attorney;
15. Administrative and supervisory conferences are not to be charged to the City;
16. Office supplies;
17. Data storage.
DATE: October 27, 2020
TO: Mayor and Members of the City Council
FROM: Heather Ruiz, Human Resources Director
SUBJECT: ADOPT A RESOLUTION APPOINTING VERONICA NEBB AS CITY ATTORNEY AND AUTHORIZE THE MAYOR TO ENTER INTO AN EMPLOYMENT AGREEMENT WITH VERONICA NEBB TO SERVE AS CITY ATTORNEY

RECOMMENDATION
Adopt a Resolution appointing Veronica Nebb as City Attorney and authorizing the Mayor to execute an employment agreement with Veronica Nebb to serve as City Attorney effective no later than November 16, 2020.

REASONS FOR RECOMMENDATION
With the retirement of the previous City Attorney, Claudia Quintana, in April 2020, the City has been recruiting for a permanent City Attorney. An executive search was conducted by Greg Nelson of Ralph Andersen & Associates, resulting in several candidates being invited for interviews with the City Council. The City Council identified a top candidate for the position and appointed an Ad Hoc Committee consisting of Council Member McConnell and Vice Mayor Sunga to enter into negotiations with Veronica Nebb for the position of City Attorney within the compensation and benefit parameters established by the City Council. The Ad Hoc Committee has concluded its negotiations with Ms. Nebb regarding terms and conditions of employment as detailed in the attached proposed Employment Agreement.

BACKGROUND AND DISCUSSION
The City Council has completed the City Attorney recruitment process and is asked to consider the appointment of Veronica Nebb as City Attorney and approve an employment agreement with her, within compensation and benefit parameters established by City Council. The negotiations over the terms and conditions of employment and a total compensation package have concluded, resulting in the attached proposed Employment Agreement (Exhibit A).

This report provides for the approval of an Employment Agreement with compensation and benefits for the Vallejo City Attorney, based on several factors, including market considerations for the position of a City Attorney in the Bay Area, the City of Vallejo's fiscal environment, the complexity of organizational and community issues, and Ms. Nebb's extensive skills, knowledge and abilities as a City Attorney. The proposed initial base salary is $219,760.85 annually, with other compensation and benefits as outlined in this report. The initial term of the proposed Agreement is sixty (60) months from date of hire. It is expected that Ms. Nebb will begin her employment with the City of Vallejo on or before November 16, 2020.

Ms. Nebb has extensive experience working as a City Attorney in several communities, including Martinez and Novato, California.
In addition to standard terms and conditions of employment, the Agreement provides for the following salary and benefits:

- Base salary: $219,760.85 annual salary.
- An automobile allowance of $6000 annually.
- Administrative leave allowance of eighty (80) hours per calendar year with option to cash out up to eighty (80) hours annually.
- Initial annual leave (vacation) bank of eighty hours, plus annual accrual of one hundred and sixty (160) hours, with option to cash out up to eighty (80) hours annually, and a maximum accrual cap of four hundred and eighty (480) hours.
- Initial sick leave bank of eighty (80) hours with accrual rate of eight (8) hours per month of employment, with maximum accrual cap of two hundred eighty-eight (288) hours, no payout of accrued sick leave balance upon separation, but option to use accrued sick leave to purchase CALPERS service credit.
- Life insurance benefit of $500,000 (term life policy) and Accidental Death and Disability insurance policy with benefit equal to sixty percent (60%) of annual base salary.

**FISCAL IMPACT**
The salary and benefits under the proposed City Attorney Employment Agreement is estimated at $ 358,000 /year. This cost is within what was budgeted for the City Attorney position in the adopted FY 2020-21 budget.

**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. Resolution_Appointment of City Attorney and Authorizing Mayor to Execute Employment Agreement with Veronica Nebb (1) rjr stamp
2. 2020-10-21 FINAL City Attorney Contract - Nebb dy CAO Stamp

**CONTACT**
Heather Ruiz, Human Resources Director (707) 648-4317
heather.ruiz@cityofvallejo.net
WHEREAS, the City Council has determined that Ms. Veronica Nebb is qualified to serve as City Attorney of the City of Vallejo; and

WHEREAS, an employment agreement has been prepared that sets forth the duties, compensation, and other terms and conditions of employment for Ms. Veronica Nebb; and

WHEREAS, the City Council desires to appoint Ms. Veronica Nebb as City Attorney and to authorize the City Attorney Employment Agreement attached to this Resolution as Exhibit A.

NOW, THEREFORE BE IT RESOLVED that the Council of the City of Vallejo does hereby resolve as follows:

Section 1. Appointment of City Attorney. The City Council appoints Ms. Veronica Nebb as City Attorney for the City of Vallejo effective November 16, 2020.

Section 2. Approval of the City Attorney Employment Agreement. The City Council approves the Employment Agreement between the City and Ms. Veronica Nebb, which is attached as Exhibit A and incorporated herein by this reference, and authorizes the Mayor to execute said Agreement.

Adopted by the City Council of the City of Vallejo at a regular meeting held on October 27, 2020 with the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

BOB SAMPAYAN, MAYOR
ATTEST: _____________________________________

DAWN G. ABRAHAMSON, CITY CLERK
CITY ATTORNEY
EMPLOYMENT AGREEMENT
Between
THE CITY OF VALLEJO
and
VERONICA A.F. NEBB

1. PARTIES AND DATE

This Agreement is entered into as of October 27, 2020 by and between the City of Vallejo, California, a municipal corporation (the “City”), and Veronica A.F. Nebb, an individual (the “City Attorney”). The City and the City Attorney are sometimes individually referred to as a ”Party” and collectively as "Parties."

A. The City requires the services of a City Attorney.
B. The City Attorney represents that she has the necessary education, experience, skills and expertise to serve as the City's City Attorney.
C. The City Council of the City (the "Council") desires to employ the City Attorney to serve as the City Attorney of City.
D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of the Charter of the City of Vallejo and the Vallejo Municipal Code.
E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

2. EMPLOYMENT

The City hereby employs the City Attorney as its City Attorney, effective November 16, 2020, and the City Attorney hereby accepts such employment.

3. COMMITMENTS AND UNDERSTANDINGS

A. The City Attorney's Obligations

(1) Duties and Authority

The City Attorney shall be the chief administrative officer of the Legal Department and shall have all of the duties, powers, authority, and responsibilities of City Attorney as the same are specifically prescribed and set forth in the City Charter, and in particular Section 401 thereof, and the ordinances of the City, and in particular those provided in the Vallejo Municipal Code, Sections 2.10.070 and 2.10.072, resolutions, policies, rules and regulations, as from time to time existing thereunder. The City Attorney
shall also perform those lawful duties and follow those lawful orders and instructions given to her by the Council when sitting at a lawfully convened meeting of the Council.

(2) **Hours of Work**

(a) The City Attorney is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Attorney's position. The City Attorney does not have set hours of work as the City Attorney is expected to be available at all times.

(b) It is recognized that the City Attorney must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Attorney's schedule of work each day and week shall vary in accordance with the work required to be performed. The City Attorney shall spend sufficient hours on site to perform the City Attorney's duties; however, the City Attorney has discretion over the City Attorney's work schedule and work location, subject to the approval of the City Council.

(c) The City Attorney shall not engage the practice of law or giving of legal advice for compensation without the express written approval of a majority of the City Council, which may be withheld in the City Council's unfettered discretion.

(3) **Disability or Inability to Perform**

(a) In the event the City Attorney becomes mentally or physically incapable of performing the City Attorney's essential functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than 6 months, the City Council may, subject to state and federal law, terminate the City Attorney. If the City Council does elect to terminate the City Attorney due to incapacity, the City Attorney shall not receive severance benefits provided in Section 5.C below.

(4) **Goal-Setting**

The City Attorney commits to spending time each year outside of regular City Council meetings to work with the City Council on setting goals and priorities for the Law Department, and to work on issues that may be inhibiting the maximal achievement of City goals. The City Council and City Attorney intend to hold the first goal setting meeting no later than May 2021.

B. **City Obligations**

(1) The City shall provide the City Attorney with the compensation, incentives and benefits, specified elsewhere in this Agreement.
(2) The City shall provide the City Attorney with a private office, secretary, staff, office equipment, supplies, and a stipend for her use of her own cell phone as provided in Section 4(A)(4), and all other facilities and services adequate for the performance of the City Attorney’s duties, as approved by the City Council in the City's annual budget.

(3) The City shall pay for or provide reimbursement for all reasonable and lawful business expenses of the City Attorney incurred as a result of performing the duties of the City Attorney, as well as a computer, laptop computer, high-speed internet access, electronic calendar, fax, copy machine and similar devices for use at the City Attorney’s Office at City Hall, except that the laptop computer is available for the City Attorney’s use outside of the office. The City shall provide the City Attorney a City credit card to charge appropriate and lawful business expenses, as approved by the City Council in the City's annual budget.

(4) The City agrees to pay the professional dues and subscriptions on behalf of the City Attorney which are necessary for the City Attorney’s continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City, and for the City Attorney's continued professional participation and advancement and as approved by the City Council in the City’s annual budget. At minimum, this shall include any annual professional dues for membership with the State Bar of California, any section memberships for the California Lawyers Association, as well as continuing education and/or training to maintain an active State Bar of California license.

(5) The City agrees to pay the travel and subsistence expenses of the City Attorney to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Attorney, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Attorney serves as a member and as approved by the City Council in the City's annual budget. Any expenditures must be in conformance with any applicable City travel and reimbursement policy.

(6) The City also agrees to pay reasonable costs for the travel and subsistence expenses of the City Attorney for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Attorney and as approved by the City Council in the City’s annual budget. Any expenditures must be in conformance with any applicable City travel and reimbursement policy.

(7) The City Attorney shall prepare and submit to the City Council on an annual basis, or upon request of the Council as part of a performance evaluation, a report detailing the expenses and costs related to Subsections (4), (5) and (6).

C. City Council Obligations

(1) The City Council commits to spending time each year outside of regular City Council meetings to work with the City Attorney on setting goals and priorities
for the Law Department, and to work on issues that may be inhibiting the maximal achievement of City goals. The City Council and City Attorney intend to hold the first goal setting meeting no later than May 2021.

(2) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, contractors, and consultants under the supervision of the City Attorney solely through the City Attorney or the City Attorney's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Attorney, either publicly or privately.

(3) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Attorney.

(4) Except as otherwise expressly provided in this Agreement or in the City's Charter, Municipal Code, policies, resolutions, rules or regulations, neither the City Council nor any of its members shall interfere with the lawful execution of the powers and duties of the City Attorney. Notwithstanding the foregoing, the City Attorney shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

D. Mutual Obligations

(1) Performance Evaluation

(a) Annual performance evaluations are an important way for the City Council and City Attorney to ensure effective communications about expectations and performance.

(b) The City Council recognizes that for the City Attorney to respond to its needs and to grow in the performance of the City Attorney’s job, the City Attorney needs to know how the City Council Members evaluate the City Attorney's performance.

(c) To assure that the City Attorney gets this feedback, the City Council shall conduct an evaluation of the City Attorney's performance at least once each year. The City Council and the City Attorney agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times during each calendar year.

(d) The City Attorney and the City Council will create goals or other outcome measures that will provide the basis for the next performance review on an annual basis on or before July 1 of each year.

(e) The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Attorney. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Attorney.
4. **COMPENSATION**

The City agrees to provide the following compensation to the City Attorney during the term of this Agreement:

A. **Compensation & Required Employer Costs**

   (1) **Base Salary**

   (a) The beginning annual salary for the position of City Attorney shall be Two Hundred Nineteen Seven Hundred Sixty Dollars and Eight-Five Cents ($219,760.85). Thereafter, the City Attorney's annual salary increases, if any, shall be based on performance and as determined by the City Council, in the exercise of its sole and unfettered discretion.

   (b) The City Attorney shall be paid at the same intervals and in the same manner as regular City employees.

   (c) The City shall not at any time during the term of this Agreement (i) reduce the compensation, leave and/or other financial benefits of the City Attorney or (ii) increase the City Attorney's financial obligations to contribute to, assume the cost of or pay for any benefits, unless as part of (iii) a reduction in the same compensation, leave and/or other financial benefits the Unrepresented Management Employees experience, or (iv) an increase in the same financial obligations experienced by the Unrepresented Management Employees, respectively, and then in no greater percentage than the (v) average reduction in the relevant compensation, leave and/or benefit or (vi) average increase in the financial obligations, as the case may be, experienced by all of the Unrepresented Management Employees.

   (2) **Deferred Compensation**

   To the extent authorized by applicable federal law and regulations applicable thereto ("federal laws"), City agrees to pay annually, on behalf of City Attorney, Twenty-Four Thousand Dollars ($24,000.00) [or the then applicable maximum allowable contribution pursuant to applicable federal laws] into the City Attorney's deferred compensation accounts with the City's current deferred compensation providers.

   (3) **Cell Phone Allowance**

   The City Attorney shall be provided a monthly cell phone allowance of $100.00 in exchange for making a non-City-owned cell phone available for the City Attorney's own use and for City-related business and/or functions during, before and after normal work hours.

   (4) **Automobile Allowance**

   The City Attorney shall be provided a monthly automobile allowance of Five Hundred Dollars and No Cents ($500.00) in exchange for making a non-City-
owned vehicle available for the City Attorney’s own use and for City-related business and/or functions, during, before and after normal work hours. The City Attorney shall provide auto insurance, fuel and maintenance for this vehicle.

(5) **Life Insurance & Accidental Death & Disability Insurance**

The City Attorney shall be provided with life insurance and Accidental Death & Disability Insurance under the same terms as those of the Unrepresented Employee Group, except that the coverage level for the City Attorney shall be increased to a maximum of Five Hundred Thousand Dollars and No Cents ($500,000.00) for term life insurance and a benefit of sixty percent (60%) of the City Attorney’s annual base salary for Accidental Death & Disability Insurance.

(6) **Required Employer Costs**

The City shall pay the following, subject to the following conditions:

(a) The City participates in social security. This benefit is in addition to the CalPERS Retirement Plan. The City and the City Attorney each pay their required amount under the Social Security Act. The City Attorney's contribution amount will be deducted from her paycheck.

(b) Unemployment Compensation.

(c) The employer's share of California Public Employees Retirement System (CalPERS) rate, subject to the following qualifications:

   The City contracts with CalPERS for retirement benefits. Based on the City Attorney’s hire date and date of entry into CalPERS, the City Attorney shall be classified as a “new member” as defined by Government Code Section 7522.04(e). With respect to retirement compensation and all other relevant respects, the City will comply with Government Code Section 7522 et. seq., including but not limited to the employee cost-share, the cap on pension benefits, and the three-year average for calculating final compensation. The City shall pay the employer share of applicable CalPERS contributions, and the City Attorney shall pay any required employee contributions for “new members” as required by Government Code Section 7522.30.

(d) The cost of any fidelity or other bonds required by law for the City Attorney.

(e) The cost to defend and indemnify the City Attorney as provided in Section I.E. below.

(f) Workers’ compensation to the same extent provided to other employees of the City.
B. Basic Benefits

(1) General

The City Attorney is entitled to the same benefits as are available to other Unrepresented Management Employees, unless specifically revised herein.

(2) Holidays

(a) Declared Holidays - The City Attorney shall be entitled to the same eleven (11) holidays each fiscal year as set by the City Council and under the same terms as provided to the Unrepresented Management Employee group.

(3) Leave Allowance

(a) The City Attorney shall be given 80 hours of annual leave credit effective upon the execution of this Agreement. The City Attorney shall then begin accruing annual leave at a rate of 160 hours during her first year of employment, then for each year of employment thereafter, at a rate of 200 hours per year. The City Attorney shall take at least 80 hours of annual leave each fiscal year. The City Attorney is eligible to accumulate annual leave up to that which can be accumulated over the past three (3) years. The City Attorney shall not accrual annual leave beyond the maximum allowed.

The City Attorney may choose to cash out up to 80 unused, annual leave hours by making the appropriate designation by December 31 of the calendar year prior to the effective date of any such cash out designation. Upon the termination of this Agreement and/or the City Attorney's employment, she shall be paid accrued but unused annual leave hours at a rate based upon her then base salary.

(b) The City Attorney shall be given eighty (80) hours of administrative leave credit on the effective date of this Agreement. The City Attorney shall be credited with eighty (80) hours of administrative leave on January 1 of each subsequent year, starting on January 1, 2021. The City Attorney has the option of cashing out administrative leave hours up to a maximum of eighty (80) hours every calendar year by making the appropriate designation by December 31 of the calendar year prior to the effective date of any such cash out designation. Upon the termination of this Agreement and/or the City Attorney's employment, she shall be paid accrued but unused administrative leave hours at a rate based upon her then base salary.
(c) The City Attorney shall be given 80 hours of sick leave effective upon the execution of this agreement and shall accrue on a monthly basis the same as other employees in the Unrepresented Management Employee group. The current rate of accrual is eight (8) hours per month. The City Attorney shall be eligible to accumulate sick leave up to that which can be accumulated in three (3) years or Two Hundred Eighty-Eight hours. The City Attorney shall not accrue annual leave beyond the maximum allowed. Upon retirement from the City, the City Attorney shall not be entitled to cash out any remaining sick leave balance.

(d) The City Attorney may use sick leave for the purpose of bereavement leave up to a maximum of three (3) working days per bereavement on the same basis as other employees in the Unrepresented Management Employee group.

(e) The City Attorney shall be entitled to the same health care benefits, including Group Health Insurance (or Medical Flex Benefit), Retiree Health Insurance, Medical Insurance Flex, Dental, Vision and Employee Assistance Program, as are provided to other employees in the Unrepresented Management Employee group and at the same rates as provided to Unrepresented Management Employees.

(4) Deferred Compensation Plans

The City Attorney may voluntarily participate in the deferred compensation plans available to other employees in the Unrepresented Management Employees group:

(a) 457 Plan  
(b) 401(a) Plan  
(c) IRS Section 125 Plan  
(d) PARS Plan

5. SEPARATION

A. Resignation/Retirement

The City Attorney may resign at any time and agrees to give the City at least 60 days advance written notice of the effective date of the City Attorney's resignation, unless the Parties otherwise agree in writing.

B. Termination and Removal

(1) City Attorney is an at-will employee serving at the pleasure of the City Council under the authority of Vallejo Charter Section 401.

(2) The City Council may remove the City Attorney pursuant to section 407 of the Charter. Notice of termination shall be provided to the City Attorney in writing.
Termination as used in this section shall also include: (i) a request by the City Council that the City Attorney resign, (ii) a percentage reduction in compensation, leave or other financial benefits of the City Attorney greater than the average percentage reduction experienced by the Unrepresented Management Employees during the same fiscal year in the same benefit, (iii) a percentage increase in the City Attorney's financial obligations to contribute to, assume the cost of or pay for any benefits greater than the average percentage increase in the Unrepresented Management Employees' financial obligations to contribute to, assume the cost of or pay for the same benefits occurring during the same fiscal year or (iv) the elimination of the City Attorney's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular meeting of the City Council.

(3) Pursuant to the provisions of Vallejo Charter Section 407(c), an affirmative vote of at least five members of the City Council shall be required to terminate the City Attorney within 60 days after her initial appointment or within 60 days after any election at which members are elected to the City Council.

C. **Severance Pay**

(1) In the event the City Attorney is terminated as defined in Section 5 B (2) by the City Council during such time that the City Attorney is willing and able to perform the City Attorney's duties under this Agreement during the term of this Agreement or any extension thereof, then in that event the City agrees to pay the City Attorney a lump sum cash payment equal to twelve months' base salary, or equal to her monthly salary multiplied by the numbers of months left on the unexpired term of this Agreement, whichever is less. In addition, the City shall extend to the City Attorney the right to continue health insurance as provided for in the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The City agrees to pay half of the premium for the City Attorney's COBRA coverage provided that the City Attorney is not already receiving medical coverage under another plan, for the same number of months for which the City Attorney is entitled to a lump sum cash payment under this Section, or until City Attorney either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. The City Attorney shall notify the City within 5 days of securing new full-time employment or insurance. The intent of the provisions contained in this section is to comply with Government Code Section 53260.

(2) In exchange for the consideration provided in paragraph C(1) above, the City Attorney shall execute a release of all claims in a form mutually acceptable to the Parties.

D. **Separation for Cause**

(1) Notwithstanding the provisions of Section 5.B.2, the City Attorney may be terminated for cause. As used in this section, “cause” shall mean only one or more of the following:
(a) Willful misconduct;
(b) Malfeasance;
(c) Dishonesty for personal gain;
(d) Conviction of a misdemeanor involving moral turpitude or any felony, provided that the City Attorney may be placed on administrative leave without pay should she be charged with a felony;
(e) Continued abuse of drugs or alcohol that materially affects the performance of the Attorney’s duties;
(f) Repeated and protracted unexcused absences from the City Attorney’s office and duties;
(g) Willful abandonment of duties;
(h) Acceptance of employment for another source which is inconsistent with full time employment as Vallejo's City Attorney and in violation of Section 6. D of this Agreement;
(i) Failure to follow the lawful orders or instructions given by the City Council when it is sitting as a body in a lawfully held meeting;
(j) Death or incapacity due to injury or illness (physical or mental);
(k) Resignation by the City Attorney for any reason other than described in Section 5.B.2;
(l) Willful violation of any conflict of interest laws or regulations;
(m) Fraud or dishonesty in securing this appointment;
(n) Willful violation of State or Federal discrimination laws or any lawful City policies and procedures concerning race, religious creed, color, national origin, ancestry, sexual orientation, physical or mental disability, marital status, sex or age concerning either members of the general public or City employee(s); or
(o) Willful or unlawful or violation of any lawful City policies and procedures concerning retaliation against any other City official or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or directly related thereto.
(p) Suspension of City Attorney's right to practice law by the State Bar of California, or City Attorney's failure or refusal to maintain a California State Bar license in good standing.

(2) In the event the City terminates the City Attorney for cause, then the City may terminate this Agreement immediately, and the City Attorney shall be entitled to only the compensation accrued up to the date of termination, and such other termination benefits and payments as may be required by law. The City Attorney shall not be entitled to any severance benefits as provided in Section 5(C)(l).

(3) In the event the City terminates the City Attorney for cause, the City and the City Attorney agree that neither Party shall make any written or oral statements to members of the public or the press concerning the City Attorney's termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Provided, however, that
either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.

(4) In the event the City Attorney dies while employed by the City under this Agreement, the City Attorney's beneficiaries or those entitled to the City Attorney's estate, shall be entitled to the City Attorney's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

6. MISCELLANEOUS PROVISIONS

A. Term

(1) Initial Term

The Initial Term shall be for a period of three years (36 months) commencing on November 16, 2020, and continuing until November 15, 2023 (the initial "Termination Date"), unless terminated earlier in accordance with Section 5.

(2) Subsequent Terms

This Agreement shall automatically renew on a year-to-year basis, for a maximum of two additional years (24 months) as provided herein unless the City gives the City Attorney timely notice of non-renewal. The City must give the City Attorney written notice of non-renewal at least 6 months prior to the initial Termination Date or any succeeding Termination Date. Unless such notice of non-renewal is timely given, this Agreement shall automatically renew for an additional year and a new Termination Date shall be accordingly established. If notice of non-renewal is given, the City Council may at any time choose to relieve the Attorney of her duties and pay any remaining salary and benefits through the remainder of the term left in the Agreement as a lump sum.

B. Provisions that Survive Termination

Only the sections of this Agreement that by their terms are reasonably intended to survive the termination of this Agreement shall survive the termination of this Agreement.

C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Attorney. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

D. Conflict of Interest

(1) The City Attorney shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in
conflict with the proper discharge of official duties or would tend to impair
independence of judgment or action in the performance of official duties.
Personal as distinguished from financial interest includes an interest arising
from blood or marriage relationships or close business, personal, or political
associations. This section shall not serve to prohibit independent acts or other
forms of enterprise during those hours not covered by active City employment,
providing such acts do not constitute a conflict of interest as defined herein.

(2) The City Attorney shall also be subject to the conflict of interest provisions of
the California Government Code, California State Bar Rules of Professional
Responsibility, and any conflict of interest code applicable to the City
Attorney’s City employment.

(3) The City Attorney is responsible for submitting to the City Clerk the appropriate
Conflict of Interest Statements at the time of appointment, annually thereafter,
and at the time of separation from the position.

E. Indemnification

Except as otherwise provided by law, and provided that City Attorney complies with
the provisions of Sections 825 and 825.6 of the California Government Code, as now
existing or hereafter amended, City shall defend, hold harmless, and indemnify City
Attorney against any tort, professional liability claim or demand or other legal action,
whether groundless or otherwise, arising out of an alleged act or omission occurring
in the performance of City Attorney's duties in accordance with the provisions of
Sections 825 and 825.6, as now existing or hereafter amended. City may conduct such
defense reserving the rights of City not to pay the judgment, compromise or settlement
until it is established that the injury arose out of an act or omission occurring within the
scope of City Attorney’s employment as an employee of City. City is required to pay
the judgment, compromise, or settlement only if it is established that the injury arose
out of an act or omission occurring in the scope of City Attorney's employment as an
employee of City. Nothing in this Agreement authorizes or obligates City to pay that
part of any claim or judgment that is for punitive or exemplary damages. City may
compromise and settle any such claim or suit and pay the amount of any settlement or
judgment rendered therefrom only to the extent authorized in Sections 825 through
825.6, as now existing or hereafter amended.

If the City Attorney is convicted of a crime involving an abuse of her office or
position, as defined in Government Code Section 53243.4, then the City Attorney shall
fully reimburse the City for (1) any paid administrative leave salary paid by the City to
the City Attorney pending any investigation concerning said crime, (2) funds provided
to the City Attorney for her legal criminal defense, and/or (3) any severance pay or
cash settlement paid to the City Attorney related to her termination by the City.
Said reimbursements are required if such payments are made, even if the payments were
made by the City in the absence for any contractual requirement to do so.

F. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court
of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part,
section, or portion so found shall be regarded as though it were not part of this
Agreement and the remaining parts of this Agreement shall be fully binding and
enforceable by the Parties hereto.

G. **Jurisdiction and Venue**

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Solano County, California.

H. **Entire Agreement**

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

I. **Waiver**

Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

J. **Ambiguity**

The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party’s draftsmanship thereof.

K. **Headings**

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

L. **Notice**

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Attorney or the City shall be required, or may desire, to make shall be in writing and shall be sent by postage prepaid first class mail or hand-delivered to the respective Parties as follows:

1. **If to the City:**

   Mayor
   555 Santa Clara Street
   Vallejo, California 94590

2. **If to the City:**

   Greg Nyhoff, City Manager
   555 Santa Clara Street
   Vallejo, California 94590
(3) If to the City Attorney:

Veronica A.F. Nebb
555 Santa Clara Street
Vallejo, California 94590

Notices shall be deemed received upon receipt or upon depositing in the U.S. Mail postage prepaid first class mail.

M. **Conflict with Charter**

Should any provision of this Agreement be found to conflict with the Charter of the City of Vallejo, the provisions of the Charter shall control.

N. **Facsimile Signatures**

This Agreement shall be binding upon the receipt of facsimile signatures; provided, however, that any person transmitting his or her signature by facsimile shall promptly send an original signature to the other party.

7. **EXECUTION**

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

"City"                                                               "City Attorney"

CITY OF VALLEJO

By: ___________________________________________________________  ___________________________________________________________

MAYOR BOB SAMPAYAN                                                 VERONICA A.F. NEBB

DATE: ____________________________                               DATE: ____________________________

ATTEST:

By: ___________________________________________________________

(City Seal)                                                       DAWN ABRAHAMSON
City Clerk

APPROVED AS TO FORM:

By: ___________________________________________________________

RANDY J. RISNER
Interim City Attorney
DATE: October 27, 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 a usage and privacy policy for the cell site simulator previously acquired by the City of Vallejo.

REASONS FOR RECOMMENDATION
The City Council previously authorized acquisition of a radio frequency detector/cellular site simulator and directed staff to prepare and implement privacy and usage policy for the equipment. As directed, staff have prepared and implemented the policy.

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).)

A legal challenge has been raised on the grounds that the policy itself was not itself reviewed and approved by Council and to some of the policy language. The City Attorney’s Office has assisted in revising the policy. In the interests of resolving this matter, the policy was revised and staff recommends the Council review and approve the attached policy.

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.

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

(A) The authorized purposes for using cellular communications interception technology and for collecting information using that technology.
(B) 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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.

Additionally, use of the Radio Frequency Detector/Cellular Site Simulator is subject to the requirements of Penal Code Section 1546.1.

The revised policy addresses the above. 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.

**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. Resolution Cell Site Simulator (002)
2. Policy 610

CONTACT
Shawny K. Williams, Chief of Police (707) 648-4540
shawny.williams@cityofvallejo.net
RESOLUTION NO. 20 - ______

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

WHEREAS, on March 24, 2020, the City Council authorized the Chief of Police to
acquire a radio frequency detector/cell site simulator equipment; and

WHEREAS, on March 24, 2020, the City Council directed staff to prepare and
implement a usage and privacy policy related to the equipment, which was
subsequently prepared and implemented;

WHEREAS, Government Code § 51366(c)(1) requires that the governing body of a
local agency choosing to acquire cellular communications technology approve a
resolution or ordinance authorizing the acquisition of such technology and a related
usage and privacy policy.

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 October
13, 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
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.**

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:

(a) Azimuth (an angular measurement in a spherical coordinate system)
Cellular Site Simulator Usage and Privacy

(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

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 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.

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:

(a) The name and other applicable information of each user
(b) The reason for each use
(c) The results of each use including the accuracy of the information 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
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(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 annual report will be made available to the public 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
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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
DATE: October 27, 2020  
TO: Mayor and Members of the City Council  
FROM: Greg Nyhoff, City Manager  
SUBJECT: POLICE AUDITOR AND OVERSIGHT COMMITTEE OPTIONS AND AUTHORIZATION TO CONTRACT FOR AN INTERIM POLICE AUDITOR

RECOMMENDATION
1. Receive a presentation that provides an overview of various options for police oversight models;  
2. Receive a presentation from Common Ground;  
3. Authorize the City Manager to contract with The OIR Group for interim police auditor services; and  
4. Direct staff to schedule subsequent study sessions to provide an opportunity for more in-depth discussions of the various oversight options.

REASONS FOR RECOMMENDATION
As part of efforts to transform the Vallejo Police Department, staff was directed to return to Council with options for a Police Auditor and an Oversight Committee. Since this is anticipated to be an intensive effort and because there are several options for consideration, staff is recommending that the Council set up a number of study sessions to thoroughly explore those options and make an informed decision. After the study sessions, the implementation of the Council’s recommendation will take approximately four to six months. If it is a contracted model, the city’s RFP process will be followed to select the best firm. If it is an in-house model, the hiring process and the time to physically place someone at Vallejo City Hall will take approximately four to six months. Also, the City Attorney has to codify this new program into the City Code. Independent oversight cannot wait, thus staff is recommending that the City contract with Michael Gennaco from The OIR Group to step in and provide immediate, but interim, services in this area.

Staff believes this approach provides almost immediate benefit to the City given OIR is familiar with our City and the Vallejo Police Department. He is currently providing an administrative review of the Monterrosa officer involved shooting.

Finally, as part of the October 27th council item, representatives from Common Ground will be making a presentation on this topic to the Council.

BACKGROUND AND DISCUSSION
The National Association for Civilian Oversight of Law Enforcement (NACOLE). It appears to be the largest and most comprehensive resource for Police oversight models and professional development of the same.
Their categorization of the differing models includes the following three basic types:

1. The investigation focused (IF) model involves routine, independent investigations of complaints against police officers. These may replace or duplicate police internal affairs processes, though non-police civilian investigators staff them. Sometimes, these programs are paired with a Police Commission that have certain authorities granted to them, including oversight of the Police Department and the possibility of hiring/firing the Police Chief.

   Sometimes the City Manager provides the staffing capacity for this effort. Most of the time, this model is overseen by Council appointees.

2. The auditor/monitor model (AM) focuses on examining broad patterns in complaint investigations including the quality of investigations, findings and discipline rendered. Further, in many cities that use this model, auditors/monitors may actively participate in or monitor open internal affairs investigations; opine on the quality of internal affairs investigations; request additional work be done; and, review the appropriateness of any discipline meted out to officers. Their requests for more action may go to the Chief, the City Manager or possibly the City Council. This model often seeks to promote organizational change by conducting systemic reviews of police policies, practices or training, and making recommendations for improvement.

3. The review-focused model (RF) concentrates on commenting on completed investigations after reviewing the quality of police internal affairs investigations. Recommendations may be made to the Chief, the City Council and/or the City Manager, or there may be a request to conduct further investigations, similar to the AM model. This model typically involves citizen volunteers that hold public meetings to collect community input and facilitate police-community communication. This model is relatively rare in California.

There are additional variations within the above three categories. The AM model may have a citizen’s oversight committee appointed by the City Council to provide guidance on work plans, facilitate community involvement and to receive periodic report on Police activities. The IF model almost always has a Council appointed commission. The AM may be hired by the Council or City Manager. The IF model sometimes is restricted on what cases in may independently review. Sometimes the City Manager provides and directs the staff for the IF related commission.

NACOLE lists 125 jurisdictions that are part of their membership. One of the major challenges when examining oversight options is due to the limited empirical evidence demonstrating their effectiveness. The three basic models have not been examined to determine whether they actually improve accountability, constitutional policing or if community confidence is enhanced by their presence. For example, the Oakland oversight model has grown to a $4.3 program and their Police department still operates under a Federal consent decree and they have had eight Police Chiefs in the last 10 years. In other words, the oversight options should be viewed as a means to an end. Which option will likely effectuate a high performing Police Department that has a high degree of legitimacy and trust in the community, follows constitutional policing but also prevents or reduces crime? In Vallejo’s case, the preferred oversight model will contribute to transforming the Police Department from within and in the eyes of the community.

The Office of Community Oriented Policing Services (COPS Office) collaborated with other partners to
examine and better understand the options. This COPS effort produced a table of advantages and disadvantages of each oversight model after facilitating a roundtable discussion with partners (see attached). The reality is every city’s oversight model has some overlap between these basic models; thus, there should be caution in drawing strong conclusions about each one.

Some cities felt they could improve the “community perspective”, “public confidence” and “diversity representation” perspectives by appointing a citizen’s oversight committee to provide direction and to solicit community dialogue with the AM model. Also, to add authority to the same model, some auditors/monitors can access the City Manager and City Council to pursue their recommendations, in the event the Police Chief resists their recommendations.

The advantages and disadvantages for each model and their reason for them are clear in many instances. A separate body that hires their own investigators with an oversight panel appointed by the City Council receives higher community acceptance. However, sometimes in the IF model, the investigation quality suffers with civilian investigations; thus, the officer acceptance goes down. And sometimes there is more conflict between the Police Chief and the stewards of the IF model. As we mentioned earlier, the IF model is more expensive, and any comprehensive review (includes the IF and AM models) takes time and produces disappointment with complainants.

Resolution of complaints, tracking of them and reporting out is paramount. Although there are variations from one community to another, most use four investigative outcomes.

1. Unfounded. Investigation shows the events complained of did not occur or the subject of the complaint was not involved.
2. Exonerated. The actions of the subject of the complaint were justified, lawful and proper.
3. Not sustained. The investigation failed to find evidence to clearly prove or disprove the allegation.
4. Sustained. The investigation discovered sufficient evidence to clearly prove the allegation.

Again, the investigated outcomes and their rationale should be tracked and shared with the community in various reports.

Recommendations and Timing of Activities:

When considering the idea of a police auditor and oversight options, it is a question of when, not if. The Vallejo Police Department has been understaffed for a City the size of Vallejo since 2008. It is now trying to manage an effective response (Operation P.E.A.C.E.) to a substantial crime spike. It is also tasked to implement an unprecedented reform effort that consists of 45 substantial recommendations delineated in the OIR independent assessment. And if this was not enough, it is collaborating with a comprehensive independent review by the State Department of Justice.

Additionally, as summarized in this staff report, there are numerous decision points in identifying the model that will fit best and assist in transforming the police department and the community’s perception of their legitimacy, as well as instill trust in the department. To that end, staff is recommending that the City contract with an interim police auditor, specifically The OIR Group, as Michael Gennaco and his team are well
respected experts in law enforcement, and are also familiar with the Vallejo Police Department given their recent extensive review of the department. Mr. Gennaco performs this same role up and down the entire state. Additionally, staff is recommending that a series of study sessions be scheduled to explore each model in more depth and allow for additional community input.

FISCAL IMPACT
Staff is allocating up to $90,000 for this interim contract. Specific costs will need to be determined based on the final scope of work. This 6-month cost for this fiscal year will be absorbed via reductions to the Police Department’s current budget. The full annual amount for this function will need to be budgeted as part of the FY 2021-22 Budget.

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. Advantages and Disadvantages of Police Oversight Models

CONTACT
Anne Cardwell, Assistant City Manager (707) 648-4579
anne.cardwell@cityofvallejo.net
Advantages and Disadvantages of Police Oversight Models

By the Office of Community Oriented Policing Services (COPS Office)

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<th>Auditor</th>
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TO: Mayor and Members of the City Council

FROM: Randy J. Risner, Interim City Attorney

SUBJECT: Quarterly Report for FY 2020/2021, First Quarter (July – September 2020)

The following list of projects, work and statistics represents an overview of the work performed at the City Attorney’s Office during the first quarter of Fiscal Year 2020/2021. Some projects and items have been omitted due to their sensitive nature. If Councilmembers or officials have any questions, please feel free to contact the City Attorney privately, as many of the below items are attorney-client privileged and, therefore, not appropriate for public discussion.

I. Litigation:
   a. Number of Pitchess Motions served on the City this FY Quarter: 5
   b. Number of Pitchess Motions served on the City this FY: 5
   c. Summons & Complaints (New cases this FY Quarter):
      
      | No. | Case Name                                      | Date Served | City’s Counsel                  |
      |-----|-----------------------------------------------|-------------|--------------------------------|
      | 1   | Monterrosa, Neftali v. COV, et al. USDC, ED, Case No. 2:20-cv-01563-TLN-DB | 09.15.2020 | Meera Bhatt, ACA Katelyn Knight, ACA Farrah Hussein, DCA |
      | 2   | Plump, Arthur v. COV Solano Superior Court Case No. FCS054813 | 07.07.2020 | Farrah Hussein Deputy City Attorney |
      | 3   | Doe, John v. COV, et al. Solano Superior Court Case No. FCS055124 | 08.07.2020 | (OC Sloan Sakai) Meera Bhatt Assistant City Attorney |
      | 4   | Friends of River Park v. COV, et al. Solano Superior Court Case No. FCS055143 | 08.19.2020 | (OC Colantuono) Dylan Brady Deputy City Attorney |
   
   d. Summons & Complaints (New) - FY to date: 4
   e. Total Active Litigation Cases: 58
II. Funds Recovered from Third Parties this FY Quarter: $3,200.00
(see details below)

Funds Recovered from Third Parties - FY to Date: $3,200.00

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<th>Type</th>
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<th>CASE NAME</th>
<th>Case Type</th>
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<td>Connelly v. COV</td>
<td>Defense Litigation</td>
<td>Connelly</td>
<td>$100.00</td>
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Q1 FY 20-21 Total $3,200.00

III. Contracts Entered into by City Attorney’s Office this FY Quarter: 18

- Allen, Glaesnner, Hazelwood & Werth
  - Master Outside Legal Counsel Services Agreement
  - Addendum #1 to Master Agreement
- Bertrand, Fox, Elliot, Osman & Wenzel
  - Master Outside Legal Counsel Services Agreement
  - Addendum #1 to Master Agreement
- Burke, Williams & Sorensen, LLP
  - Master Outside Legal Counsel Services Agreement
  - Addendum #1 to Master Agreement
- Colantuono, Highsmith, Whatley
  - Master Outside Legal Counsel Services Agreement
  - Addendum #1 to Master Agreement
  - Addendum #2 to Master Agreement
  - Addendum #3 to Master Agreement
- Devaney, Pate, Morris & Cameron
  - Master Outside Legal Counsel Services Agreement
- Gallery & Barton
  - Master Outside Legal Counsel Services Agreement
- Liebert, Cassidy, Whitmore
  - Master Outside Legal Counsel Services Agreement
  - Addendum #1 to Master Agreement
- Porter Scott
  - Master Outside Legal Counsel Services Agreement
  - Addendum #1 to Master Agreement
- Sloan, Sakai, Yeung & Wong
  - Master Outside Legal Counsel Services Agreement
  - Addendum #1 to Master Agreement