

**VALLEJO CITY COUNCIL
REGULAR MEETING – 7:00 PM
VIA TELECONFERENCE**

DECEMBER 15, 2020

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

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

VIEW THE MEETING:

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

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

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

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

<https://ZoomRegular.CityofVallejo.net>

Option to join by phone:

Dial (669) 900-6833

Enter Meeting ID: 914 0075 0676#

Press *9 to digitally raise your hand from the phone

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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 diigitally 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. ADOPTION OF AN ORDINANCE AMENDING VALLEJO MUNICIPAL CODE CHAPTER 3.20 REGARDING PURCHASING

Recommendation: Adopt an Ordinance amending Chapter 3.20 of the Vallejo Municipal Code to allow Public Works staff to perform public works projects that staff is capable of performing

Contact: Melissa Tigbao, Assistant Public Works Director/City Engineer (707) 648-4085

Melissa.Tigbao@cityofvallejo.net

B. NOTICE OF INTENT TO AMEND FY 2020-21 MARINA FUND BUDGET

Recommendation: Provide notice of intent to amend the Marina Fund budget to recognize grant revenue and authorize expenditure of funds.

Contact: Terrance Davis, Public Works Director (707) 648-4301

Terrance.Davis@cityofvallejo.net

C. **ACCEPTANCE OF THE DOWNTOWN PARKING LOTS REHABILITATION PROJECT**

Recommendation: Accept the Downtown Parking Lots Rehabilitation Project, performed by Lister Construction, Inc., of Vacaville, California, as complete and authorize and direct the City Clerk to file a notice of completion with the Solano County Recorder's Office.

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

D. **COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT PARTNERSHIPS PROGRAM FISCAL YEAR 2021-22 FUNDING PROCESS**

Recommendation: Authorize the City Manager to approve a process for the allocation of Fiscal Year (FY) 2021-22 Community Development Block Grant (CDBG) Program and HOME Investment Partnerships (HOME) Program funding as outlined in this Staff Report.

Contact: Judy Shepard-Hall, Housing & Community Development Program Manager (707) 648-4408

judy.shepard-hall@cityofvallejo.net

E. **AUTHORIZE THE CITY MANAGER TO EXECUTE A CONSULTANT AGREEMENT WITH ICMA-RC TO BECOME THE SOLE DEFERRED COMPENSATION PROVIDER FOR THE CITY OF VALLEJO**

Recommendation: Authorize the City Manager to execute the Consultant Agreement with ICMA-RC to become the sole deferred compensation provider for the City of Vallejo.

Contact: Sarah Brannick, Human Resources Program Manager (707) 648-5346

Sarah.Brannick@cityofvallejo.net

F. **AB 1600 ANNUAL REPORT**

Recommendation: Adopt a Resolution accepting, filing and making the findings identified in the attached AB 1600 Development Impact Fee Report for the fiscal year ended June 30, 2020.

Contact: Terrance Davis, Public Works Director (707) 648-4301

Terrance.Davis@cityofvallejo.net

G. **AMENDMENT TO DESIGN PROFESSIONAL SERVICES AGREEMENT WITH WSP USA, INC.**

Recommendation: Authorize the City Manager to execute the Second Amendment to the Design Professional Services Agreement with WSP, USA, Inc., of Sacramento, California, for Mare Island Causeway Bridge Preventative Maintenance Project design services to increase the contract amount from \$394,235 to \$961,866.

Contact: Terrance Davis, Public Works Director (707) 648-4301

Terrance.Davis@cityofvallejo.net

Melissa L. Tigbao, Assistant Public Works Director/City Engineer

Melissa.Tigbao@cityofvallejo.net

H. **SECOND AMENDMENT TO CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT FOR AKIN GUMP STRAUS HAUER & FELD**

Recommendation: Authorize the City Manager to execute a Second Amendment to the Consultant and Professional Services Agreement with Akin Gump for legislative affairs services, increasing the contract from \$90,000 to a new not to exceed amount of \$210,000 and extending the term to December 31, 2021.

Contact: Terrance Davis, Public Works Director, 707-648-4301

Terrance.Davis@cityofvallejo.net

I. **AWARD CONSTRUCTION CONTRACT FOR CAPITOL STAIRS MOSAIC PROJECT**

Recommendation: Adopt a Resolution approving the project plans and specifications for the Capitol Street Stairs Project and authorizing the City Manager to execute a construction contract in the amount of \$187,220 with HM Construction, Inc., of Hercules, California, in accordance with the approved plans and specifications.

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

J. **AGREEMENT WITH E SOURCE FOR ADVANCED METERING INFRASTRUCTURE CONSULTING SERVICES**

Recommendation: Authorize the City Manager to execute a Consultant and Professional Services Agreement with E Source (formerly UtiliWorks) of Boulder, Colorado, in the amount of \$214,560, to provide specialized Advanced Metering Infrastructure (AMI) consulting services to the City of Vallejo's Water Department.

Contact: Mike Malone, Water Director (707) 648-4308

mike.malone@cityofvallejo.net

Mark Quady, PE, Water Engineering Manager (650) 648-4309

mark.quady@cityofvallejo.net

K. **RECEIVE & FILE COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR THE FISCAL YEAR ENDED JUNE 30, 2020**

Recommendation: Receive and file the City's Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2020.

Contact: Rekha Nayar, Finance Director (707-648-4592)

Rekha.Nayar@cityofvallejo.net

L. **REAFFIRM PROCESS FOR INSTALLATION OF NEWLY ELECTED MAYOR & COUNCILMEMBERS**

Recommendation: Reaffirm the process to conduct the Oath of Office and Installation of the newly elected Mayor and Councilmembers to Districts 1, 3 and 6 as discussed at the December 8 regular City Council meeting.

Staff is presenting Plan A (Current COVID-19 Widespread Purple Tier) and Plan B (Regional Shelter at Home Order).

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

Dawn.Abrahamson@cityofvallejo.net

8. **ACTION CALENDAR**

*NOTICE: Members of the public wishing to address the Council on Action Calendar Items are requested to submit a completed speaker card to the City Clerk. Each speaker is limited to five minutes pursuant to Vallejo Municipal Code Section 2.02.420. 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.*

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A. **APPOINTMENTS TO PLANNING, CULTURE & THE ARTS AND ECONOMIC VITALITY COMMISSIONS AND THE VALLEJO HOUSING AUTHORITY FOR TENANT COMMISSIONERS**

Recommendation:

Adopt a Resolution making the following appointments:

1. 1 appointment to the Planning Commission for a term to expire 6/30/23.
2. 2 appointments to the Culture & the Arts Commission for terms to expire 12/31/24
3. 1 appointment to the Economic Vitality Commission for a term to expire 6/30/22 and 1 appointment for a term to expire 6/30/23
4. 2 Vallejo Housing Authority Board Tenant Commissioner appointments for terms to expire 12/31/22

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

Dawn.Abrahamson@cityofvallejo.net

B. **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALLEJO AMENDING SECTION 2.10.126 AND ADDING SECTIONS 2.10.130, 2.10.131, AND 2.10.132 TO CHAPTER 2.10 (ADMINISTRATIVE ORGANIZATION) OF THE VALLEJO MUNICIPAL CODE RELATING TO THE WATER DEPARTMENT**

Recommendation:

1. Introduce an ordinance amending section 2.10.126 and adding sections 2.10.130, 2.10.131, and 2.10.132 to Chapter 2.10 (Administrative Organization) of the Vallejo Municipal Code relating to the Water Department.
2. Allow reading of the ordinance by title only, waive reading of the entire ordinance pursuant to Government Code section 25131, and set the second hearing for adoption of the ordinance for December 15, 2020.

Contact: Michael Malone, Water Director, (707) 648-4307

mike.malone@cityofvallejo.net

C. NORTH MARE ISLAND TERM SHEET UPDATE AND ENA 5th AMENDMENT

Recommendation: Approve the new Term Sheet for the North Mare Island Disposition and Development Agreement or Purchase Sale Agreement with The Nimitz Group, LLC, and authorize the City Manager to execute the Fifth Amended and Restated Exclusive Negotiation Agreement (ENA) with the Nimitz Group, LLC for North Mare Island.

Contact: Gillian Hayes, Interim Deputy City Manager,

Gillian.Hayes@cityofvallejo.net

Paul Kelley, Economic Development Director, Paul.Kelley@cityofvallejo.net

Erin Hanford, Mare Island Project Manager, Erin.Hanford@cityofvallejo.net

Veronica Nebb, City Attorney, Veronica.nebb@cityofvallejo.net

Dylan Brady, Deputy City Attorney II, Dylan.Brady@cityofvallejo.net

D. CONSIDERATION OF APPROVAL OF A MASTER AGREEMENT AND ASSOCIATED DOCUMENTS TO UNWIND THE EXISTING FINANCING STRUCTURE AND TRANSFER OWNERSHIP OF THE EMPRESS THEATER TO THE CITY OF VALLEJO; NOTICE OF A PROPOSED BUDGET AMENDMENT TO PAY TRIAD AS PART OF THE TRANSFER OF OWNERSHIP

Recommendation: Staff recommends that the City Council authorize the City Manager to execute a Master Agreement and supporting documents to complete the exit of Triad Communities L.P. ("Triad"), and dissolve a series of holding companies left over from the tax credit financing plan. With the developer's exit, the City will have direct control of the Theater and will be positioned to negotiate a new Theater operator lease for ongoing community arts programming. In addition, staff recommends that the City Council receive the notice of a proposed budget amendment to be presented to City Council at its meeting on December 21, 2020.

Contact: Randy J. Risner, Chief Assistant City Attorney (707) 648-4545

randy.risner@cityofvallejo.net

9. INFORMATION CALENDAR

10. CITY MANAGER'S REPORT

11. CITY ATTORNEY'S REPORT

12. COMMUNITY FORUM

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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, December 10, 2020

Bob Sampayan, Mayor

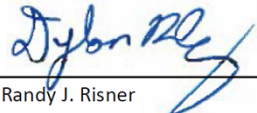
I, Dawn Abrahamson, City Clerk do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Vallejo City Council, at the time and in the manner prescribed by law and that this agenda was posted at City Hall, 555 Santa Clara Street, CA at 1:00 p.m., Thursday, December 10, 2020.



Dated: Thursday, December 10, 2020

Dawn G. Abrahamson, City Clerk

Approved as to form:

By:  for
Randy J. Risner
Interim City Attorney

ORDINANCE NO. _____ N.C. (2d)

**AN ORDINANCE OF THE CITY OF VALLEJO MUNICIPAL CODE AMENDING
CHAPTER 3.20 REGARDING PURCHASING**

THE COUNCIL OF THE CITY OF VALLEJO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3.20.135 of the Vallejo Municipal Code is hereby added to read as follows:

3.20. 135. Public Works Projects.

A. “Public works project” is defined as the following:

- (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.**
- (2) Painting or repainting of any publicly owned, leased, or operated facility.**
- (3) In the case of a publicly owned utility system, “public project” shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.**

B. “Public project” does not include maintenance work. For purposes of this section, “maintenance work” includes all of the following:

- (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.**
- (2) Minor repainting.**
- (3) Resurfacing of streets and highways at less than one inch.**
- (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.**
- (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.**

SECTION 2. Section 3.20.40 of the Vallejo Municipal Code is hereby amended to read as follows:

3.20.140 - Formal bidding public works projects.

Public works projects anticipated to cost more than one hundred thousand dollars shall be acquired by issuance of written invitations for bids, ***unless performed under Section 3.20.155.*** Bid documents shall include, at a minimum, the notice inviting bids; instructions to bidders;

technical specifications; a form for listing subcontractors; a non-collusion affidavit; bid forms and schedules; all required bond forms and the proposed contract document.

SECTION 3. Section 3.20.40 of the Vallejo Municipal Code is hereby amended to read as follows:

3.20.150 - Formal bidding—Exemptions—Public works projects.

All public works projects expected to exceed one hundred thousand dollars shall be formally bid in accordance with the requirements of this chapter unless exempt pursuant to Section 3.20.090 *or performed under Section 3.20.155.*

SECTION 4. Section 3.20.155 of the Vallejo Municipal Code is hereby added to read as follows:

3.20.155 Use of City Forces.

City employees may be used to perform public works projects expected to not exceed two hundred and fifty thousand dollars.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each one all provisions hereof, irrespective of the fact one or more provisions may be declared invalid.

SECTION 6. Effective Date. This Ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage.



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Terrance Davis, Public Works Director
SUBJECT: NOTICE OF INTENT TO AMEND FY 2020-21 MARINA FUND BUDGET

RECOMMENDATION

Provide notice of intent to amend the Marina Fund budget to recognize grant revenue and authorize expenditure of funds.

REASONS FOR RECOMMENDATION

The Vallejo Municipal Marina applied and was approved for a FY 2020/2021 Surrendered and Abandoned Vessel Exchange (SAVE) grant and a FY 2020/2021 Oil Spill Response Equipment (OSPR) grant, both from the State of California. Per City Charter Section 703, amending the budget requires a public notice of intent prior to any action taken. A staff report with recommendation to amend the budget will be presented to City Council at the next regularly scheduled City Council meeting in January 2021.

BACKGROUND AND DISCUSSION

The Vallejo Municipal Marina submitted an application for the FY 2020/2021 Surrendered and Abandoned Vessel Exchange (SAVE) grant in April 2020. In mid October, notification was received from the California State Parks Division of Boating and Waterways that grant funding up to \$100,000 had been awarded to the Vallejo Municipal Marina for the removal of abandoned, submerged, sinking, and/or turned-in recreational vessels.

The Vallejo Municipal Marina submitted an application for the FY 2020/2021 Oil Spill Response Equipment (OSPR) grant in March 2020. In late October, notification was received from the Department of Fish and Wildlife that grant funding up to \$35,000 had been awarded for the procurement of an oil spill response trailer equipped with specialty equipment and supplies.

This is the first step in the two-step process to amend the FY 2020-2021 Marina Fund budget. A detailed staff report and draft resolution will be presented to City Council for consideration at the next regular meeting.

FISCAL IMPACT

The notice of intent does not have any fiscal impact. A future recommended action to amend the FY 2020-2021 Marina Fund budget will include the anticipated increase of \$135,000 in both revenue and expenditure budgets of the 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

None

CONTACT

Terrance Davis, Public Works Director (707) 648-4301

Terrance.Davis@cityofvallejo.net



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Terrance Davis, Public Works Director
SUBJECT: **ACCEPTANCE OF THE DOWNTOWN PARKING LOTS REHABILITATION PROJECT**

RECOMMENDATION

Accept the Downtown Parking Lots Rehabilitation Project, performed by Lister Construction, Inc., of Vacaville, California, as complete and authorize and direct the City Clerk to file a notice of completion with the Solano County Recorder's Office.

REASONS FOR RECOMMENDATION

The City Engineer has determined that the work has been completed in accordance with the plans and specifications.

BACKGROUND AND DISCUSSION

On August 10, 2018, a claim was filed with the City of Vallejo Clerk's office due to accessibility issues in several of the City owned parking lots, specifically lots D, H, I, J, K, L and M. The City entered into an agreement with the claimant on March 19, 2019 to address the issues in these lots related to the accessibility of the parking areas to the public right of way.

The Plans and Specifications for this project were completed by City Staff under the direction of the City Engineer. The City advertised the project on March 10, 2020. A Notice to Contractors was also issued to various plan rooms and posted on the City's bid solicitation website through Planet Bids, an electronic bid management site.

Due to the COVID-19 local State of Emergency, the bids were required to be submitted both electronically and in the Public Works Drop Box at Office of the City of Vallejo - Housing Authority Main Lobby, 200 Georgia Street on or before March 30, 2020. On March 30, 2020 at 12:00pm, one (1) sealed bid was retrieved from the drop box and read by the City Engineer. The only and apparent low bidder was Lister Construction, Inc., of Vacaville, California, with a total bid price of \$677,291.50, including alternate bid item 1 for \$66,742.50 and alternate bid item 2 for \$24,200.00.

On May 12, 2020, City Council adopted Resolution No. 20-048, awarding the construction contract to the lowest responsive and responsible bidder, Lister Construction in the amount of \$677,291.50. Construction began May 14, 2020 and the project was substantially completed by August 28, 2020. The time of completion for the project was 73 working days. The original contract was 50 working days, but Lister Construction was granted 25 extra days due to unforeseen conditions such as redesign of asphalt, extra work including new sidewalk, and fires that caused poor air quality.

The final contract amount was \$721,403.08. The proposed final estimate was forwarded to the contractor on October 21, 2020 and was accepted.

An additional \$113,467 was needed to reach Americans with Disabilities Act ("ADA") compliance which included sidewalk, curb and gutter replacement, concrete ADA compliant parking stalls and minor landscape modifications. The additional funding was also needed for staff time related to construction administration and inspection increases due to the field fitting and re-designs of some lot improvements.

FISCAL IMPACT

There is no impact to the General Fund with the approval of this item. The approved budget for the Downtown Parking Lot ADA Improvements (PW9413) is as follows.

Source	Budget	Expenditures
Fund 431 Parking Enterprise	\$532,000	
Fund 201 Capital Outlay	\$318,000	
Fund 431 PWV001 Vallejo Station Major Maintenance	\$100,467	
Fund 201 PW9737 Marina Vista Improvements	\$ 13,000	
Design		\$135,017.43
Construction (<i>Lister Construction Contract</i>)		\$721,403.08
Construction Management & Inspection		\$102,729.31
Miscellaneous		\$ 4,316.81
TOTAL	\$963,467	\$963,466.55

ENVIRONMENTAL REVIEW

The project is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guideline section 15301 because it consists of the rehabilitation of existing street pavement within the City. There will be no increase in the number of lanes and no scenic resource will be altered or removed.

Additionally, this action is exempt from 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.	PW 9413_Location Map
2.	PW 9413_Vicinity Map

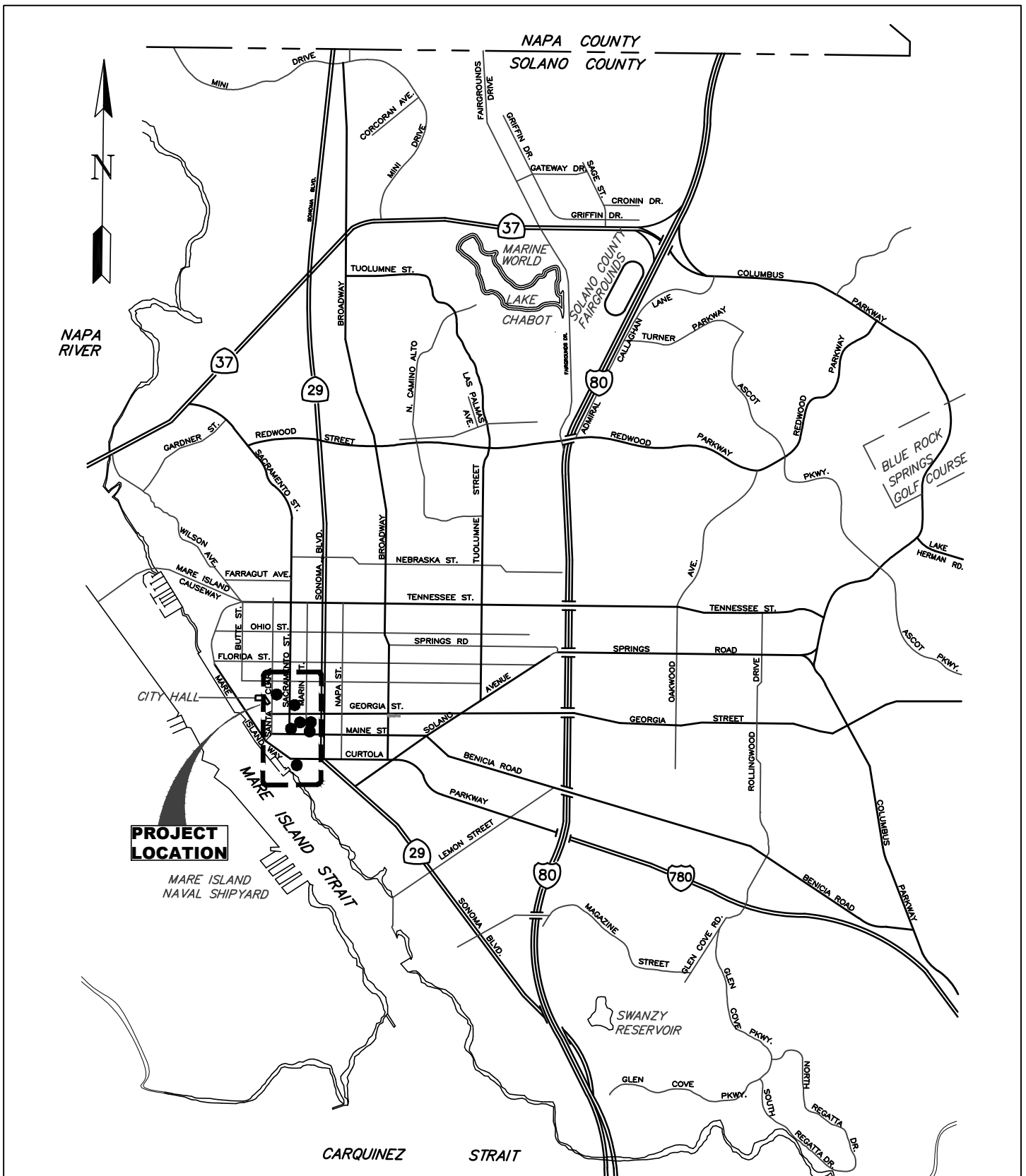
CONTACT

Terrance Davis, Public Works Director (707) 648-4301

Terrance.Davis@cityofvallejo.net

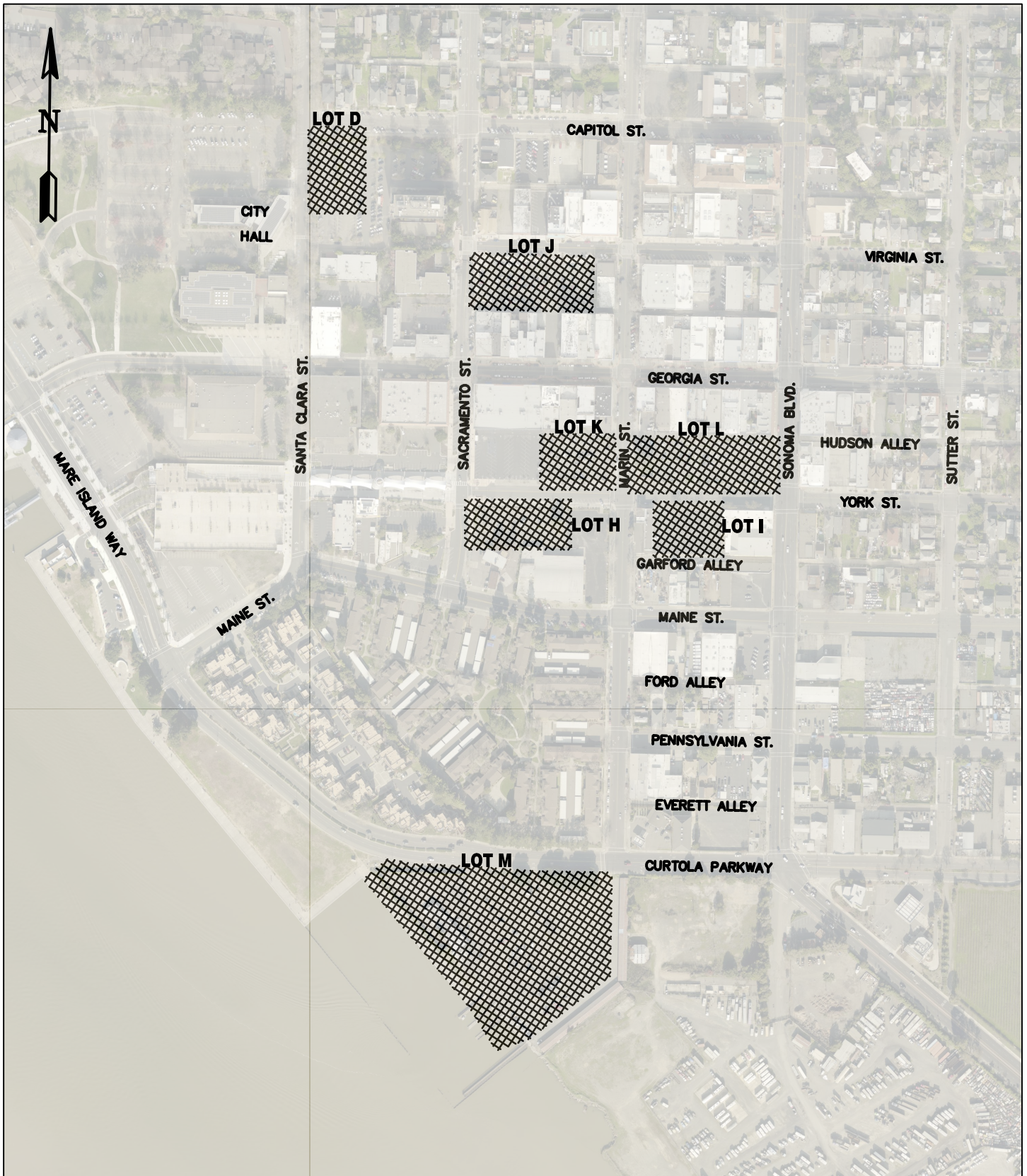
Melissa L. Tigbao, Assistant Public Works Director / City Engineer (707) 648-4085

Melissa.Tigbao@cityofvallejo.net



DOWNTOWN PARKING LOTS REHABILITATION PROJECT FY 19/20

DWG. NO. _____ DRAWN BY <u>BAW</u> DATE <u>04/07/2020</u> CHECKED _____	SHEET <u>1</u> OF <u>2</u> FILE NO. <u>-</u> REF. <u>-</u> SCALE <u>1" = 4000'</u>		PUBLIC WORKS DEPARTMENT ENGINEERING DIVISION DOWNTOWN PARKING LOTS REHABILITATION PROJECT FY 19/20 LOCATION MAP
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DOWNTOWN PARKING LOTS REHABILITATION PROJECT FY 19/20

DWG. NO. _____	SHEET <u>2</u> OF <u>2</u>		PUBLIC WORKS DEPARTMENT ENGINEERING DIVISION
DRAWN BY <u>BAW</u>	FILE NO. <u>-</u>		DOWNTOWN PARKING LOTS REHABILITATION PROJECT FY 19/20
DATE <u>04/07/2020</u>	REF. <u>-</u>		VICINITY MAP
CHECKED _____	SCALE <u>1" = 400'</u>		



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Judy Shepard-Hall, Housing and Community Development Program Manager
SUBJECT: **COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT PARTNERSHIPS PROGRAM FISCAL YEAR 2021-22 FUNDING PROCESS**

RECOMMENDATION

Authorize the City Manager to approve a process for the allocation of Fiscal Year (FY) 2021-22 Community Development Block Grant (CDBG) Program and HOME Investment Partnerships (HOME) Program funding as outlined in this Staff Report.

REASONS FOR RECOMMENDATION

The City has received annual funding allocations of CDBG Program and HOME Program from the U. S. Department of Housing and Urban Development (HUD) since 1974 and 1990, respectively. These funds have helped the City to address its affordable housing and community development needs. The City Council typically approves a process for determining activities and projects every one or two years.

BACKGROUND AND DISCUSSION

This agenda item is the beginning of the process to determine the allocation of the FY 2021-22 CDBG Program and HOME Program funds for activities as part of implementing the City's 2021-2022 fiscal year, beginning July 1, 2021. At tonight's meeting, staff proposes that the Commission recommend a funding process and criteria.

CDBG Program funds may be used for projects such as affordable housing, housing and neighborhood preservation or revitalization, public improvements in target area neighborhoods, curb ramps City-wide, social services, and economic development. HOME Program funds may be used only to support affordable housing.

Availability of Funds – For FY 2020-21, the current fiscal year, the City received \$1,065,798 in new CDBG Program funds. Of this amount, \$15,000 is revenue (program income) that the City anticipates it will receive in FY 2020-21, primarily from principal and interest loan repayments. The balance of \$1,050,798 is grant ("entitlement") funds the City received from HUD.

The City also received \$610,172 in new HOME Program funds from HUD for FY 2020-21, and estimated that it would additionally receive \$100,000 in program income, also from loan repayments, for a total of \$710,172. At least fifteen percent of the City's annual HOME Program grant received directly from HUD must be allocated to a qualified Community Housing Development Organization, (or "CHDO"). A CHDO is a non-profit affordable housing developer whose primary purpose is the development and/or management of housing. The City has determined that Community Housing Development Corporation (CHDC) and Eden Housing, Inc. are qualified CHDOs.

**Subject: COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT
PARTNERSHIPS PROGRAM FISCAL YEAR 2021-22 FUNDING PROCESS**

The funding levels for FY 2021-22 are uncertain at this time. However, in order to adhere to the City's typical timeline and complete a funding process by HUD's deadline of May 15, staff recommends the City proceed on the assumption that it may receive approximately the same amount in CDBG Program and HOME Program funds in FY 2021-22 as it did in FY 2020-21.

High-Priority Needs – The Consolidated Plan is a five-year planning document required by HUD in order for the City to receive certain federal affordable housing and community development funds. It documents in detail affordable housing and community development needs in Vallejo. The Plan contains data on the characteristics of the housing market and the existing housing stock, an assessment of affordable housing needs, and the resources available to address those needs. The City's current Consolidated Plan was approved by the City Council in July, 2020. The Plan includes the period beginning July 1, 2020 and ending June 30, 2024.

The current Consolidated Plan has established the following groups as the most in need of assistance, in this order of priority: (1) extremely low- and very low-income renters; (2) homeless persons, (3) very low- and low-income first-time homebuyers and (4) non-homeless persons with special needs.

The Plan also contains quantifiable goals and objectives in the areas of housing, targeted expenditures for the installation of public improvements and providing social services.

Staff does not recommend that the City accept CDBG or HOME Program proposals for funding in FY 2021-22 for housing activities/projects or public improvements other than those described below.

Housing Activities– The Consolidated Plan documents a need for the development of affordable rental and ownership housing; supportive housing for persons with special needs; tenant-based rental assistance; first time homebuyer assistance; and services appropriate to address the needs of the unsheltered and chronically homeless population in the community.

CHDO - Due to the ongoing unmet affordable housing needs in the community, staff recommends that the City accept proposals from qualified CHDOs to receive HOME Program funds in FY 2021-22 to develop either rental or owner-occupied affordable housing.

Social Services- According to HUD guidelines, the City may allocate a maximum of fifteen percent of its CDBG Program funds each year to social service activities. In FY 2020-21, the City allocated \$187,548 to seven social service agencies.

The social service agencies receiving CDBG Program funds serve vulnerable residents of the community, including the elderly, disabled, veterans, and very low-income and homeless persons. In FY 2020-21, they include such organizations as Meals on Wheels, Vallejo Senior Citizens' Council, House of Acts, and Global Center for Success. Receiving these funds also enables these organizations to leverage other funding sources. Therefore, staff recommends that the City accept social service applications in FY 2021-22.

**Subject: COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT
PARTNERSHIPS PROGRAM FISCAL YEAR 2021-22 FUNDING PROCESS**

Staff estimates that there will be approximately \$150,000 available to allocate to social service programs in FY 2021-22. Staff further recommends that as in past years, the minimum funding allocation to each social service activity be \$20,000, and that there be no maximum. Staff believes that with limited funding, and numerous regulations mandated by HUD, it is not cost effective for the City to allocate less than \$20,000 per social service program and still meet the administrative requirements of the program. In some cases, the Commission and the City Council may wish to allocate more than \$20,000 to a program.

Program Administration – HUD regulations allow the City to allocate up to twenty percent of CDBG Program funds and ten percent of HOME Program funds, each year to program administration. These funds are used for general management, oversight, and coordination of these programs by staff; and for providing public information.

Staff anticipates the City will need to allocate the full amount allowed in this category in FY 2021-22 to administer these programs effectively, and to ensure that program requirements are met.

Proposed Process for Requesting CDBG Program and HOME Program Funds by Housing Agencies and Social Service Agencies

Housing Agencies

The City would accept proposals from non-profit affordable housing organizations, including qualified CHDOs, that will address one or more of the top priority housing needs in the City's Five-Year Consolidated Plan.

Staff proposes that the following criteria be used in screening and evaluating proposals from housing agencies:

Agencies must document that they are chartered as a 501 (c) (3) organization, submit other eligibility documents, and provide evidence that they are fiscally sound. All proposers will submit a proposed HOME Program Budget, an overall organizational budget, and a financial audit or financial statements as applicable. All proposers must also submit written fiscal and personnel policies and procedures.

Social Service Agencies

The City would accept proposals from social service organizations that will address the top priority needs in the Consolidated Plan, as described below.

Staff proposes the following criteria be used in screening and evaluating proposals from social service agencies:

A social service agency must propose to address the needs of one of the following populations: (1) homeless single men in need of emergency shelter, (2) unsheltered homeless persons in need of appropriate supportive services, (3) homeless individuals in need of permanent housing, (4) very low- and low-income families with children, (5) homeless families with children in need of permanent housing, (6) supportive services for persons with HIV/AIDS, (7) supportive permanent housing for the severely mentally ill, (8) treatment and prevention

**Subject: COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT
PARTNERSHIPS PROGRAM FISCAL YEAR 2021-22 FUNDING PROCESS**

programs for persons with substance abuse addictions, (9) programs meeting the needs of the elderly and disabled, and (10) victims of domestic violence. If awarded funding, these agencies must maintain household income and related documentation to verify benefit and services to one of these populations.

Social service agencies must document that they are chartered as a 501 (c) (3) organization, submit other eligibility documents, and provide evidence that they are fiscally sound. All agencies will submit a proposed CDBG Program budget (simple line item) for direct costs only, an overall organizational budget, and a financial audit or financial statements as applicable. All agencies must also submit written fiscal and personnel policies and procedures.

According to HUD guidelines, the City must expend CDBG Program funds promptly. Therefore, staff recommends that the City consider funding social service activities that have the best chance to be delivered in a timely manner.

Proposed Availability of Proposals and Proposal Deadline – Staff recommends that it prepare proposals for organizations to complete, as applicable, and to make them available not later than Monday, January 4, 2021, with a deadline for organizations to return completed proposals not later than 3:00 p. m. (PST) on Friday, January 29, 2021.

In fairness to those agencies and residents that participate in the funding process from the beginning, and to ensure an orderly process, staff recommends that the Commission and the City Council not consider any proposal that is submitted after the January 29, 2021 deadline, or that is substantially incomplete, with no exceptions. After January 4, 2021 but prior to January 29, 2021, staff will hold a mandatory Notice of Funding Availability (“NOFA”) workshop for prospective social service and housing agencies that wish to submit proposals, in order to review the program requirements and provide technical assistance. The City will not accept a proposal from an organization that does not attend the workshop.

FY 2021-22 Funding Agreements – After the City Council allocates CDBG Program and HOME Program funds in the Spring of 2021, agencies awarded funding will execute an Agreement with the City in a timely manner, effective July 1, 2021. Some of the elements in the Agreement are: (1) quarterly reports must be submitted; and (2) City staff will conduct quarterly reviews or meetings with the agencies, as well as on-site monitoring visits at the social service and housing agency locations to review client and agency files and records, and program progress.

FISCAL IMPACT

If approved, the City Council's action will establish a funding process for the allocation of CDBG Program and HOME Program funds in FY 2021-22, in an estimated total amount of \$1.8 million. The City's application for FY 2021-22 CDBG Program and HOME Program funds, also known as an “Action Plan”, must be received by HUD by not later than May 15, 2021. There is no fiscal impact to the General Fund associated with this item.

ENVIRONMENTAL REVIEW

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which

**Subject: COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT
PARTNERSHIPS PROGRAM FISCAL YEAR 2021-22 FUNDING PROCESS**

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

None

CONTACT

Judy Shepard-Hall, Housing & Community Development Program Manager (707) 648-4408

judy.shepard-hall@cityofvallejo.net



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Heather Ruiz, Human Resources Director
SUBJECT: **AUTHORIZE THE CITY MANAGER TO EXECUTE A CONSULTANT AGREEMENT WITH ICMA-RC TO BECOME THE SOLE DEFERRED COMPENSATION PROVIDER FOR THE CITY OF VALLEJO**

RECOMMENDATION

Authorize the City Manager to execute the Consultant Agreement with ICMA-RC to become the sole deferred compensation provider for the City of Vallejo.

REASONS FOR RECOMMENDATION

The City of Vallejo in the past contracted with four separate deferred compensation vendors. On January 14, 2020, the City Council adopted a resolution to create a committee to provide oversight and governance to the City's deferred compensation plans and defined contribution plans.

The committee issued a request for proposals and received seven vendor responses. After evaluating all proposals received, the committee met on several occasions to discuss the selection, and decided on ICMA-RC to be the City's sole provider for these plans. They selected ICMA-RC because the committee determined ICMA-RC to be the best match for the participants based on all the criteria evaluated. Moving to one vendor is a benefit to all participants and to the City as a result of reduced administrative costs in a single vendor model.

BACKGROUND AND DISCUSSION

As stated above, on January 14, 2020 the City Council adopted Resolution 20-002 N.C establishing a Deferred Compensation Committee and approving the Charter to provide oversight of the administration of the City of Vallejo's deferred compensation and defined contribution plans. The Committee is comprised of representatives from City Management and the Recognized Employee Organizations. The establishment of the Committee created a new governance structure for the plan administration and is in line with best practices.

This new inclusive plan administration has been reviewing ways to make improvements in the plan, reduce costs and identify ways to maximize investments for participants. One of those efforts was to issue a Request for Proposal and conduct an evaluation to identify a provider that would meet the following needs of all plan participants by:

- Enhancing participant retirement outcomes;
- Analyzing the overall competitiveness of the Plans;
- Providing for the integrated administration and reporting for the Plans;

Subject: AUTHORIZE THE CITY MANAGER TO EXECUTE A CONSULTANT AGREEMENT WITH ICMA-RC TO BECOME THE SOLE DEFERRED COMPENSATION PROVIDER FOR THE CITY OF VALLEJO

Page 2

- Offering the most appropriate investment menu(s) across the Plans;
- Improving participant education and communication services;
- Developing a strategy on educating the newly formed Deferred Compensation Plan Committee (Committee) on fiduciary best practices and industry trends;
- Providing robust on-line transaction and information capabilities;
- Providing support for as many administrative functions as deemed appropriate
- Evaluating alternative pricing structures, including scenarios that consolidate plans to one record keeper;
- Reducing participant and Plan expenses;
- Providing for an orderly and timely transition of assets and services if necessary; and
- Formalizing the record keeper/Committee working relationship.

The committee plans to meet at least quarterly to review Plan performance and to review the plans' investment options offered in accordance with the Plans' Investment Policy Statement. The Committee will also make changes to the investment offerings as provided under the investment Policy Statement and as warranted.

FISCAL IMPACT

There is no fiscal impact to the City. Any fees associated with plan administration are paid by the participants.

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.	20-21 City of Vallejo
2.	ICMA Contract Final

CONTACT

Sarah Brannick, Human Resources Program Manager (707) 648-5346

Sarah.Brannick@cityofvallejo.net



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 1050 CONNECTICUT AVENUE, SUITE 700 WASHINGTON, DC 20036-5386	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
CN101976702-MULTI--20-21	INSURER(S) AFFORDING COVERAGE INSURER A : Great Northern Insurance Company INSURER B : Federal Insurance Company INSURER C : Pacific Indemnity Insurance Company INSURER D : Federal Insurance Company INSURER E : Travelers Casualty And Surety Company Of America INSURER F :
INSURED ICMA RETIREMENT CORP. ATTN: DJUANA THOMAS 777 NORTH CAPITOL ST., NE WASHINGTON, DC 20002	NAIC # 20303 20281 20346 20281 31194

COVERAGES**CERTIFICATE NUMBER:**

CLE-006516438-03

REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ CONTRACTUAL COV. INCL. GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:			3604-49-95	08/01/2020	08/01/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			7360-45-48	08/01/2020	08/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			9364-77-37	08/01/2020	08/01/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	7176-36-85	08/01/2020	08/01/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	BANKERS PROF. LIAB.			8211-6261	06/30/2020	06/30/2021	\$7,500,000 p/o \$12,500,000
E	SIR \$1,000,000			106758967	06/30/2020	06/30/2021	\$5,000,000 p/o \$12,500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Vallejo, its officers, officials, employees, agents, and volunteers are additional insured for general liability and automobile liability as required by written contract. Waiver of subrogation is applicable where required by written contract and subject to policy terms and conditions with respect to general liability and workers' compensation.

CERTIFICATE HOLDERCity of Vallejo
Human Resources Department
555 Santa Clara Street
Vallejo, CA 94590**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA INC.		NAMED INSURED ICMA RETIREMENT CORP. ATTN: D'JUANA THOMAS 777 NORTH CAPITOL ST., NE WASHINGTON, DC 20002
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

BANKERS PROF. LIAB. CONTINUED:
 SIR: 1,000,000

1ST EXCESS BANKERS PROF. LIAB.:
 CARRIER: AXIS Insurance Company
 POLICY NO: P00100012680401
 EFF/EXP DATES: 06/30/2020 - 06/30/2021
 LIMIT: \$7,500,000

2ND EXCESS BANKERS PROF. LIAB.:
 CARRIER: Arch Insurance Company
 POLICY NO: IAX9300068-05
 EFF/EXP DATES: 06/30/2020 - 06/30/2021
 LIMIT: \$5,000,000

3RD EXCESS BANKERS PROF. LIAB.:
 Total layer limit is \$10M
 Twin City Fire Insurance Co (The Hartford) - Policy# 10 DC 0299488 20 - \$5M p/o \$10 excess \$25M
 Berkley Insurance Company(Berkley) - Policy# BPRO8051969- \$5M p/o \$10 excess \$25M
 06/30/2020 - 06/30/2021

Approved as to form:

By:  for
Veronica A.F. Nebb
City Attorney

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

This Consultant and Professional Services Agreement ("Agreement") is made at Vallejo, California, dated for reference this 15th day of December, 2020, by and between the City of Vallejo, a municipal corporation ("City"), and the International City Management Association Retirement Corporation, hereinafter referred to as "Consultant", who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
- 2. Payment.** City shall pay Consultant for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement.
- 3. Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
- 4. Mutual Indemnification.** Consultant and City shall each indemnify and hold harmless one another, their respective officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, consultant's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of this agreement for Consultant's or City's tort negligence including active or passive, or strict negligence, including but not limited to personal injury including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Consultant or City, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by the law, regardless to any limitation by insurance. This provision shall not require Consultant to indemnify participants or beneficiaries of the Retiree Heath Savings Plan ("RHS Plan") or participants or beneficiaries of any other plan or account administered by ICMA-RC

City understands that, as a general matter, the Internal Revenue Service ("IRS") may

decline to rule on certain design features or provisions that the City may request to have added to the “RHS Plan”. The City agrees to hold Consultant harmless in connection with the addition and administration of any Plan feature or provision requested by the City for which the IRS will not provide express interpretive guidance.

The provisions of this section shall survive the expiration or termination of this Agreement.

5. Insurance Requirements. Consultant agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled “Insurance Requirements.” Failure to maintain required insurance at all times shall constitute a default and material breach. The parties agree to the following exceptions to the Insurance Requirements:

- a. For Insurance Requirement 1.B., Consultant has no owned autos and insures auto liability under codes 8-9 for hired and non-owned autos.
- b. For Insurance Requirement 4.E., Consultant’s period for providing notice of cancellation for non-payment of premium shall be 10 days.
- c. For Insurance Requirement 7, “subcontractor” shall mean those third parties Consultant retains to provide custom services unique to the City, and Consultant’s liability coverage specifically excludes subcontractors as insureds.

6. Accident Reports. Consultant shall immediately report (as soon as feasible, but not more than 24 hours) to the City Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses, and telephone numbers of any known witnesses, (c) the date, time, and description of the accident or other occurrence.

7. Conflict of Interest. Consultant warrants and represents that to the best of its knowledge, there exists no actual or potential material conflict between Consultant’s family, business, real property or financial interests and the services to be provided under this Agreement. Consultant shall comply with the City of Vallejo Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a material conflict of interest with its duties to City under this Agreement. In the event of a change in Consultant’s family, business, real property, or financial interests occurs during the term of this Agreement that creates an actual or potential material conflict of interest, then Consultant shall disclose such conflict in writing to the City.

8. Independent Contractor. Consultant is an independent contractor. Neither Consultant nor any of Consultant’s officers, employees, agents, or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant’s services rendered pursuant to this Agreement; however,

City shall not have the right to control the means by which Consultant accomplishes services pursuant to this Agreement.

9. Licences, Permits, Etc. Consultant represents and warrants to City that all consultant services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Consultant has all the permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession.

10. Business License. Consultant, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Consultant until such business license(s) has been obtained.

11. Standard of Performance. Consultant shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Consultant's profession currently practicing in California.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Consultant's responsibilities under this section shall not be delegated.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Consultant is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors,

omissions, noncompliance with industry standards, or the willful misconduct of Consultant.

12. Force Majeure. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by causes or circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Consultant is unable to meet the completion date or schedule of services, Consultant shall immediately inform the City Representative of this in writing. If additional time is required to perform the work, the City Representative may adjust the schedule.

13. Time is of the Essence. Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

14. Personnel. Consultant agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant and Consultant's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Consultant nor Consultant's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Consultant. The City shall not be required to pay any workers' compensation insurance on behalf of Consultant.

Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

15. Consultant Not Agent. Except as authorized and contemplated under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Consultant shall have no authority, express or implied to act on behalf of City as an agent in carrying out this agreement. Consultant shall have no authority, express or implied, under this Agreement, to bind City to any obligation outside the scope of this Agreement.

16. Term. The term of this Agreement shall commence on February 1, 2021 with an initial term of five years with five additional annual automatic renewals. City shall, at its discretion, have the right to extend the term of this Agreement, annually, by written notice to Consultant. The total duration of this Agreement, including the exercise of any

options under this section, shall not exceed 10 years.

If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the City Council of the City of Vallejo. If funds to effect such continued payment are not appropriated, Consultant agrees to terminate any services supplied to City of Vallejo under this Agreement, and relieve City of any further obligation therefore.

17. Termination or Abandonment by City. The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving a hundred and fifty (150) days' written notice to Consultant. Upon receipt of a notice of termination, Consultant shall perform no further work except as specified in the notice. Before the date of termination, Consultant shall deliver to City all City records and documents, all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Consultant for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Consultant for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Consultant for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

18. Products of Consulting Services. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Consultant resulting from services rendered pursuant to this Agreement, shall become the property of City. Consultant agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office Suite (2002) format as appropriate for the particular work product or, if directed by the City Representative in Adobe Acrobat PDF format.

19. Cooperation by City. City shall, to the extent reasonable and practicable, assist and cooperate with Consultant in the performance of Consultant's services hereunder.

20. Assignment and Subcontracting. Consultant shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligations under this Agreement that are specific or unique to City without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Consultant shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Consultant. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Consultant to use subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Consultant's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

Any subcontractor or assignee consented to by City shall be bound by all terms and conditions of this agreement and the same shall be incorporated into and made a part of any assignment or subcontractor agreement.

21. Successors and Assigns. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

22. Non-Discrimination/Fair Employment Practices.

(a) Consultant shall not, because of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation of any person, refuse to hire or employ, or to bar or discharge from employment, or to discriminate in compensation, or in terms, conditions or privileges any person, and every employee will receive equal opportunity for employment and shall be granted equal treatment with respect to compensation, terms, conditions or other privileges of employment, without regard to his race, religious creed, color, sex, national origin, ancestry, or disability, medical condition, age, marital status or sexual orientation.

Consultant warrants and represents it is an equal opportunity employer and agrees it shall not discriminate on the basis of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation in the selection and retention of employees, subcontractors or procurement of materials or equipment.

(b) Consultant agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations and City ordinances and regulations hereinafter enacted.

23. 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:	Heather Ruiz Director of Human Resources 555 Santa Clara Street Vallejo, CA 94590
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If to Consultant:	Legal Department ICMA-RC 777 North Capitol Street, NE Washington, DC 20002
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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.

24. Integration Clause. This Agreement, including all Exhibits, 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 may be amended so as to comport with state and federal law. In no way can it be amended in terms specific to the relationship between parties, such as pricing. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto. Notwithstanding the foregoing, ICMA-RC may implement service enhancements and fee reductions without prior written consent.

25. 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.

26. Law Governing. This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern

District of California, Sacramento, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

27. 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.

28. 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.

29. Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

30. 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.

31. Compliance with Laws. Consultant will comply with all applicable statutes, regulations and ordinances in the performance of all services under this Agreement.

32. Confidentiality of City Information. During the performance of services under this Agreement, Consultant may gain access to and use City information regarding, but not limited to, procedures, policies, training, operational practices, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. Consultant agrees that it will not use any information obtained as a consequence of the performance of services under this Agreement for any purpose other than fulfillment of Consultant's scope of work, to protect all City Information and treat it as strictly confidential and proprietary to City, and that it will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party, other than its own employees, agents or subcontractors who have a need for the City Information for the performance of services under this Agreement, without the prior written consent of City, or as required by law.

Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this Agreement as confidential.

A violation by Consultant of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Consultant's obligations under this section shall survive the completion of services, expiration or termination of this Agreement.

33. News and Information Release. Consultant agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

34. City Representative. The Director of Human Resources or designee shall administer this Agreement for the City.

35. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

36. 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.

37. Authority. The person signing this Agreement for Consultant hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Consultant.

38. 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
Exhibit C, entitled "Insurance Requirements," including any attachments
Exhibit D, entitled "Service Guarantees"

[SIGNATURES ON FOLLOWING PAGE]

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

INTERNATIONAL CITY MANAGEMENT
ASSOCIATION RETIREMENT
CORPORATION
Retirement Plan Services

By: _____

DATE: _____

Vallejo Business License No.

(City Seal)

CITY OF VALLEJO,
a municipal corporation

By: _____
Greg Nyhoff
City Manager

DATE: _____

ATTEST:

By: _____
Dawn Abrahamson
City Clerk

APPROVED AS TO CONTENT:

Heather Ruiz
Director of Human Resources

APPROVED AS TO FORM:

Veronica Nebb
City Attorney

APPROVED AS TO INSURANCE:

Armond Sarkis
Risk Manager & Safety Officer

Exhibit A

Scope of Work

I. Administrative Services for the 457 and 401 Plans:

300439, 107519, 107517

The nondiscretionary administrative services to be performed for the 457 and 401 Plans by Consultant under this Agreement shall be as follows:

- (a) Participant enrollment services are provided online. Employees will enroll online through a secure site or the City will enroll employees through EZLink.
- (b) Establishment of participant accounts for each employee participating in the Plan for whom Consultant receives appropriate enrollment instructions. Consultant is not responsible for determining if such Plan participants are eligible under the terms of the Plan.
- (c) Allocation in accordance with participant directions received in good order of individual participant accounts to investment funds offered under the Plan.
- (d) Maintenance of individual accounts for participants reflecting amounts deferred, income, gain or loss credited, and amounts distributed as benefits.
- (e) Maintenance of records for all participants for whom participant accounts have been established. These files shall include enrollment instructions (provided to Consultant through Account Access or EZLink), beneficiary designation instructions and all other documents concerning each participant's account.
- (f) Provision of periodic reports to the City through EZLink. Participants will have access to account information through Participant Services, Voice Response System, Account Access, and TextAccess, and through quarterly statements that can be delivered electronically through Account Access or by postal service.
- (g) Communication to participants of information regarding their rights and elections under the Plan.
- (h) Making available Participant Services Representatives through a toll-free telephone number from 5:30 a.m. to 6:00 p.m. Pacific Time, Monday through Friday (excluding holidays and days on which the securities markets or Consultant are closed for business (including emergency closings)), to assist participants.
- (i) Making available access to Consultant's web site, to allow participants to access certain account information and initiate certain plan transactions at any time. Account access is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance. The scheduled maintenance window is outlined at <https://accountaccess.icmarc.org>.
- (j) Maintaining the security and confidentiality of client information through a system of controls including but not limited to, as appropriate: restricting plan and participant information only to those who need it to provide services, software and hardware security, access controls, data back-up and storage procedures, non-disclosure agreements, security incident response procedures, and audit reviews.

- (k) Making available access to Consultant's plan sponsor EZLink web site to allow plan sponsors to access certain plan information and initiate plan transactions such as enrolling participants and managing contributions at any time. EZLink is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance. The scheduled maintenance window is outlined at <https://ezlink.icmarc.org>.
- (l) Distribution of benefits as agent for the City in accordance with terms of the Plan. Participants who have separated from service can request distributions through Account Access or via form.
- (m) Upon approval by the City that a domestic relations order is an acceptable qualified domestic relations order under the terms of the Plan, Consultant will establish a separate account record for the alternate payee and provide for the investment and distribution of assets held thereunder.
- (n) Loans may be made available on the terms specified in the Loan Guidelines, if loans are adopted by the City. Participants can request loans through Account Access.
- (o) Guided Pathways Advisory Services – Consultant's participant advice service, "Fund Advice", and asset allocation service, "Asset Class Guidance" may be made available through a third-party vendor on the terms specified on Consultant's website. Fund Advice shall be available at no charge to participants.
- (p) Consultant shall make a financial plan available to any participant in the Plan who requests one.
- (q) Consultant shall provide City with 28 service days—onsite or virtual.
- (r) Consultant will determine appropriate delivery method (electronic and/or print) for plan sponsor/participant communications and education based on a number of factors (audience, effectiveness, etc.).

II. Administrative Services for the RHS Plan 803523

The nondiscretionary administrative services to be performed for the 457 and 401 Plans by Consultant and its agents under this Agreement shall include:

- (a) allocation in accordance with participant direction of individual accounts to investment funds ("Funds") made available to Plan participants;
- (b) maintenance of individual accounts for participants reflecting amounts contributed, income, gain, or loss credited, and amounts disbursed as benefits;
- (c) provision of periodic reports to the City and participants of the status of Plan investments and individual accounts;
- (d) communication to participants of information regarding their rights and elections under the Plan;
- (e) disbursement of benefits as agent for the City in accordance with terms of the Plan; and
- (f) performance of tax withholding and reporting in conjunction with the City for each RHS account.
- (g) handling participant information in the manner described in the Business Associate Agreement to be executed between the Plan and Consultant in the following form:

RHS HIPAA BUSINESS ASSOCIATE AGREEMENT FOR PLAN NUMBER 803523

This Business Associate Agreement (“BA Agreement”) supplements and is made part of the Consultant and Professional Services Agreement entered into between **City of Vallejo** on behalf of plan number **803523** (“Covered Entity” or “**City of Vallejo RHS**”) and ICMA-RC (“Business Associate”) on (please enter date) _____, and is effective as of the effective date of the Consultant and Professional Services Agreement (the “Effective Date”).

RECITALS

Covered Entity is a group health plan that reimburses medical expenses for eligible participants, their spouses, and their dependents. Under the Health Information Portability and Accountability Act of 1996 (“HIPAA”), Covered Entity is required to enter into this BA Agreement to obtain satisfactory assurances that Business Associate will appropriately safeguard all Protected Health Information (“PHI”), as defined herein, that is created, maintained, received, or transmitted by Business Associate on behalf of Covered Entity.

Business Associate is a record keeper providing administrative services to Covered Entity. In general, Business Associate will not have access to information that would traditionally be considered PHI because participant medical information used to substantiate reimbursements is sent directly to and reviewed by a third-party claims processor. The third-party claims processor has agreed to protect PHI that it creates, maintains, receives, or transmits in a manner that is consistent with and as stringent as the terms agreed to by Business Associate under this BA Agreement with respect to information that could be considered PHI. Business Associate has access to information that might be interpreted as PHI, including an individual’s participation in the plan, reimbursement amounts, and the timing of reimbursements.

In consideration of the mutual promises below and the exchange of information pursuant to this BA Agreement and in order to comply with all legal requirements for the protection of this information, Covered Entity and Business Associate agree as follows:

1. DEFINITIONS

- a. The following terms used in this BA Agreement shall have the same meaning as those terms are defined in the HIPAA Rules: Breach, Data Aggregations, Designated Record Set, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. “Consultant and Professional Services Agreement” refers to a separate agreement outlining the services ICMA-RC will provide to Covered Entity and the terms and conditions governing the provision of such services. The Consultant and Professional Services Agreement is made between ICMA-RC and **City of Vallejo RHS** or its sponsor, acting on behalf of **City of Vallejo RHS**.
- c. “Business Associate” shall have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to this BA Agreement shall mean ICMA-RC.

- d. "Covered Entity" shall have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference this BA Agreement, shall mean **City of Vallejo RHS**.
- e. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- f. "Privacy Rule" shall mean the Privacy Standards and Implementation Specifications at 45 CFR 170 and 164, Subparts A and E.
- g. "Protected Health Information" ("PHI") shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity pursuant to this Agreement.
- h. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Parts 160 and 164, Subparts A and C.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- a. Not Use or Disclose PHI other than as permitted or required by this BA Agreement or as required by law.
- b. Use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BA Agreement, and comply with subpart C of 45 CFR Part 164 with respect to electronic PHI in Business Associate's custody or control, to prevent Use or Disclosure of PHI other than as provided for by this BA Agreement.
- c. Report to Covered Entity any Use or Disclosure of PHI not provided for by the BA Agreement of which it becomes aware not more than 60 calendar days after Business Associate discovers such non-permitted Use or Disclosure, including Breaches of Unsecured PHI as required at 45 CFR 164.410, and any Security Incident for which it becomes aware.
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- e. Make available, within 30 calendar days of the request of Covered Entity, PHI in a Designated Record Set in Business Associate's custody or control, to Covered Entity, or as Directed by Covered Entity, to an individual, so that Covered Entity may meet its access obligations under 45 CFR § 164.524.
- f. Make any amendment(s) to PHI in a Designated Record Set in Business Associate's custody or control as directed in writing by the Covered Entity pursuant to 45 CFR 164.526 no later than 60 days after receipt of such request, so that Covered Entity may meet its amendment obligations under 45 CFR 164.526.

- g. Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as requested by Covered Entity in writing and as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.528.
- h. Make its internal practices, books, and records, available to the Secretary for purposes of determining compliance with the HIPAA Rules.
- i. Not directly or indirectly receive remuneration in exchange of PHI.
- j. Comply with the administrative simplification rules applicable to standard transactions, if Business Associate conducts such transactions under the electronic data interchange rules on behalf of Covered Entity.
- k. To the extent the parties agree that Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. Business Associate may only Use or Disclose PHI as necessary to perform the services set forth in the Consultant and Professional Services Agreement and as permitted by this BA Agreement.
- b. Business Associate may Use or Disclose PHI as required by law or to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(i).
- c. Except as otherwise limited by this BA Agreement, Business Associate agrees to make Uses and Disclosures and requests for PHI consistent with the Covered Entity's Minimum Necessary policies and procedures when such are provided by the Covered Entity to Business Associate.
- d. Business Associate is authorized to de-identify information in accordance with 45 CFR 164.514(a)-(c).
- e. Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth below.
- f. Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- g. Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity.

4. OBLIGATIONS AND ACTIVITIES OF COVERED ENTITY

- a. Covered Entity shall notify Business Associate of any limitations in the Notice of Privacy Practices that Covered Entity provides to individuals pursuant to 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restrictions on the Use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
- d. Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except to the extent that Business Associate will Use or Disclose PHI for Data Aggregation or management and administration and legal responsibilities of the Business Associate.
- e. Covered Entity shall notify Business Associate of any confidential communication requests with which the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent such requests would affect Business Associate's Use or Disclosure of PHI.

5. TERM AND TERMINATION

- a. This BA Agreement shall be effective as of the Effective Date, and shall terminate upon the termination of the Consultant and Professional Services Agreement, subject to the provisions below regarding the return or destruction of PHI.
- b. Business Associate authorizes termination of this BA Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the BA Agreement, and Business Associate has not cured the Breach or ended the violation, following written notice to the Business Associate, within a reasonable period of time not to exceed any reasonable cure period defined in the Consultant and Professional Services Agreement.
- c. Upon termination of this BA Agreement for any reason, Business Associate, with respect to PHI Received from Covered Entity, or created, maintained, or received from Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains PHI;
 - iv. Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Paragraph 3(f);

- v. Return to Covered Entity or, if agreed to Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities;
 - vi. Notwithstanding any other provision of this BA Agreement, upon termination, Business Associate may also transmit PHI to another Business Associate of the Covered Entity upon the written request of the Covered Entity.
- d. The obligations of Business Associate under Section 5, Term and Termination, shall survive the termination of this BA Agreement.

6. GENERAL PROVISIONS

- a. A reference in this BA Agreement to a section in the HIPAA Rules means the section as in effect or amended.
- b. The parties agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable laws.
- c. Any ambiguity in this BA Agreement shall be interpreted to permit compliance with the HIPAA rules.
- d. Nothing in this BA Agreement shall be construed as creating any rights or benefits to any third parties.
- e. The invalidity and unenforceability of any provision of this BA Agreement shall not affect the enforceability of any other provision of this BA Agreement or the Consultant and Professional Services Agreement, which shall remain in full force and effect.
- f. All notices and communications required by this BA Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally-recognized, next-day courier service, (iii) by first-class, registered or certified mail, postage prepaid, or (iv) by electronic mail to the address that each party specifies in writing.

- g. This BA Agreement and the Consultant and Professional Services Agreement constitute the entire agreement between the parties with respect to its subject matter and constitute and supersede all prior agreements, representations, and understandings of the parties, written or oral, with regard to the same subject matter.

CITY OF VALLEJO RHS

By _____
Signature / Date

Name and Title (Please Print)

**INTERNATIONAL CITY MANAGEMENT ASSOCIATION
RETIREMENT CORPORATION**

By _____
Erica McFarquhar
Assistant Secretary

Please return an executed copy of the Agreement to a Delivery Address, either:

- (a) Via **DocuSign**
- (b) Electronically to
PlanAdoptionServices@icmarc.org, or
- (c) In paper form to ICMA-RC
ATTN: PLAN ADOPTION SERVICES
777 North Capitol Street NE
Suite 600
Washington DC 20002-4240

Exhibit B

I. Compensation and Payment for the 457 and 401 Plans:

300439, 107519, 107517

Compensation from the Plans to ICMA-RC for recordkeeping services shall be as follows:

1. **Participant Fees.** Plan participant accounts shall be assessed an asset-based fee to cover the costs of record-keeping and other services provided by ICMA-RC, and other costs associated with the Plans as directed by the City. The City shall work with ICMA-RC to determine the appropriate amount of the gross asset-based fee to be charged to participant accounts, which may be increased or decreased from time to time at the direction of the City. At the inception of this Agreement the participant fee shall be **0.125%**.
2. **Revenue Requirement.** ICMA-RC shall receive total annual aggregate revenue of **0.025%** of Plan assets under ICMA-RC's administration for providing recordkeeping and other services to the Plans. Such revenue shall be deducted by ICMA-RC from amounts collected through the application of the asset-based fee described in Paragraph 1 prior to allocation of any participant level asset-based fees to the Administrative Allowance Account described in Paragraph 3 below.
3. **Administrative Allowance Account.** Amounts collected through the application of the asset-based fee described in Paragraph 1 above in excess of the Revenue Requirement specified in Paragraph 2 above, if any, shall be held in an Administrative Allowance Account for each Plan (that is maintained as a Plan asset by ICMA-RC). The City understands that the Plan administrative allowance is to be used only to pay for reasonable plan administrative expenses of the Plan or allocated to Plan participants at the instruction of the City. The City may determine that funds from the Administrative Allowance Account should directly pay the invoices of consultants to the Plan. If the City makes such a determination, The City will direct ICMA-RC in a separate letter to send Administrative Allowance monies to such consultants.

The payment will be made only from the above-referenced Plan's Administrative Allowance Account. Should the amount in the Plan's Administrative Allowance Account be insufficient to cover the fee due, ICMA-RC will seek written instruction from the City as to the amount to

pay the consultant. For processing purposes, the consultant may submit an invoice to ICMA-RC for payment of the fee; provided, however, that ICMA-RC will pay the consultant only as set forth above. The consultant shall have no authority to calculate the fee amount, change the frequency of the payment, or change the payee.

The City acknowledges and agrees that, for the purposes of these payments, ICMA-RC is acting as the agent of the Plan. The City also acknowledges that in following its direction ICMA-RC is not exercising any discretion regarding whether the above fee payment is an appropriate or reasonable use of Plan funds. Accordingly, The City agrees to hold ICMA-RC harmless from adverse consequences that may result from making such payments.

4. **Revenue Received from Investment Options.** Neither ICMA-RC nor the City shall retain recordkeeping revenue received directly from investment options made available under the Plans. ICMA-RC shall be compensated from fees collected from participant accounts through the application of the asset-based fee described in Paragraph 1 above. In the event that any Plan investment options do generate revenue from plan investments, ICMA-RC shall, as directed by the City, credit any and all revenue back to those participant accounts invested in the option in question.
5. **Compensation for Management Services to VantageTrust, Compensation for Advisory and other Services to the VT III Vantagepoint Funds and Payments from Third-Party Mutual Funds.** The City acknowledges that, in addition to amounts payable under this Agreement, ICMA-RC receives fees from VantageTrust for investment advisory services and plan and participant services furnished to VantageTrust. The City further acknowledges that ICMA-RC, including certain of its wholly owned subsidiaries, receives compensation for advisory and other services furnished to the VT III Vantagepoint Funds, which serve as the underlying portfolios of a number of Funds offered through VantageTrust. For a VantageTrust Fund that invests substantially all of its assets in a third-party mutual fund not affiliated with ICMA-RC, ICMA-RC or its wholly owned subsidiary receives payments from the third-party mutual fund families or their service providers in the form of 12b-1 fees, service fees, compensation for sub-accounting and other services provided based on assets in the underlying third-party mutual fund. These fees are described in the VT Disclosures and ICMA-RC's fee disclosure statement. In addition, to the extent that third party mutual funds are included in the investment line-up for the Plan, ICMA-RC receives administrative fees from its third party mutual fund settlement and clearing agent for providing administrative and other services based on assets invested in third party mutual funds; such administrative fees come from

payments made by third party mutual funds to the settlement and clearing agent.

6. **Redemption Fees.** Redemption fees imposed by outside mutual funds in which Plan assets are invested are collected and paid to the mutual fund by ICMA-RC. ICMA-RC remits 100% of redemption fees back to the specific mutual fund to which redemption fees apply. These redemption fees and the individual mutual fund's policy with respect to redemption fees are specified in the prospectus for the individual mutual fund and referenced in the VT Disclosures.
7. **Payment Procedures.** All payments to ICMA-RC pursuant to this Exhibit B shall be made from Plan assets held by VantageTrust or received from third-party mutual funds or their service providers in connection with Plan assets invested in such third-party mutual funds, to the extent not paid by the City. The amount of Plan assets administered by ICMA-RC shall be adjusted as required to reflect any such payments as are made from the Plans. In the event that the City agrees to pay amounts owed pursuant to this Exhibit B directly, any amounts unpaid and outstanding after 30 days of invoice to the City shall be withdrawn from Plan assets.

The compensation and payment set forth in this Exhibit B.I are contingent upon the City's use of ICMA-RC's EZLink system for contribution processing and submitting contribution funds by ACH or wire transfer on a consistent basis over the term of this Agreement. The compensation in this Exhibit B.I is also based on the assets of the Plan being invested in **R10** shares of Vantagepoint PLUS Fund and the City offering the Vantagepoint PLUS Fund as the sole stable value option.

The compensation and payment set forth in this Exhibit B.I are further contingent upon the transfer of all assets of the Plan(s) from the prior recordkeeper for the Plan(s) to ICMA-RC's administration in the approximate amount of **\$39 million**. The City further acknowledges and agrees that compensation and payment under this Agreement shall be subject to re-negotiation in the event that there is a material difference between the assets and/or participants transferred to ICMA-RC and the information provided from the City pursuant to the Request for Proposal.

Prior Recordkeeper Surrender Charges. At conversion, participant accounts will be transitioned at market value regardless of any surrender charges assessed in connection with the City's termination of its prior recordkeeper(s). ICMA-RC will provide its services provided that the amount of surrender charges assessed by the prior record-keeper(s) are no more than **\$17,000**. ICMA-RC has amortized the value of the surrender charges assessed by the prior recordkeeper(s) over the life of this Agreement; therefore, should the City terminate this Agreement before the expiration of

the initial term, the unrecovered portion of the surrender charges outstanding on the date of termination shall be due and payable to ICMA-RC at the time of any future Plan transition.

The compensation and payment in this Exhibit B.I will take effect following receipt at a Delivery Address (defined below the signature line) of one fully executed copy of this Consultant and Professional Services Agreement and; receipt of all assets of the Plan's prior recordkeeper or a fund lineup change, whichever come first.

The City further acknowledges and agrees that compensation and payment under this Agreement shall be subject to re-negotiation in the event that the City (a) chooses to implement additional mutual funds that neither (i) trade via NSCC nor (ii) meet ICMA-RC's daily trading operational guidelines or (b) chooses to implement investment options that are not mutual funds.

Exhibit B
II. Compensation and Payment for RHS Plan 803523

Absent an explicit agreement to the contrary between ICMA-RC and Employer, participant fees and expenses shall be payable from RHS assets, in accordance with the requirements of the RHS Program as set forth below.

- (a) *For RHS assets in the VT II Funds, other than the S11 class of the Vantagepoint PLUS Fund*
 - (i) Asset-based fees will be included in the daily unit value of each VT II Fund; and
 - (ii) No separate asset-based fees will be assessed.
- (b) *For the S11 class of the Vantagepoint PLUS Funds and for assets in Funds other than the VT II Funds, an annual asset fee of 0.55% (55 basis points) will be charged on a monthly or quarterly basis, depending on the funds selected. Quarterly charges are based on the balance in the account on the last day of the previous quarter. Monthly charges are based on the average balance for the previous month.*
- (c) A **\$25** annual account administration fee will be charged quarterly to each Accountholder's account.
- (d) Asset-based fees and the annual account administration fee are subject to change with appropriate prior notification.
- (e) **Compensation for Advisory and other Services to VT III Vantagepoint Funds and Payments from Third-Party Mutual Funds.** Employer acknowledges that ICMA-RC, including certain of its wholly owned subsidiaries, receives compensation for advisory and other services furnished to the VT III Vantagepoint Funds, which are collective funds serving as the underlying funds to certain VT II Funds. In addition, to the extent that third party mutual funds are included in the investment line-up for the RHS Plan, ICMA-RC receives administrative fees from its third party mutual fund settlement and clearing agent for providing administrative and other services based on assets invested in third-party mutual funds; such administrative fees come from payments made by third-party mutual funds to the settlement and clearing agent.

Exhibit C

Insurance Requirements

Consultant shall procure and maintain for the duration of this Agreement, including any extensions thereto, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by the Consultant, their agents, representatives, or employees or subcontractors.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

A. Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

B. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 any auto and endorsement CA 0025.

C. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

D. Professional Liability insurance appropriate to the Consultant's profession (Errors and Omission).

2. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

A. General Liability: \$2,000,000 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.

B. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

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

D. Professional Liability (Errors and Omission): \$1,000,000 combined single limit per occurrence, and annual aggregate.

3. 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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. 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:

A. 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 Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased hired or borrowed by the Consultant. 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.

B. For any claims related to this project, the Consultant'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 Consultant's insurance and shall not contribute with it.

C. 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.

D. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. 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.

F. The workers' compensation and employer's liability policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against City, its officers, officials, employees,

agents and volunteers, which might arise by reason of payment under such policy in connection with Consultant's performance under this Agreement.

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

6. Verification of Coverage. Consultant shall furnish the City with certificates of insurance and original endorsements effecting general and automobile liability insurance coverage required by this clause. The certificates and 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.

7. Subcontractors. Consultant 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.

8. Payment Withhold. City will withhold payments to Consultant if the certificates of insurance and endorsements required in Paragraph F, above, are canceled or Consultant otherwise ceases to be insured as required herein.

Exhibit D
Service Guarantees

	Benchmark	Amount at Risk
Phone		
Plan sponsor services response time:	80% of calls answered within 60 seconds.	\$1,000 per year in which this does not occur.
Participant services response time:	80% of calls answered within 60 seconds.	\$1,000 per year in which standard is not met.
Return all calls to plan sponsor within:	Calls returned within one (1) business day.	Our financial penalty will be based upon emails. We find that our plan sponsors communicate more through email, and this is tracked. \$1,000 per year in which fewer than 99% of emails sent from plan sponsor receive a response within one (1) business day.
Return all calls to participants within:	Calls returned within one (1) business day.	Not applicable. Participants can make phone calls to various personnel at the local level and at headquarters. We would like to discuss alternatives with the City.
Statements		
Participant statement mail time:	Quarterly statements will be mailed within 12 business days, unless delays are due to factors beyond ICMA-RC's control.	\$2,500 per year in which fewer than 99% of statements in aggregate meet the deadline due to circumstances under ICMA-RC control.
Sponsor plan statement mail time:	Plan sponsor-level statements will be made available electronically within 12 business days	\$2,500 per year in which fewer than 99% of statements in aggregate meet the deadline due to circumstances under ICMA-RC control.
Participant online statement posting:	Quarterly statements will be made available electronically within 12 business days, unless delays are due to factors beyond ICMA-RC's control.	\$2,500 per year in which fewer than 99% of statements in aggregate meet the deadline due to circumstances under ICMA-RC control.
Sponsor online statement posting:	Plan sponsor-level statements will be made available electronically within 12 business days.	\$2,500 per year in which fewer than 99% of statements in aggregate meet the deadline due to circumstances under ICMA-RC control.
Participant Services		
Number of on-site individual meetings:	28 days on-site individual educational meetings.	\$1,000 per year in which the target number of seminars is not met.
Number of on-site group meetings:	Mutually agreed-upon number of on-site seminars.	\$1,000 per year in which target number of seminars is not met.

	Benchmark	Amount at Risk
Financial planning services:	Mutually agreed-upon number of group seminars or days on site.	\$1,000 per year in which target number of seminars is not met.
Plan participation rate increases:	To be mutually agreed upon by ICMA-RC and the City based on current participation rate.	\$1,000 per year in which the target is not met.
Deferral rate increases:	To be mutually agreed upon by ICMA-RC and the City based on current participation rate.	\$1,000 per year in which the target is not met.
Transition		
Timeline:	Transition of assets to ICMA-RC by agreed upon deadline and with a blackout period of no more than two (2) business days following the receipt of reconciled assets and records.	\$2,500 if delay caused by factors controllable by ICMA-RC.
Deliverables:	Establish key milestones and deliverables mutually agreed upon between the City, the current recordkeeper, and ICMA-RC.	\$500 if project plan is not provided which covers key milestones and deliverables.
On-site meetings:	Mutually agreed-upon number of transition seminars based on the scenario determined by the City.	\$1,000 if agreed-upon number of transition seminars does not occur.
Administration		
Contribution posting:	If received in good order before 1:00 p.m. Pacific Time on a normal business day, contributions will post as of the close of business that day.	\$1,000 per year in which at least 26 payrolls are submitted and in which 2 or more payrolls received in good order are not processed within benchmark due to ICMA-RC error.
Withdrawals processed:	Withdrawal requests are processed within three business days following the date the request is received in good order.	\$500 for each year in which at least 20 withdrawals are requested and in which fewer than 95% are processed within benchmark due to ICMA-RC error.
Emergency withdrawals processed:	Payments sent within two business days following the date of receipt, if received by 1:00 p.m. Pacific Time with complete supporting documentation and plan sponsor approval.	\$500 for each year in which at least 20 emergency payments are made and in which fewer than 95% are processed within benchmark due to ICMA-RC error.
Rollovers/transfers out:	Please refer to withdrawals processed; this measurement is included in withdrawals processed.	See above.

	Benchmark	Amount at Risk
Loan processing (if applicable):	If received in good order by 1:00 p.m. Pacific Time on a normal business day, loan requests submitted via Account Access will be processed as of the close of business that day.	\$1,000 per year in which fewer than 99% are processed within benchmark due to ICMA-RC error.
Plan Sponsor Services		
Report delivery:	Monthly reports available within EZLink within seven business days after end of calendar month.	\$500 per year if the standard is not met.
Training:	Mutually agreed upon training for the City's benefits staff.	\$500 per year in which training is requested but not provided.
Overall Satisfaction		
Draft and distribute survey:	Survey schedule to be mutually agreed upon between the City and ICMA-RC.	\$500 if survey is not distributed based upon mutually agreed upon schedule.
Satisfaction survey score:	Measurement system to be mutually agreed upon between the City and ICMA-RC.	\$500 per year based upon mutually agreed upon measurement is not met.



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Terrance Davis, Public Works Director
SUBJECT: AB 1600 ANNUAL REPORT

RECOMMENDATION

Adopt a Resolution accepting, filing and making the findings identified in the attached AB 1600 Development Impact Fee Report for the fiscal year ended June 30, 2020.

REASONS FOR RECOMMENDATION

The City is authorized by state law to collect development impact fees from new development to fund public improvements and services that support the new development. The City of Vallejo collects three development impact fees – the Transportation Impact Mitigation Fee, the Hiddenbrooke Overpass Mitigation Fee and the Neighborhood Parks Impact Mitigation Fee.

BACKGROUND AND DISCUSSION

In accordance with the provisions of California Government Code Section 66001 (AB1600), the City is required to prepare a report annually which reviews the status of any development fees collected. Specifically, the annual report must include:

- A description of the development fee
- Fee schedule
- Amount of fees collected, interest earned, funds spent and remaining balance
- Estimated timeline for expending funds if sufficient funding has been collected for an identified project

State law also requires that the City spend or commit the development impact fees within five years of collection or adopt a resolution stating that there remains a reasonable relationship between the current need for the development fees and the purpose for which the development fees were originally proposed.

The City's three development impact fees had a total balance of \$12,565,188 as of June 30, 2020. The Transportation Impact Mitigation Fee had a balance of \$3,544,953. Of this amount, \$1,759,884 has been held in excess of five years. These funds are budgeted for expenditure for various roadway improvement projects in the City's Capital Improvement Plan. The Hiddenbrooke Overpass Mitigation Fee had a balance of \$8,280,499 as of June 30, 2020. Of this amount, \$7,531,484 has been held in excess of five years. It is anticipated that these funds will be expended for design and construction costs associated with the I-80 on/off ramp improvements at Hiddenbrooke Parkway (CIP Project # PW9967). Construction is anticipated to begin in Fiscal Year 2022-23. The Neighborhood Parks Impact Mitigation Fee had a balance of \$739,736 as of June 30, 2020, all of which had been collected within the previous five fiscal years.

Attached to this report is information on each of the City's three development impact fees including: the current fee schedule and description of the basis for the fee; revenue collected, expenditures and fund balance for each of the past five fiscal years; description of projects funded with the development impact fees; and findings regarding the expenditure of the remaining available funds.

FISCAL IMPACT

There is no immediate financial impact associated with or budget action necessary as a result of the recommended actions.

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 - AB 1600 Report FY 2019-20 CAO stamped
2.	Fund 137- Park Impact Mitigation Fee FY 2019-20
3.	Fund 203- Transportation Impact Mitigation Fee FY 2019-20
4.	Fund 211 - Hiddenbrooke Overpass Mitigation Fee FY 19-20

CONTACT

Terrance Davis, Public Works Director (707) 648-4301
Terrance.Davis@cityofvallejo.net

RESOLUTION NO. 20 - _____ N.C.

**RESOLUTION TO ACCEPT AND FILE THE FINDINGS IDENTIFIED IN THE AB 1600
REPORT ON DEVELOPMENT IMPACT FEES FOR FISCAL YEAR 2019-20**

WHEREAS, the Mitigation Fee Act, Government Code §§ 66000, et seq. requires cities to publish an annual report for each fund established to account for development impact fees collected by each city; and

WHEREAS, the report must include the beginning and ending balances by public facility type for the fiscal year, and the amount of fees, interest, other income and expenditures for each fund; and

WHEREAS, in connection with the report, cities must make certain findings describing how certain unexpended fees will be used in connection with the purpose for which they were originally proposed and collected; and

WHEREAS, the City has prepared and provided to the City Council a report for the fiscal year ended June 30, 2020 containing the required information.

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND FOUND by the City Council of the City of Vallejo, State of California, as follows:

The City Council hereby accepts, files, and makes the findings identified in the AB 1600 Report on Development Impact Fees for the Fiscal Year Ended June 30, 2020, attached hereto and incorporated herein by this reference.

Adopted by the City Council of the City of Vallejo at a regular meeting held on December 15, 2020 with the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

BOB SAMPAYAN, MAYOR

ATTEST:

DAWN G. ABRAHAMSON, CITY CLERK

Approved as to form:

By:  for
Randy J. Risner
Interim City Attorney

City of Vallejo
AB 1600 Fee Report
Fiscal Year Ended June 30, 2020
Fund 137

Neighborhood Parks Impact Mitigation Fee

The purpose of this fee is to provide funds to assist in paying the cost of additional park land and park improvements needed to serve the residents of new development within the City.

Greater Vallejo Recreation District Park Fee

Single Family Detached (per unit)	Single Family Attached (per unit)	Duplex (per unit)	Multiple Family (3 or more units) (per unit)	Mobile Home (per unit)
\$13,240.00	\$11,937.00	\$10,808.00	\$9,072.00	\$7,942

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Beginning Fund Balance	\$488,897	\$655,729	\$510,348	\$518,359	\$679,305
Revenue					
Developer Fees	\$ 97,571	\$ 25,697	\$ 13,295	\$ 127,872	\$ 37,632
Interest Income	\$ 5,315	\$ 914	\$ 2,153	\$ 33,074	\$ 22,799
Other Revenue	\$ 75,658	\$ 1,000	\$ -	\$ -	\$ -
Total Revenue	\$ 178,544	\$ 27,611	\$ 15,448	\$ 160,946	\$ 60,431
Expenditures	\$ 11,712	\$ 172,992	\$ 7,437	\$ -	\$ -
Total Available	\$ 655,729	\$ 510,348	\$ 518,359	\$ 679,305	\$ 739,736

Five-Year Revenue Test Using First In First Out Method

Revenue Collected FY 2015-16	\$ 178,544
Revenue Collected FY 2016-17	\$ 27,611
Revenue Collected FY 2017-18	\$ 15,448
Revenue Collected FY 2018-19	\$ 160,946
Revenue Collected FY 2019-20	\$ 60,431
<u>Total Revenue for Last Five Years</u>	<u>\$ 442,980</u>

NEIGHBORHOOD PARKS IMPACT MITIGATION FEE

PROJECTS	Project to Date Funding	Total Funded with Fee	% Complete	% Funded with Fee
Hiddenbrooke Park	\$ 2,039,184.00	\$ 1,548,261.00	100%	78%
Reimbursement to Greater Vallejo Recreation District	\$ 10,186,666.00			
Total	\$ 12,225,850			

All Neighborhood Parks Impact Mitigation funds for the projects identified above, including the entire unexpended fee, have been deposited in the Neighborhood Parks Mitigation Fund, which is the appropriate fund for these projects.

City of Vallejo
AB 1600 Fee Report
Fiscal Year Ended June 30, 2020
Fund 203

Transportation Impact Mitigation Fee

The purpose of this fee is to fund the modification or improvement to existing transportation facilities and to fund construction of new transportation facilities in the form of new streets, bridges, signals and other improvements to maintain existing levels of service required to mitigate the impact of new residential, commercial and industrial development.

Single Family (per unit)	Multi-Family (per unit)	Motels/Hotels (per unit)	Commercial (per square foot)	Industrial (per square foot)
\$6,820	\$3,835	\$3,835	\$3.28	\$1.67

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Beginning Fund Balance	\$ 2,577,145	\$ 3,083,078	\$ 3,377,321	\$ 3,533,903	\$ 4,078,028
Revenue					
Developer Fees	\$ 467,711	\$ 291,761	\$ 141,900	\$ 503,471	\$ 26,564
Interest Income	\$ 42,722	\$ 6,982	\$ 19,182	\$ 127,645	\$ 157,131
Total Revenue	\$ 510,433	\$ 298,743	\$ 161,082	\$ 631,116	\$ 183,695
Expenditures	\$ 4,500	\$ 4,500	\$ 4,500	\$ 86,991	\$ 716,769
Total Available	\$ 3,083,078	\$ 3,377,321	\$ 3,533,903	\$ 4,078,028	\$ 3,544,953

Five-Year Revenue Test Using First In First Out Method

Revenue Collected FY 2015-16	\$ 510,433
Revenue Collected FY 2016-17	\$ 298,743
Revenue Collected FY 2017-18	\$ 161,082
Revenue Collected FY 2018-19	\$ 631,116
Revenue Collected FY 2019-20	\$ 183,695

Total Revenue for Last Five Years \$ 1,785,069 **Unexpended Fee (Five Year Test): \$ 1,759,884**

Unexpended funds will fund the Budgeted Projects identified below.

TRANSPORTATION IMPACT MITIGATION FEE PROJECTS

COMPLETED PROJECTS	Total Project Cost	Total Funded with Fee	% Complete	% Funded with Fee
PW9411 - In-N-Out Traffic Signal	\$ 280,243.00	\$ 280,243.00	100%	100%
PW9792 - HES Signal @ Alameda and Georgia	\$ 192,044	\$ 39,044	100%	20%
PW9797 - Traffic Signal at Tennessee and Broadway	\$ 307,583	\$ 132,583	100%	43%
PW9841-Turner Parkway Overcrossing	\$ 19,027	\$ 19,027	100%	100%
PW9876 - I80 Eastbound Offramp at Redwood Street	\$ 517,486	\$ 517,486	100%	100%
PW9878 - Traffic Signal - Highway 29/Maritime Academy Drive	\$ 125,883	\$ 40,883	100%	32%
PW9882 - Admiral Callaghan Lane	\$ 1,063,477	\$ 1,063,477	100%	100%

City of Vallejo
AB 1600 Fee Report
Fiscal Year Ended June 30, 2020
Fund 203

PW9896 - Update Transportation Impact	\$	33,945	\$	33,945	100%	100%
PW9936 - Wilson Avenue Phase II	\$	16,570,777	\$	9,454,595	100%	57%
PW9991 - MI Way/Wilson Avenue	\$	165,008	\$	57,608	100%	35%
PW9995 - Left Turn - Georgia Street/Highway I80	\$	47,000	\$	18,000	100%	38%
Total		\$	19,322,473	\$	11,656,891	

BUDGETED PROJECTS	Total Project Budget	Total Funded with Fee	Total Project % Complete	% Funded with Fee
PW9422 - Turner Parkway Improvements	\$ 200,000.00	\$ 200,000.00	0%	100%
PW9421 - Frontage Lane Traffic Signals	\$ 200,000.00	\$ 200,000.00	0%	100%
PW9420 - Erosion Control	\$ 200,000.00	\$ 200,000.00	0%	100%
PW9416 - Vision Zero Plan and Corridor Study	\$ 150,000.00	\$ 150,000.00	2%	100%
PW9417 - Traffic Calming Toolbox	\$ 100,000.00	\$ 100,000.00	2%	100%
PW9701-Admiral Callaghan Lane Widening	\$ 400,000.00	\$ 400,000.00	0%	100%
PW9730 - Citywide Road Diet Study	\$ 100,000.00	\$ 100,000.00	7%	100%
PW9735 - HSIP 5 Intersections Improvements	\$ 296,000.00	\$ 50,000.00	7%	17%
PW9736 - HSIP 6 Pedestrian Crossing Improvements	\$ 1,505,800.00	\$ 200,000.00	6%	13%
PW9763 - HSIP Sonoma Blvd Road Diet	\$ 1,116,204.00	\$ 550,647.00	95%	60%
PW9766 - HSIP Sereno Drive Pavement Rehabilitation	\$ 564,737.00	\$ 175,000.00	95%	26%
Total Budgeted Funds	\$ 4,832,741.00	\$ 2,325,647.00		

All Transportation Impact Mitigation Fee funds for the projects identified above, including the entire unexpended fee, have been deposited in the Transportation Impact Mitigation Fund, which is the appropriate fund for these projects.

City of Vallejo
AB 1600 Fee Report
Fiscal Year Ended June 30, 2020
Fund 211

Hiddenbrooke Overpass Mitigation Fee

The purpose of this fee is to fund improvements to the existing Hiddenbrooke overpass required to mitigate the impact of new residential development within the Hiddenbrooke development area.

**Hiddenbrooke
Overpass
Mitigation Fee
(per unit)**

\$6,000

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Beginning Fund Balance	\$ 7,820,511	\$ 7,895,372	\$ 7,845,669	\$ 7,835,194	\$ 8,064,313
Revenue					
Developer Fees	-	-	\$ 340	-	-
Interest Income	\$ 120,283	\$ 16,732	\$ 42,585	\$ 256,229	\$ 312,846
Other Revenue	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenue	\$ 120,283	\$ 16,732	\$ 42,925	\$ 256,229	\$ 312,846
Expenditures	\$ 46,190	\$ 66,435	\$ 47,599	\$ 19,633	\$ 82,626
Transfers In/(Out)	\$ 768	\$ -	\$ (5,801)	\$ (7,477)	\$ 14,034
Total Available	\$ 7,895,372	\$ 7,845,669	\$ 7,835,194	\$ 8,064,313	\$ 8,280,499

Five-Year Revenue Test Using First In First Out Method

Revenue Collected FY 2015-16	\$ 120,283
Revenue Collected FY 2016-17	\$ 16,732
Revenue Collected FY 2017-18	\$ 42,925
Revenue Collected FY 2018-19	\$ 256,229
Revenue Collected FY 2019-20	\$ 312,846

Total Revenue for Last Five Years \$ 749,015

Unexpended Fee (Five Year Test): \$ 7,531,484

Unexpended funds will fund the Budgeted Projects identified below

HIDDENBROOKE OVERPASS MITIGATION FEE

PROJECTS	Project to Date Funding	% Complete	% Funded with Fee
PW9967 - Hiddenbrooke Overpass Improvement	\$ 976,000	43%	100%
Total		\$ 976,000	

Design work for the Hiddenbrooke Overpass Project started in Fiscal Year 2019-20. Project construction (estimated cost \$8 million) is projected to begin in Fiscal Year 2022-23.

All Hiddenbrooke Overpass Mitigation Fee funds for the project identified above, including the entire unexpended fee, have been deposited in the Hiddenbrooke Overpass Mitigation Fund, which is the appropriate fund for this project.



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Terrance Davis, Public Works Director
SUBJECT: **AMENDMENT TO DESIGN PROFESSIONAL SERVICES AGREEMENT WITH WSP USA, INC.**

RECOMMENDATION

Authorize the City Manager to execute the Second Amendment to the Design Professional Services Agreement with WSP, USA, Inc., of Sacramento, California, for Mare Island Causeway Bridge Preventative Maintenance Project design services to increase the contract amount from \$394,235 to \$961,866.

REASONS FOR RECOMMENDATION

Approving this second amendment to the agreement, will cover the final design of the project and will bring the project design to 100% completion. The Mare Island Causeway Bridge has been identified by Caltrans Division of Structure Maintenance & Investigations for painting, concrete repairs and other works as part of a long-awaited maintenance project. This project is part of the City's effort to maintain its infrastructure.

BACKGROUND AND DISCUSSION

The City of Vallejo submitted an application in July 2015 for Mare Island Causeway repairs based on Caltrans inspection reports from 2010 through 2014. Caltrans District 4 programmed funds after consulting with Caltrans Division of Maintenance & Investigations for concrete repairs, painting of lifting span and other repairs.

Additional Caltrans inspections reports were done in 2015 and 2018 after the Napa earthquake. This project was included in the Bridge Preventive Maintenance Project (BPMP) for federal funding which covers up to 88.53 percent in funding. The remaining portion will be the required local match.

Through the BPMP program, City Council approved the design professional services agreement in the amount of \$394,235 on December 20, 2016 for environmental approval and preliminary design for the project. Staff executed the First Amendment to the Agreement in September 2020 to extend the term of the agreement.

Federal (Caltrans) approved funding for the environmental and preliminary design for the project in 2016. The Plans, Specification and Estimate (PSE) phase approval was provided in September 2020. The PSE phase includes public outreach and the 100% design to advertise the project for construction. This action is intended to award the PSE phase of the design professional agreement to bring the design to 100%.

The PSE Phase is expected to be complete by May 2021. Construction is scheduled September 2021.

FISCAL IMPACT

There will be no impact to the General Fund with the approval of this item. The appropriated PW9762: MI Causeway Bridge Preventative Maintenance Project budget and estimated project expenditures are as follows:

Source	Budget	Expenditures
Fund 221: Federal BPMP Grant	\$ 437,586	
Fund 112: Mare Island CFD Funds	\$2,099,073	
Preliminary Engineering		\$ 150,973
Design Preliminary Environmental Design		
PHASE 1: Design		\$ 394,235
PHASE 1: Admin (staff time)		\$ 99,765
Design Final Design 100%		
PHASE 2: Design		\$ 567,631
PHASE 2 Admin (staff time)		\$ 134,369
TOTALS	\$2,536,659	\$1,346,973

All remaining funds will be used for the construction portion of the project.

ENVIRONMENTAL REVIEW

The City of Vallejo, as lead agency, performed California Environmental Quality Act (CEQA) and determined that the project will not have a significant effect on the environment. A Mitigated Negative Declaration was prepared and approved by staff on September 15, 2020, pursuant to the provisions of CEQA. A Notice of Determination was filed at the County on September 30, 2020. Caltrans determined the project to be categorically excluded under the National Environmental Policy Act (NEPA) on September 18, 2020, pursuant to 23 CFR Sec. 771.117(d).

ATTACHMENTS

1.	Vicinity Map
2.	Location Map
3.	2nd Amendment to Agreement CAO approved

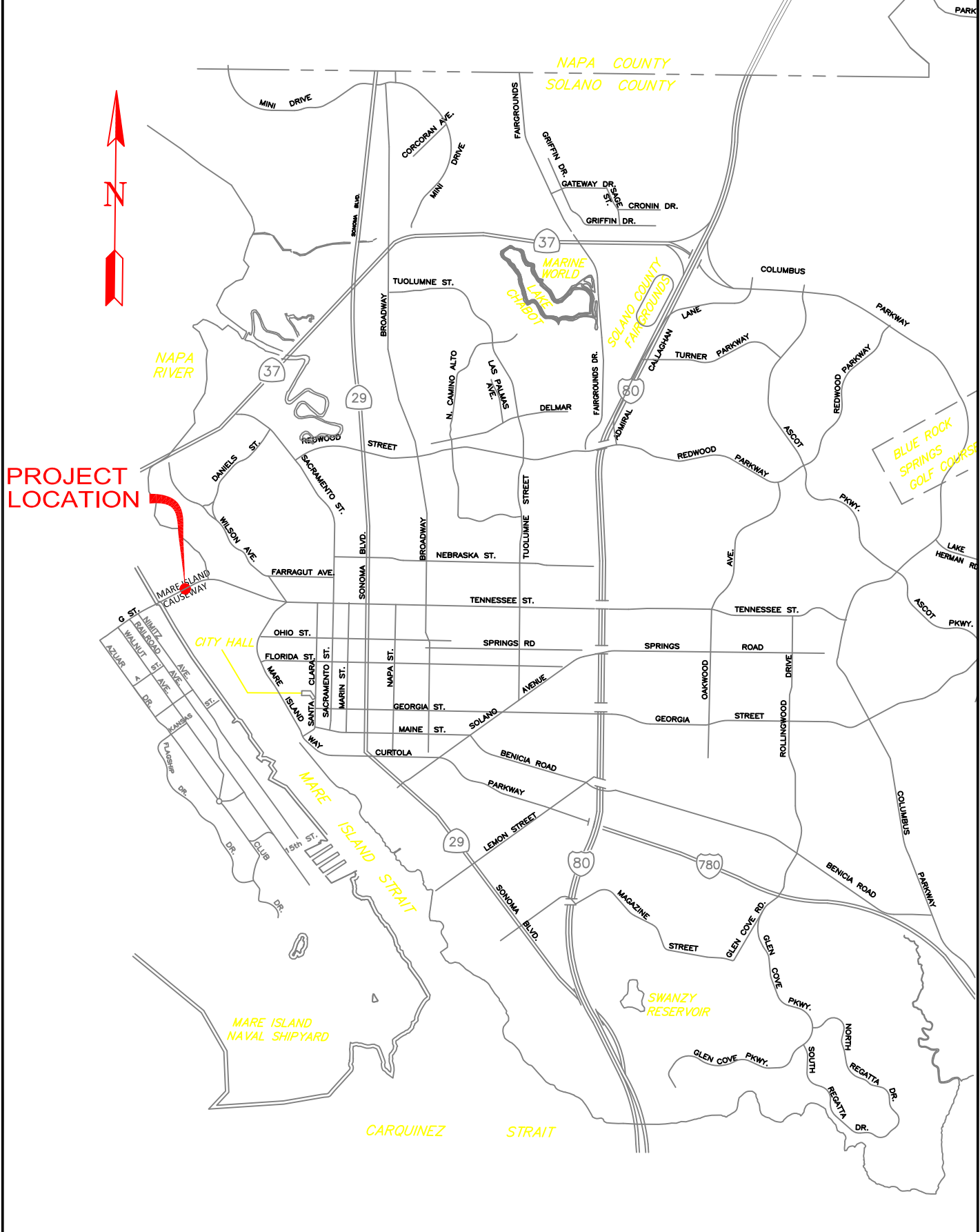
CONTACT

Terrance Davis, Public Works Director (707) 648-4301

Terrance.Davis@cityofvallejo.net

Melissa L. Tigbao, Assistant Public Works Director/City Engineer

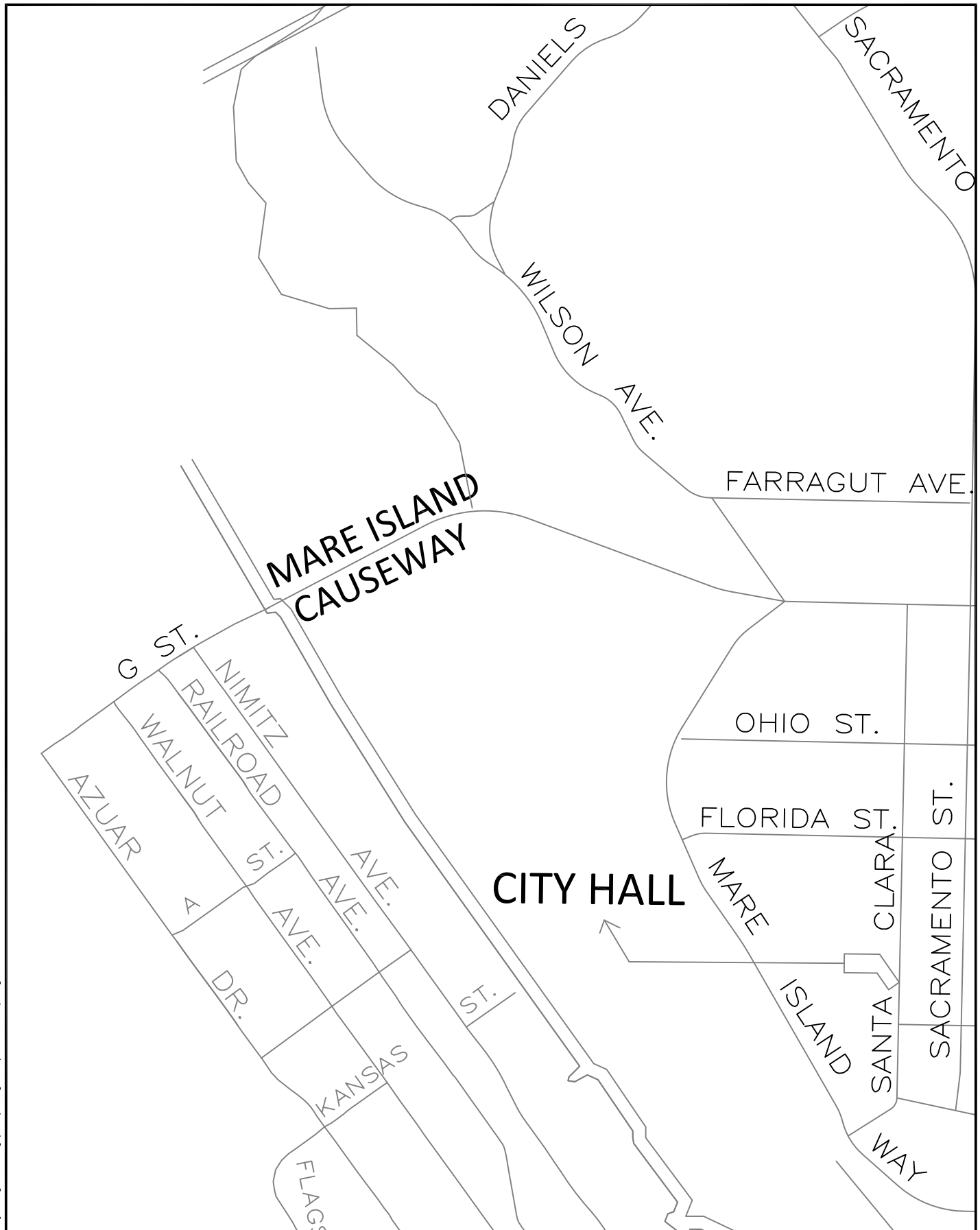
Melissa.Tigbao@cityofvallejo.net



DWG. NO. --	SHEET 1 OF 1		PUBLIC WORKS DEPARTMENT ENGINEERING DIVISION
DRAWN BY SM	FILE NO. -		MARE ISLAND CAUSEWAY BRIDGE PREVENTIVE MAINTENANCE PROJECT
DATE 11/08/16	REF. -		VICINITY MAP
CHECKED	SCALE 1" = 4000'		154 of 563

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DWG. NO. --	SHEET 1 OF 1		PUBLIC WORKS DEPARTMENT ENGINEERING DIVISION
DRAWN BY SM	FILE NO. -		MARE ISLAND CAUSEWAY BRIDGE PREVENTIVE MAINTENANCE PROJECT
DATE 11/08/16	REF. -		LOCATION MAP
CHECKED	SCALE 1" = 4000'		

**SECOND AMENDMENT TO
AGREEMENT BETWEEN
CITY OF VALLEJO
AND
WSP USA INC.**

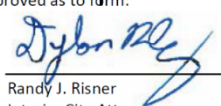
This Second Amendment to the Principal Agreement made and entered into on December 20, 2016, hereafter referred to as Agreement, between the WSP USA Inc., a New York Corporation, herein referred to as Consultant, and the City of Vallejo, a municipal corporation, therein referred to as City, is made and entered into on this October 14, 2020.

Consultant and City do mutually agree as follows:

- 1. New Exhibit.** A new Exhibit A, entitled, "Scope of Services for Final Design" is hereby added to the Agreement to read as shown in Exhibit A of this Second Amendment.
- 2. Final Design Services.** The scopes of services to be provided as specified in Exhibit A of the Agreement is amended to include the services described in Exhibit A of this Second Amendment ("Scope of Services for Final Design").
- 3. Payment for Final Design Services.** In consideration of Consultant providing the Final Design Services, Consultant shall be paid an amount not to exceed five hundred sixty-seven thousand six hundred thirty-one dollars and no/100 cents (\$567,631.00). The maximum not to exceed amount specified in Exhibit B of the Agreement is increased by said amount and the new not to exceed amount is nine hundred sixty-one thousand eight hundred sixty-six dollars and no/100 (\$961,866.00).

Consultant agrees that the amount of increase in the not to exceed amount specified above shall constitute full compensation for the Final Design Services, and shall fully compensate Consultant for any and all direct and indirect costs that may be incurred by Consultant in connection with the Final Design Services, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by Consultant

- 4. Integration.** This Second Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Second Amendment. This Second Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement, and all prior amendments, if any, shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

Approved as to form:
By:  for
Randy J. Risner
Interim City Attorney

5. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the Agreement, and any prior amendment, if any, the provisions of this Second Amendment shall control in all respects.

6. Ambiguities. The parties have each carefully reviewed this Second Amendment and have agreed to each term of this Second Amendment. No ambiguity shall be presumed to be construed against either party.

7. Counterparts. This Second Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

8. Facsimile Signatures. This Second Amendment 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 at the addresses noted below:

City: Sam Kumar
Public Works Department, 4th Floor
555 Santa Clara Street,
Vallejo, CA 94590

Consultant: Ali Seyedmadani

9. Authority. The person signing this Fifth Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Fifth Amendment on behalf of Consultant

(SIGNATURES ARE ON THE FOLLOWING PAGE)

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

WSP USA Inc.
a New York Corporation

CITY OF VALLEJO,
a municipal corporation

By: _____
John M. Fisher
Vice President, District Manager,
Northern California

By: _____
Greg Nyhoff
City Manager

DATE: _____

DATE: _____

ATTEST:

By: _____
Dawn Abrahamson
City Clerk

APPROVED AS TO CONTENT:

(City Seal)

Terrance Davis
Public Works Director

APPROVED AS TO FORM:

Randy J. Risner
Interim City Attorney

APPROVED AS TO INSURANCE:

Heather Ruiz
Interim Risk Manager



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Terrance Davis, Public Works Director
SUBJECT: **SECOND AMENDMENT TO CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT FOR AKIN GUMP STRAUS HAUER & FELD**

RECOMMENDATION

Authorize the City Manager to execute a Second Amendment to the Consultant and Professional Services Agreement with Akin Gump for legislative affairs services, increasing the contract from \$90,000 to a new not to exceed amount of \$210,000 and extending the term to December 31, 2021.

REASONS FOR RECOMMENDATION

Approval of the Second Amendment provides continuity for the professional services support of the City's legislative and grant funding priorities. This includes the services necessary for the completion of the City's FY 20-21 platform and continued advocacy with newly elected Federal and State officials.

BACKGROUND AND DISCUSSION

Akin Gump has been contracted to provide legislative support to the Solano Transportation Authority (STA) since 2007. As a member of the JPA, the City of Vallejo is a party to the professional services agreement with Akin Gump and utilizes the firm's services via the cooperative STA agreement to establish and advocate for legislative priorities for the City of Vallejo related to transportation and transit infrastructure.

To expand legislative support to include the City's economic development, water, housing, and public safety legislative priorities, in April 2020, the City Manager entered into a separate Consultant and Professional Agreement with Akin Gump. The original contract was for a 6-month term, with two, one-year options to extend, and an original not to exceed amount of \$60,000.

On October 1, 2020, the City issued the First Amendment to the contract, extending the term three months, and increasing the not to exceed amount from \$60,000 to \$90,000. The first amendment was an extension of time only, and did not modify the original scope for legislative support. To provide continuity for the City's legislative and grant funding priorities, the Second Amendment ensures the completion of the City's FY 20-21 platform and continued advocacy with new Federal and State elected officials.

FISCAL IMPACT

The requested additional consulting work is \$120,000, split between \$60,000 in General Fund and \$60,000 in Water Fund expenditures. There would be no additional impact on the General Fund if this action is approved. There are sufficient appropriations in the FY 2020-21 General and Water Fund budgets to fund the agreement including the requested amendment.

**Subject: SECOND AMENDMENT TO CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT
FOR AKIN GUMP STRAUS HAUER & FELD**

Page 2

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.	Akin Gump - Second Amendment to Master Agreement CAO
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CONTACT

Terrance Davis, Public Works Director, 707-648-4301

Terrance.Davis@cityofvallejo.net

Approved as to form:

**SECOND AMENDMENT TO
AGREEMENT BETWEEN
CITY OF VALLEJO
AND**

By:


Veronica A.F. Nebb
City Attorney

for

AKIN GUMP STRAUS HAUER & FELD, LLP

This Second Amendment to the Master Agreement made and entered into on April 1, 2020, hereafter referred to as Agreement, between Akin Gump Straus Hauer & Feld, a Limited Liability Partnership, therein referred to as Consultant, and the City of Vallejo, a municipal corporation, therein referred to as City, is made and entered into on this 16th day of December 2020.

Consultant and City do mutually agree as follows:

1. Revised Term of the Agreement. The Agreement term is currently scheduled to expire on December 31, 2020. As of the date of this Second Amendment, the term of the Agreement is extended to and shall expire on December 31, 2021.

2. Payment for Services. In consideration of Consultant continuing to provide Services, Consultant shall be paid an additional amount not to exceed one hundred twenty thousand dollars and no/100 cents (\$120,000.00). The maximum not to exceed amount specified in Exhibit B of the Agreement is increased by said amount and the new not to exceed amount is two hundred ten thousand dollars and no/100 cents (\$210,000.00).

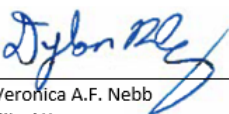
Consultant agrees that the amount of increase in the not to exceed amount specified above shall constitute full compensation for Services, and shall fully compensate Consultant for any and all direct and indirect costs that may be incurred by Consultant in connection with the provided Services, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by Consultant.

3. Integration. This Second Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Second Amendment. This Second Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

4. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the Agreement, the provisions of this Second Amendment shall control in all respects.

5. Ambiguities. The parties have each carefully reviewed this Second Amendment and have agreed to each term of this Second Amendment. No ambiguity shall be presumed to be construed against either party.

Approved as to form:


By: Veronica A.F. Nebb
City Attorney

6. Counterparts. This Second Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

7. Facsimile Signatures. This Second Amendment 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 at the addresses noted below:

City: Terrance Davis, Public Works Director
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

Consultant: Susan Lent, Partner
Akin Gump Straus Hauer & Feld, LLP
2001 K Street NW
Washington, DC 20006

8. Authority. The person signing this Second Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Second Amendment on behalf of Consultant.

(SIGNATURES ARE ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have entered into this Second Amendment on the day and year first hereinabove appearing.

AKIN GUMP STRAUS HAUER & FELD,
a Limited Liability Partnership

CITY OF VALLEJO,
a municipal corporation

BY: _____
SUSAN LENT
Partner

BY: _____
GREG NYHOFF
City Manager

DATE: _____

DATE: _____

(City Seal)

ATTEST: _____
DAWN ABRAHAMSON
City Clerk

APPROVED AS TO CONTENT:

TERRANCE DAVIS
Public Works Director

APPROVED AS TO FORM:

VERONICA NEBB
City Attorney

APPROVED AS TO INSURANCE:

ARMOND SARKIS
Risk Manager



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Terrance Davis, Public Works Director
SUBJECT: **AWARD CONSTRUCTION CONTRACT FOR CAPITOL STAIRS MOSAIC PROJECT**

RECOMMENDATION

Adopt a Resolution approving the project plans and specifications for the Capitol Street Stairs Project and authorizing the City Manager to execute a construction contract in the amount of \$187,220 with HM Construction, Inc., of Hercules, California, in accordance with the approved plans and specifications.

REASONS FOR RECOMMENDATION

It is necessary to award this construction contract in order to rebuild the Capitol Street Stairs so that the stairs are safe, stable, and ready for the next phase of the project. The next phase of the project is where the volunteers and community members will work in partnership with the Vallejo Community Artists Foundation doing the tile mosaic.

BACKGROUND AND DISCUSSION

The Capitol Street Stairs are located on City property on Capitol Street and Sonoma Boulevard in the City's Heritage District. The stairs are quite old and in need of some repairs and cosmetic upgrades.

On June 13, 2017 Council adopted Resolution No. 17-073 N.C., approving the preliminary design plans for the Capitol Street Stairs Mosaic Project, authorizing the City Manager to waive 50% of the permit fee costs up to \$25,000. Council also allocated \$100,000 from the Fiscal Year 2018-19 budget in order to match funding, donations, and in-kind contributions to the project raised by community advocates for the project.

On October 9, 2018, Council adopted Resolution No. 18-090 N.C., authorizing the City Manager to waive all remaining permit fee costs which totaled to \$38,522, to implement the project.

On February 11, 2020, Council adopted Resolution No. 20-011 N.C., transferring \$200,000 of General Fund to Fund 201: Capital Outlay funding to the PWAR01: Capitol Stairs Mosaic Project for the construction costs to demo and re-construct the stairs so that the community could start the mosaic tile work.

The Plans were prepared and completed by Roberto Cortez PE, and A.C.K. Engineering and Surveying, dated 7/03/2019. Specifications were prepared under the direction of the City Engineer. The City advertised the project on September 10, 2020 on the City's website and the City's web hosting plan room, PlanetBids. At the same time, a notice to Contractors was issued to various plan rooms in California.

On October 8, 2020, three (3) sealed bids were opened and publicly read by the City Engineer. The lowest apparent responsive and responsible bidder is HM Construction Inc. of Hercules, California with a total bid

price of \$187,220. The following bids were received:

Bid Order	Contractor	Total Base Bid Amount
1.	HM Construction Inc.	\$187,220.00
2.	Burch Construction	\$297,500.00
3.	Valentine Corporation	\$343,369.00

The lowest apparent responsive and responsible bidder is HM Constructions Inc., of Hercules California, in the amount of \$187,220.00. All submitted bid documents appear to be complete and in order.

Staff recommends adopting the Resolution and authorizing the City Manager to execute and Agreement with HM Construction in the amount of \$187,220.00 for the Capitol Stairs Mosaic Project (PWAR01).

FISCAL IMPACT

There is no impact on the General Fund with the approval of this item, as it is being funded through capital program funds. The project budget and estimated project expenditures for PWAR01: Capitol Stairs Mosaic Project are as follows:

Source	Budget	Expenditures
Fund 201 Capital Outlay	\$300,000	
Construction		(\$187,220.00)
TOTAL	\$300,000	(\$187,220.00)

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.	Reso PWAR01 CAO Approved
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2.	HM Construction Contract for Capitol Stairs Project REV CAO Approved
3.	Location Map PWAR01
4.	Vicinity Map PWAR01

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

RESOLUTION NO. 20-_____ N.C.

**AWARD CONTRACT TO HM CONSTRUCTION INC., FOR
THE CAPITOL STREET MOSAIC PROJECT IN THE CITY OF VALLEJO, IN THE
AMOUNT OF \$187,220.00.**

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

WHEREAS, the original design plans for the Capitol Street Stairs Mosaic Project were presented to the City Council on June 13, 2017; and

WHEREAS, on June 13, 2017, the Vallejo City Council adopted Resolution No. 17-073 N.C., approving the Capitol Street Stairs Community-Build Public Art Project, which authorized the City Manager to waive 50% of permit fee costs up to \$25,000 to implement the project; and

WHEREAS, the Vallejo City Council allocated \$100,000 from the General Fund Fiscal Year 2018-19 Budget in order to match funding, donations, and in-kind contributions to the project raised by community advocates for the project; and

WHEREAS, on October 9, 2018, the Vallejo City Council adopted Resolution No. 18-090 N.C., which authorized the City Manager to waive all remaining permit fee costs which totaled \$38,522, to implement the project; and

WHEREAS, on February 11, 2020, the Vallejo City Council adopted Resolution No. 20-011 N.C., which transferred in \$200,000 of Fund 201 Capital Outlay funding to the PWAR01: Capital Stairs Mosaic Project for the construction costs to demo and re-construct the stairs so that the community could start the mosaic tile work; and

WHEREAS, the City Council has appropriated a current total budget for PWAR01: Capitol Stairs Mosaic Project in an amount of \$300,000.00; and

WHEREAS, those certain plans for the Capitol Street Stairs Mosaic Project, were prepared by Roberto Cortez, PE and A.C.K. Engineering and Surveying, California. Specifications were prepared under the direction of the City Engineer, located in the City of Vallejo, County of Solano, California; and

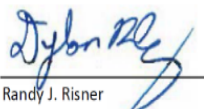
WHEREAS, those certain plans for the Capitol Street Stairs Mosaic Project, prepared by Roberto Cortez, PE and A.C.K. Engineering and Surveying, California. Specifications under the direction of the City Engineer, located in the City of Vallejo, County of Solano, California have been presented to the City Council on June 13, 2017; and

WHEREAS the City complied with Vallejo Municipal chapter 3.20, by advertising the Project and publicly opened the bids on October 8, 2020; and received three (3) bids.

NOW THEREFORE BE IT RESOLVED that the Council of the City of Vallejo hereby approves and adopts the Drawings; and

BE IT FURTHER RESOLVED that the City complied with chapter 3.20 of the Vallejo Municipal Code and an invitation for bids was duly advertised; and

Approved as to form:

By:  for
Randy J. Risner
Interim City Attorney

BE IT FURTHER RESOLVED by the Council of the City of Vallejo that, HM Construction Inc., of Hercules, CA who is the lowest bidder determined to be the lowest responsive and responsible bidder in the amount of \$ 187,220.00, and the bid is hereby accepted and a contract is awarded to said low bidder at the prices bid; and

BE IT FURTHER RESOLVED that all other bids to-wit:

Burch Construction,	\$ 297,500.00
Valentine Corporation	\$ 343,369.00

are hereby deemed rejected, upon the full execution of the contract documents by the successful bidder, with notice of rejection to be given thereupon by the City Clerk; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to sign an Agreement between the City of Vallejo and HM Constructions Inc., of Hercules CA, with any modifications recommended by City Attorney, and the City Clerk to attest the signing of that Agreement; and

BE IT FURTHER RESOLVED that the City Manager, or his designee is hereby authorized to execute future Contract Change Orders not to exceed the appropriated project budget.

CITY OF VALLEJO
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

CONTRACT

FOR

Capitol Stairs Mosaic Project (PWAR01)

This CONTRACT ("Contract") made and concluded in duplicate this _____ day of _____, 20____, at Vallejo, California, by and between **City of Vallejo**, a municipal corporation and charter city, hereinafter called "City," and **HM Construction, Inc.**, a California corporation with the principal address 2129 Drake Lane, Hercules, CA 94547, hereinafter called "Contractor".

WITNESSETH:

WHEREAS, City seeks to repair and/or replace the roofs and gutters of the five locations specified in Exhibit A, and Contractor, an approved U.S. Communities national cooperative purchasing program vendor, submitted proposals to replace the roofs and gutters of the identified City buildings.

NOW, THEREFORE, in consideration of the above, it is mutually agreed between the parties hereto as follows, to wit:

1. Scope of Work. Subject to the terms and conditions set forth in this Contract, Contractor shall provide the City services as specified in Exhibit A, entitled "Scope of Work."

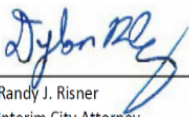
2. Contract Documents. This Contract consists of the Contract Documents identified as such, all of which are incorporated herein by reference as though set forth in full, and all of which are part of this Contract, and Contractor and City agree to comply with and fulfill all obligations, promises, covenants and conditions imposed upon each of them in the Contract Documents. All of said work done under this Contract shall be performed to the satisfaction of the City Council, or its representative, who shall have the right to reject any and all drawings, materials and supplies furnished by Contractor which do not strictly comply with said plans and specifications, together with the right to require Contractor to replace any and all drawings and work furnished by Contractor which shall not either in detail, workmanship, or material be in strict accordance with said plans and specifications.

Contractor shall furnish and deliver to City the number of complete printed sets of working drawings as required throughout the project. Before proceeding with construction, Contractor shall obtain City's written authorization to proceed using the Contractor provided and City approved drawings.

The following documents shall constitute the Contract Documents:

- (a) Designation of Subcontractors
- (b) Non-Collusion Affidavit For Contractor Or Subcontractor
- (c) Nondiscrimination Clause

Approved as to form:

By:  for
Randy J. Risner
Interim City Attorney

- (d) Faithful Performance Bond
- (e) Payment (Labor And Materials) Bond
- (f) Exhibit A – Scope of Work
- (g) Exhibit A, Attachment 1 – Garland/DBS, Inc. Proposals
- (h) Exhibit B – Compensation
- (i) Exhibit B, Attachment 1 - Change Order
- (j) Section B - General Provisions
- (i) Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation, 2018 edition, Sections 10 through 95, all as modified herein
- (i) City of Vallejo Regulations and Standard Specifications for Public Improvements, December 2011 edition
- (k) Any other documents identified as such in the Contract Documents.

3. Payment. City shall pay Contractor for services rendered pursuant to this Contract at the times and in the manner set forth in Exhibit B, entitled “Compensation.” The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Contract.

4. Facilities and Equipment. Contractor shall, at its sole cost and expense, provide all labor, tools, and materials for a complete and working project in conformance with specifications as provided and set forth herein, and made a part of this Contract.

5. Indemnification. Contractor shall indemnify, defend and hold harmless City against all claims in the manner set forth in Section B – General Provisions, Section 7: Legal Relations and Responsibility, 7-1.12A – Indemnification.

6. Accident Reports. Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the City Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Contract. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses, and telephone numbers of any known witnesses, (c) the date, time, and description of the accident or other occurrence.

7. Independent Contractor. Contractor is an independent contractor. Neither Contractor nor any of Contractor’s officers, employees, agents, or subcontractors, if any, is an employee of City by virtue of this Contract or performance of any services pursuant to this Contract. City shall have the right to control Contractor only insofar as the results of Contractor’s services rendered pursuant to this Contract; however, City shall not have the right to control the means by which Contractor accomplishes services pursuant to this Contract.

8. Licences, Permits, Etc. Contractor represents and warrants to City that all Contractor services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Contract and that Contractor has all the permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Contract any licenses, permits, and approvals which are legally required for Contractor to practice its profession.

9. Business License. Contractor, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Contract to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Contract. The failure to obtain such license shall be a material breach of this Contract and grounds for termination by City. No payments shall be made to Contractor until such business license(s) has been obtained.

10. Standard of Performance. Contractor shall provide products and perform all services required pursuant to this Contract in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Contractor's profession currently practicing in California.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Contractor's responsibilities under this section shall not be delegated. Contractor shall be responsible to City for acts, errors, or omissions of Contractor's subcontractors.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Contract and determining whether the Contractor is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor.

11. Force Majeure. Neither party shall be considered in default of this Contract to the extent performances are prevented or delayed by causes or circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Contractor is unable to meet the completion date or schedule of services, Contractor shall immediately inform the City Representative of this in writing. If additional time is required to perform the work, the City Representative may adjust the schedule.

12. Time is of the Essence. Time is of the essence in this Contract. Any reference to days means calendar days, unless otherwise specifically stated.

13. Personnel. Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Contract. Failure to assign such competent personnel shall constitute grounds for termination of this Contract.

The payment made to Contractor pursuant to this Contract shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Contract. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

14. Term. The term of this Contract shall commence on _____, 202_ and shall continue in full force and effect until _____, 2021. Pending favorable weather conditions, Contractor shall begin work within 10 calendar days after the first working day stated on the Notice to Proceed, and shall diligently prosecute the same to completion within 90 days of the first working day stated on the Notice to Proceed.

If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the City Council of the City of Vallejo. If funds to effect such continued payment are not appropriated, Contractor agrees to terminate any services supplied to City of Vallejo under this Contract, and relieve City of any further obligation therefore.

15. Products of Construction Services. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Contractor resulting from services rendered pursuant to this Contract, shall become the property of City. Contractor agrees that all copyrights which arise from creation of the work under this Contract shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City as appropriate for the particular work product or, if directed by the City Representative, in PDF format.

16. Cooperation by City. City shall, to the extent reasonable and practicable, assist and cooperate with Contractor in the performance of Contractor's services hereunder.

17. Notices. All notices or instruments required to be given or delivered by law or this Contract 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:

Terrance Davis, Public Works Director
Public Works Department
555 Santa Clara Street
Vallejo, CA 94590

If to Contractor:

Hocine Merzouk
Owner and President
HM Construction
2129 Drake Lane
Hercules, CA 94547

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.

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

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

20. Law Governing. This Contract shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Contract shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern District of California, Sacramento, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

21. 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.

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

23. Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

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

25. Compliance with Laws. Contractor will comply with all statutes, regulations and ordinances in the performance of all services under this Contract.

26. City Representative. The City Representative specified in Exhibit A, or the representative's designee, shall administer this Contract for the City.

27. Counterparts. The parties may execute this Contract in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

28. Facsimile Signature; Electronic Signature. This Contract 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 Contract. The failure to send an original shall not affect the binding nature of this Contract.

29. Authority. The person signing this Contract for Contractor hereby represents and warrants that he/she is fully authorized to sign this Contract on behalf of Contractor.

30. 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

[SIGNATURES ON FOLLOWING PAGE]

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

HM CONSTRUCTION, INC.,
a California corporation

CITY OF VALLEJO,
a municipal corporation

By: _____
HOCINE MERZOUK
Owner and President

By: _____
GREG NYHOFF
City Manager

DATE: _____

DATE: _____

Vallejo Business License No.

(City Seal)

ATTEST:

By: _____
DAWN ABRAHAMSON
City Clerk

APPROVED AS TO CONTENT:

TERRANCE DAVIS
Public Works Director

APPROVED AS TO FORM:

VERONICA NEBB
City Attorney

APPROVED AS TO INSURANCE:

HEATHER RUIZ
Interim Risk Manager

**CITY OF VALLEJO
DEPARTMENT OF PUBLIC WORKS
DESIGNATION OF SUBCONTRACTORS**

In compliance with the provisions of Section 4100 through 4114, inclusive, of the Public Contract Code, and any amendments thereto, each Bidder shall set forth in his or her bid, the name, California Contractors' State License Board contractor's license number, California DIR registration number and location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent (0.5%) of the prime contractor's total bid, or ten thousand (\$10,000) whichever is greater, and the dollar amount of the work which will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

Prime Contractor Self Perform requirement is **50%** (exclusive of specialty items). The Engineer may use the Designation of Subcontractors form to determine the percentage of Contract work amount performed by the Contractor.

SUBCONTRACTOR NAME	LICENSE NUMBER	DIR REGISTRATION NUMBER	LOCATION OF BUSINESS	DESCRIPTION OF SUBCONTRACTED WORK

NOTICE TO BIDDERS: Listing of subcontractors is mandatory under Sections 4100-4113 of the California Public Contract Code. If this form is incomplete or inaccurate, your bid may be rejected.

CAPITOL STREET STAIRS MOSAIC PROJECT (PW19-0436)

**CITY OF VALLEJO
DEPARTMENT OF PUBLIC WORKS
DESIGNATION OF SUBCONTRACTORS**

SUBCONTRACTOR NAME	LICENSE NUMBER	DIR REGISTRATION NUMBER	LOCATION OF BUSINESS	DESCRIPTION OF SUBCONTRACTED WORK

NOTICE TO BIDDERS: Listing of subcontractors is mandatory under Sections 4100 4113 of the California Public Contract Code. If this form is incomplete or inaccurate, your bid may be rejected.

CAPITOL STREET STAIRS MOSAIC PROJECT (PW19-0436)

NONCOLLUSION AFFIDAVIT

(TO BE SIGNED BY BIDDER AND SUBMITTED WITH BID)

Pursuant to section 7106 of the Public Contract Code, the undersigned declares:

I am the President of HM Construction, Inc, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder. All statements contained in the bid are true. The Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 10/08, 2020 at Vallejo, California.

(Signature)

CAPITOL STREET STAIRS MOSAIC PROJECT

CITY OF VALLEJO
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

NONDISCRIMINATION CLAUSE

Contractor shall refrain from discriminatory employment practices on the basis of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation of any employee of, or applicant for employment with, Contractor.

Contractor further agrees as follows:

- (a) That the Contractor shall not because of the race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation of any person, refuse to hire or employ any person, or to bar or discharge any person from employment, or to discriminate against any person in compensation, or in the terms, conditions, or privileges of employment, and every employee shall receive equal opportunity for employment and shall be granted equal treatment with respect to compensation, terms, conditions, or other privileges of employment without regard to his race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation.
- (b) That the Contractor shall post in conspicuous places where they may be seen by every employee or applicant for employment notices, in such form as shall be prescribed by the City Manager, the provisions set forth above.
- (c) That the Contractor shall in all solicitations or advertisements for employment applications include in such solicitation or advertisement language which will reasonably convey notice that every qualified applicant will receive consideration for employment without regard to his race religious creed, color, sex, national origin, or ancestry, disability, medical condition, age, marital status or sexual orientation.
- (d) That the Contractor shall give written notice, in such form as shall be prescribed by the City Manager, of the Contractor's commitments under this contract to any labor union or employee association with which the Contractor has a collective bargaining contract, or other employer - employee labor agreement or understanding."

Contractor shall include the provisions of this Nondiscrimination Clause in every subcontract, including subcontracts for the provision of materials or equipment.

By submitting a bid, the Contractor agrees to comply with all the non-discrimination provisions contained in the Vallejo Municipal Code.



Bidder's Signature

10/08/2020.

Date

CAPITOL STAIRS MOSAIC PROJECT

CAPITOL STREET STAIRS MOSAIC PROJECT

CITY OF VALLEJO
PUBLIC WORKS DEPARTMENT
MAINTENANCE DIVISION

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN/WOMEN BY THESE PRESENTS, that we, _____

_____, as Principal, and

_____, as Surety, are held and firmly bound unto the City of Vallejo, a municipal corporation of the State of California, hereinafter called the City, in the penal sum of _____ DOLLARS (\$ _____), and no more, for the work described below, for the payments of which sum in lawful money of the United States of America well and truly to be made to the City of Vallejo, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents as herein above provided.

THAT WHEREAS, the Principal has entered into a contract with said City for the construction of:

Capitol Stairs Mosaic Project (PWAR01)

NOW, THEREFORE, the condition of this obligation is such that if the above bounded Principal shall in all things stand to abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract agreed on his/her or their part to be kept and performed at the time and in the manner herein specified, and shall indemnify and save harmless the City of Vallejo, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue to guarantee Contractor's faithful performance of its obligations in the Contract Documents, and Principal and Surety, in the event suit is brought on this bond, will pay to the Obligee such reasonable attorneys' fees as may be fixed by the Court.

The Surety herein, for value received, hereby stipulates and agrees that no change, extension of time, alteration, addition or modification to the terms and conditions of said contract, or the specifications accompanying the same shall in any manner affect its obligations on this bond, and said Surety does hereby waive notice of any such change, extension, alteration or addition. Said Surety hereby waives the provisions of Section 2819 and 2845 of the Civil Code of the State of California.

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

PRINCIPAL

SURETY

SURETY INFORMATION:

Contact Person: _____

Name of Company: _____

Address: _____

Telephone: (_____) _____ Fax no. : (_____) _____

- NOTE: (1) Signatures of those executing for the Surety must be properly acknowledged.
- (2) This Bond must be in an amount equal to 100% of the amount bid.

APPROVED AS TO FORM:

Veronica Nebb
City Attorney

CITY OF VALLEJO
PUBLIC WORKS DEPARTMENT
MAINTENANCE DIVISION

PAYMENT (LABOR AND MATERIALS) BOND

KNOW ALL MEN/WOMEN BY THESE PRESENTS, that whereas, the City of Vallejo, a municipal corporation of the State of California, acting through its City Council, has awarded: hereinafter designated as the Principal, a contract for:

Capitol Stairs Mosaic Project (PWAR01)

AND WHEREAS, said Principal is required to furnish a bond in connection with said contract, provided that if said Contractor, or any of his/her or its subcontractors, shall fail to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such labor, the Surety of this bond will pay the same.

NOW, THEREFORE, we, _____

as Principal and _____,

as Surety, are held firmly bound unto the City of Vallejo, a municipal corporation, hereinafter called City, in the penal sum of _____

_____ DOLLARS (\$ _____), and no more, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents, as herein provided.

The condition of this obligation is such that, if said Principal, or his/her or its Subcontractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, as required by the provisions of California Civil Code, commencing with Section 9550, and providing that the persons, companies or corporations so furnishing said materials, provisions, or other supplies, appliances or power used in, for or about the performance of the work contracted to be executed or performed, or any person, company, or corporation, renting, or hiring implements, or machinery, or power, for, or contributing to said work to be done, or any person who performs work or labor upon the same, or any person who supplies both work and materials therefor, shall have complied with the provisions of said Title 15, the Surety, or Sureties, hereon will pay the same in an amount not exceeding the sum specified in his/her or its bond, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the Court, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 9100 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

The Surety herein, for value received, hereby stipulates and agrees that no change, extension of time, alteration, addition or modification to the terms and conditions of said contract, or the specifications accompanying the same, shall in any manner affect its obligation on this bond, and said Surety does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, the above bounden parties have executed this Instrument under several seals this _____ day of _____, 20_____. The name and Corporate Seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

PRINCIPAL:

SURETY:

SURETY INFORMATION:

Contact Person: _____

Name of Company: _____

Address: _____

Telephone: (_____) _____ Fax no.: (_____) _____

NOTE: (1) Signatures of those executing for the Surety must be properly acknowledged.

(2) This Bond must be in an amount equal to 100% of the amount bid.

APPROVED AS TO FORM:

Veronica Nebb
City Attorney

EXHIBIT A

SCOPE OF WORK

1. Representatives. The City Representative for this Contract is:

Melissa L. Tigbao
Assistant Public Works Director / City Engineer
Public Works Department, Engineering Division
555 Santa Clara Street
Vallejo, CA 94590
(707) 648-4085
Melissa.Tigbao@cityofvallejo.net

The Contractor's Representative for this Contract is:

Hocine Merzouk
Owner and President
HM Construction
2129 Drake Lane
Hercules, CA 94547
(510) 495-7020
HMer123@gmail.com

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission, or electronic mail as agreed between the Contractor Representative and City's Representative.

2. Services to be Provided. The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference.

3. Time for Performance. Contractor will perform the services according to the schedule below. If the schedule calls for the services to be performed in phases or discrete increments, Contractor shall not proceed from one phase or increment to the next without written authorization from the City's Representative. Notwithstanding City's right to extend the term of this Contract through. Contractor will complete all services by 50th working day of starting project.

Location	Estimated Completion Date

4. Key Personnel. All of the individuals identified below are necessary for the successful prosecution of the services due to their unique expertise and depth and breadth of experience. There shall be no change in the personnel listed below, without written approval of the City Representative. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

Key personnel are as follows:

CITY OF VALLEJO
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

PROPOSAL FORM

FOR THE

CAPITOL STAIRS MOSAIC PROJECT

TO: The Honorable Mayor and City Council
City of Vallejo
Vallejo, California 94590

Name of Bidder: HM CONSTRUCTION, INC

Business Address: 2129 Drake Ln, Hercules CA 94547

Place of Residence: HERCULES, CALIFORNIA

Any person or entity submitting a bid on this project to engage in the business or act in the capacity of a contractor shall be licensed as a contractor in accordance with the provisions of Division 3, Chapter 9 of the California Business and Professions Code.

Contractor's License No.: 754777 Expiration Date: 06/30/2022

Contractor's Classification A/B

Name of Contractor's License: HM CONSTRUCTION, INC

DIR Registration No.: 1000023737 Expiration Date: 06/30/2021

City of Vallejo Business License No.: _____

Business Address: 2129 DRAKE LN, Hercules CA 94547

Phone: 510-495-7020 Fax: _____

E-mail: HMer123@gmail.com

Place of Residence: Hercules, CALIFORNIA

Telephone No. 510-495-7020

The work to be done consists of:

Demo of bottom wall, demo landing, repair demoed landing and damage retaining walls and balusters, rebuild sidewalk, resurface walls with Eif's stucco, sand blasting, installation of two (2) inlet drainage, installation of 4 inch and 6inch drainage, non-skid tread tiles w/bull nose edging, fill top soil and four (4) benches. The work shall include all labor, tools and materials for a complete and working project in conformance with the intent shown on the drawings and specified herein.

The undersigned, as Bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he/she has carefully examined the location of the proposed work, the annexed proposed form of Contract, and the drawings therein referred to, and all of the Contract Documents; and he/she proposes and agrees if this proposal is accepted, that he/she will contract with the City of Vallejo, in the form of the copy of the contract annexed hereto, to provide all necessary labor, materials, machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the Contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he/she will take in full payment therefore the following item prices, to wit:

NOTE: The quantities following are approximate only and will be used as a basis for the comparison of bids.

An (s) listed after a Bid Sheet Description of Item, if any, indicates items that are considered "Specialty Items" as defined in Section 8-1.01 of the General Provisions.

EXHIBIT A, ATTACHMENT 1

CITY OF VALLEJO
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

BID SHEET

FOR THE

CAPITOL STAIRS MOSAIC PROJECT

<u>Item No.</u>	<u>Description of Item</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Amount</u>
1	Mobilization	1	LS	\$ 24,420	\$ 24,420
2	Traffic Control	1	LS	\$ 2,000	\$ 2,000
3	Demo Landing	1	LS	\$ 5,400	\$ 5,400
4	Demo bottom Wall & Concrete Repair	1	LS	\$ 28,000	\$ 28,000
5	Repair Demoed Landing & Rebuild Damage Ret Wall & Balusters	1	LS	\$ 25,000	\$ 25,000
6	Drainage 6"	1	LS	\$ 3,500	\$ 3,500
7	Drainage 4"	1	LS	\$ 2,500	\$ 2,500
8	Inlets Drainage	1	LS	\$ 1,000	\$ 1,000
9	Sidewalk	1	LS	\$ 17,000	\$ 17,000
10	Sand Blasting	1	LS	\$ 21,000	\$ 21,000
11	Non-skid Tread Tiles w/bull nose edging	1	LS	\$ 27,900	\$ 27,900
12	Resurface Walls with EIF's Stucco	1	LS	\$ 19,000	\$ 19,000

CAPITOL STREET STAIRS MOSAIC PROJECT (PW19-0436)

11

EXHIBIT A, ATTACHMENT 1

<u>Item No.</u>	<u>Description of Item</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Amount</u>
13	4 Concrete Benches	4	EA	\$ 2,000	\$ 8,000
14	Fill Top Soil	1	LS	\$ 2,500	\$ 2,500

TOTAL BID SUMMARY

Total Bid: \$ \$ 187,220
(IN FIGURES)

\$ one Hundred Eighty Seven Thousand
two Hundred (IN WORDS)
and Twenty & 10/100

BIDDER'S SIGNATURE: Yone Jack

EXHIBIT A, ATTACHMENT 1

The Contract, if it is awarded, shall be awarded to the Contractor submitting the lowest Total Bid that complies with these Contract Documents.

In case of discrepancy between the Unit Prices and the Total Amount for a bid item, the Unit Price shall prevail, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a Unit Price for a said item is not readable or otherwise not clear, or is omitted, or is the same amount as the entry in the Total Amount column, then the amount set forth in the Total Amount column for the line item shall prevail and shall be divided by the Estimated Quantity for said item and the price thus obtained shall be the Unit Price amount.
- (b) (Decimal Errors) If the total of the entered Unit Price multiplied by the given Estimated Quantity is **exactly** off by a decimal factor (i.e., ten, one hundred, etc. or, one-tenth, one-hundredth, etc.) from the entered Total Amount, the discrepancy will be resolved by using the entered Unit Price or entered Total Amount, whichever most closely approximates (by percentage) the Unit Price or Total Amount in the City -Engineer's Cost Estimate.
- (c) In order for a bid to be valid, all aspects of the Bid Sheet must be filled out completely. An incomplete Bid Sheet may be grounds for a bid to be rejected.

The Bidder agrees that if the Bidder is selected as the apparent lowest responsible Bidder, and the Bidder fails to sign the Contract and furnish the Performance Bond, the Payment Bond, certificates of insurance, and other required items within the time limit specified in the Contract Documents, the City of Vallejo may award the work to another Bidder or call for new bids. In such event, the Bidder shall be liable to the City for the difference between the amount of the disqualified bid and the larger amount for which the City procures the work plus all of the City's costs, damages, expenses and liabilities arising from Bidder's failure to sign the Contract and/or furnish the required documents.

Bidder declares that he/she/it has not accepted any bid from any subcontractor or vendor through any bid depository, the by-laws, rules or regulations of which prohibit or prevent the Bidder from considering any bid from any subcontractor which is not processed through said bid depository or which prevent any subcontractor or vendor from bidding to any contractor who does not use the facilities of or accept bids from or through such bid depository.

ACCOMPANYING THIS PROPOSAL is Bidder's Bond. 10%
(in an amount of ten percent (10%) of the total bid)

NOTICE: **CASH (\$** **), CASHIER'S CHECK, BIDDER'S BOND, or CERTIFIED CHECK, as the case may be.**

EXHIBIT A, ATTACHMENT 1

THE NAMES OF ALL PERSONS INTERESTED IN THE FOREGOING PROPOSAL AS PRINCIPALS ARE AS FOLLOWS:

IF THE BIDDER OR OTHER INTERESTED PERSON is a corporation, state legal name of corporation and state where incorporated, also names of the President, Secretary, Treasurer, and Manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing the firm; if Bidder or other interested person is an individual, state first and last names in full.

HM Construction, Inc

Hocine Merzouk, president.

BIDDER'S BID IS BASED ON and includes the following Addenda issued: (Bidder must list all addenda issued by City, below, or Bidder's bid may be rejected by the City as non-responsive.

ADDENDUM NO 1 10/05/2020.

LICENSED IN ACCORDANCE WITH THE CONTRACTORS' LICENSE LAW OF THE STATE OF CALIFORNIA (BUSINESS AND PROFESSIONS CODE) SECTION 7000 et seq. PROVIDING FOR THE REGISTRATION OF CONTRACTORS,

License No.: 754777

Sign Here: 

Hocine Merzouk
(Printed or typed name of Bidder)

Dated: 10/08/2020

NOTE: If the Bidder is a corporation or a co-partnership, the legal name of the firm shall be set forth above, together with the signature of the officer or partner authorized to sign contracts for the firm.

CITY OF VALLEJO
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
BIDDER'S BOND

KNOW ALL MEN/WOMEN BY THESE PRESENTS, THAT WE, HM Construction, INC, as Principal, and United States Fire Insurance Company, as Surety, are held and firmly bound unto the City of Vallejo, hereinafter called CITY, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said Principal to the City of Vallejo, for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, administrators, and executors and successors, jointly and severally, firmly by these presents; in the sum of:

\$ Ten Percent Of Total Amount Bid (10% of Total amount bid)

THE CONDITION OF THIS OBLIGATION IS SUCH THAT,

WHEREAS, the Principal has submitted the above-mentioned bid to the City of Vallejo, for certain construction specifically described as follows, for which bids are to be opened at Vallejo, California, on October 8, 2020, for the:

Demo of bottom wall, demo landing, repair demoed landing and damage retaining walls and balusters, rebuild sidewalk, resurface walls with Eif's stucco, sand blasting, installation of two (2) inlet drainage, installation of 4 inch and 6inch drainage, non-skid tread tiles w/bull nose edging, fill top soil and four (4) benches. The work shall include all labor, tools and materials for a complete and working project in conformance with the intent shown on the drawings and specified herein.

NOW, THEREFORE, if the aforesaid Principal is awarded the contract and within the time and manner required under the Specifications, after the prescribed forms are presented to him/her for signature, enters into a written contract, in the prescribed form, in accordance with the bid, and files the two bonds with the City of Vallejo, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force and virtue.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit including a reasonable attorney's fee to be fixed by the court.

[Signatures on following page]

EXHIBIT A, ATTACHMENT 1

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this 6th day of Oct., 2020.

HM Construction, Inc.

Hocine Marzouk, Hocine Marzouk
President.
Principal

United States Fire Insurance Company

John Page, Attorney-in-Fact

Surety

Address: 305 Madison Avenue, Morristown, NJ 07962

NOTES:

1. Signature of those executing for the Surety must be properly acknowledged.

ACKNOWLEDGMENT

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

State of California
County of Sacramento)

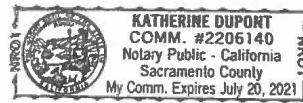
On 10/6/20 before me, Katherine DuPont, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

03694429820

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Ryan Tash, John Page, Susan Fournier

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Seven Million, Five Hundred Thousand Dollars (\$7,500,000)**.

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2021.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 22nd day of August 2019.

UNITED STATES FIRE INSURANCE COMPANY



Anthony R. Slimowicz

Anthony R. Slimowicz, Executive Vice President

State of Pennsylvania }
County of Philadelphia }

On this 22nd day of August 2019, before me, a Notary public of the State of Pennsylvania, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

Commonwealth of Pennsylvania – Notary Seal
Tamara Watkins, Notary Public
Philadelphia County
My commission expires August 22, 2023
Commission number 1348843

Tamara Watkins

Tamara Watkins

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 6th day of October 20 20

UNITED STATES FIRE INSURANCE COMPANY



Al Wright

Al Wright, Senior Vice President

CITY OF VALLEJO
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

CONTRACTOR QUALIFICATIONS

This form must be completed, signed by Bidder, and submitted to City of Vallejo with Bidder's bid. Failure to complete, sign and submit with Bidder's bid may result in Bidder's bid being rejected as not responsive.

City has determined that Bidders must meet the following minimum qualifications to bid the work of improvement contemplated herein:

1. Have possessed a valid, active and in good standing, State of California Department of Consumer Affairs, Contractor's License Board Classification **A**, for a minimum of five (5) continuous years prior to the date of bid opening.
2. Not have any pending disciplinary proceedings or investigations by the Contractors State License Board.
3. Have completed to the public owner's satisfaction, no less than two (2) public works projects in the State of California, each with an original contract price of no less than **\$250,000** within the past five years prior to the date of bid opening.
4. Currently (as of the date of bid opening) or within the past five years, not have any suspensions, disbarments, or similar proceedings (including stipulated agreements), restricting, limiting or prohibiting Bidder from bidding or performing other public works for any other public agency.

I, being the **HM Construction, Inc** of Bidder herein, declare that Bidder meets all of the minimum criteria set forth above, and furthermore certify that at the time this bid is submitted, the Bidder is not identified on a list created pursuant to subdivision (b) of California Public Contract Code section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of section 2202.5, or as a person described in subdivision (b) of section 2202.5, as applicable.

Hane
(Signature)

Hocine Marzouk
(Print Name)

10/08/2020
(Date)

EXHIBIT B COMPENSATION

1. Contractor's Compensation.

A. Services: City agrees to pay Contractor a total of One Hundred Eighty-Seven Thousand Two Hundred Twenty Dollars (\$187,220) for the services set forth in Exhibit A of this Contract.

City agrees to pay Contractor within reasonable time of receipt of an approved certificate for payment, properly executed by the Contractor, subject to all of the terms and conditions of these Contract Documents, an amount equal to ninety five percent (95%) of the sum of those services set forth in Exhibit A of this Contract upon satisfactory completion of the services as work at each individual site is completed. The retained amounts for all projects will be paid upon official acceptance of completed jobs.

B. Additional Services:

1. Additional Services are those services related to the Scope of Work of Contractor as set forth in Exhibit A but not anticipated at the time of execution of this Contract. Additional Services shall be provided only when a Supplemental Contract or Change Order (see Exhibit B, pages 3-4) authorizing such Additional Services is approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Contractors to perform said Additional Services.

2. Contractor's Reimbursable Expenses. Reimbursable Expenses shall be limited to actual reasonable expenditures of Contractor for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

3. Payments to Contractor.

A. Payments to Contractor shall be made within a reasonable time after receipt of Contractor's invoice, said payments to be made in proportion to services performed. Contractor may request payment on a monthly basis. Contractor shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Contractor shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number

4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses")
7. Total Billed to Date

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

D. Request for payment shall be sent to:

Melissa L. Tigbao
Assistant Public Works Director / City Engineer
City of Vallejo Public Works Engineering Division
555 Santa Clara Street
Vallejo, CA 94590

4. Accounting Records of Contractor. Contractor shall maintain for three (3) years after completion of all services hereunder, all records under this Contract, including, but not limited to, records of Contractor's direct salary costs for all Services and Additional Services performed under this Contract and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices. Contractor shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours' notice.

The obligations of Contractor under this section shall survive this Contract.

5. Taxes. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6. Taxpayer Identification Number. Contractor shall provide City with Contractor'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.

**CITY OF VALLEJO
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

CONTRACT CHANGE ORDER NO.: _____ **DATE:** _____

TO: _____

PROJECT: **Capitol Stairs Mosaic Project (PWAR01)**

FROM: CITY OF VALLEJO

This change order modifies and amends the provisions of that certain Contract dated _____ by and between the City and _____ ("Contractor").

REFERENCE: Contract Plans, Sheet No. _____
or other Plans attached

Contractor is hereby directed to make the following changes to the Work:

By signing this Change Order, Contractor understands and agrees that it is accepting the specified sums and adjustment of contract time of completion (if any) set forth herein as full, final and complete satisfaction of any and all claims by Contractor for all costs and expenses of Contractor and anyone for whom Contractor may be responsible for the work referred to herein, including but not limited to costs or expenses of the Contractor or any of its subcontractors, materials suppliers, vendors or anyone else for whom Contractor is responsible, for labor, materials, services or equipment, no matter how characterized, whether known or unknown to Contractor, including but not limited to, all field and home office overhead, delay costs/claims, acceleration costs/claims, unabsorbed or under-absorbed home office overhead, extended field costs, general conditions, claim preparation costs, inefficiencies, or the like, no matter how characterized. Contractor further understands and agrees by signing this Change Order that any attempt by Contractor to purportedly reserve rights to claim additional time or compensation for the work referred to herein, is void.

ADJUSTMENT OF CONTRACT TIME OF COMPLETION: _____

AGREED PRICE: _____

FORCE ACCOUNT

BASE CONTRACT PRICE: _____

PREVIOUS CONTRACT CHANGE ORDER: _____

NEW ADJUSTED CONTRACT PRICE: _____

EXCEPT AS SET FORTH ABOVE, ALL TERMS AND PROVISIONS OF THE CONTRACT AND ALL PRIOR CHANGE ORDERS REMAIN IN FULL FORCE AND EFFECT.

RECOMMENDED: _____
NAME TITLE

Execution of this Change Order by both parties constitutes a binding agreement. This document constitutes the entire agreement between the parties. The person signing this Change Order for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor.

ACCEPTED AND AGREED

Contractor: _____ DATE _____
[Type in name and title]

City: _____ DATE _____
CITY REPRESENTATIVE

SECTION B - GENERAL PROVISIONS

SECTION 1: DEFINITIONS AND TERMS

1-1.01 GENERAL

Unless the context otherwise requires, wherever in the Specifications and other Contract Documents the following abbreviations and terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as provided in this Section One. Working titles having a masculine gender, such as "workman" and "journeyman" and the pronoun "he," are utilized in the Specifications for the sake of brevity, and are intended to refer to persons of either gender.

1-1.02 ABBREVIATIONS

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APHA	American Public Health Association
API	American Petroleum Institute
AREA	American Railway Engineering Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
EIA	Electronic Industries Association
IEEE	Institute of Electrical and Electronics Engineers
NEMA	National Electrical Manufacturers Association
UL	Underwriters' Laboratories Inc.

1-1.02A UNITS OF MEASUREMENT

These General Provisions contain units in two systems of measurement: units shown in the International System of Units (SI or "metric") and units in the United States Standard Measures are shown in braces "{}". The Department does not warrant the accuracy of the units shown in United States Standard Measures, and any use of United States Standard Measures is at the sole risk of those agencies and others that specify United States Standard Measures units in their contracts. The measurements expressed in the two systems are not necessarily equal, and items constructed or fabricated in one system are not necessarily interchangeable with items constructed or fabricated in the other system. The project Special Provisions designate the system of units that will apply to contracts referencing these Standard Specifications.

Some of the symbols for metric units of measurement used in the Specifications and in the Engineer's Estimate are defined as follows. The symbols for other units of measurement used in the Specifications are as defined in ASTM Designation: E-380, or in the various Specifications and test referenced in the Specifications.

Symbols as used in the Specifications	Symbols as used in the Engineer's Estimate	Definitions
A	—	amperes
—	EA	each
g	G	gram
kg	KG	kilogram
ha	HA	hectare (10 000 m ²)
h	H	hour
J	—	joule
—	LNKM	lane kilometer
L	L	liter
—	LS	lump sum
m	M	meter
km	KM	kilometer
mm	MM	millimeter
µm	—	micrometer
nm	—	nanometer
m ²	M ²	square meter
m ³	M ³	cubic meter
N	—	newton
N·m	—	newton meter
Ω	—	ohm
Pa	—	pascal
kPa	—	kilopascal
MPa	—	megapascal
s	—	second
—	STA	station (100 m)
—	TAB	tablet
tonne	TONN	metric ton (1000 kg)
W	—	watt
V	—	volt

Some of the symbols for United States Standard Measures units of measurement used in the Specifications and in the Engineer's Estimate are defined as follows.

Symbol Used	Definitions
A	amperes
EA	each
LB	pound
ACRE	acre
h	hour
LNMI	lane mile
GAL	gallon
LS	lump sum
LF	linear foot
MI	mile
MSYD	thousand station yard
SF	square foot
CF	cubic foot
SY	square yard
CY	cubic yard
Ω	ohm
s	second
STA	100 feet
TAB	tablet
TON	2,000 pounds
W	watt
V	volt
MFBM	thousand foot board measure

1-1.03 ACCEPTANCE

The formal written acceptance by the Vallejo City Council of an entire contract which has been completed in all respects in accordance with the plans and Specifications and any modifications thereof previously authorized in writing.

1-1.04 (BLANK)

1-1.05 BASE

A layer of specified material of planned thickness placed immediately below the pavement or surfacing.

1-1.06 BASEMENT MATERIAL

The material in excavation or embankments underlying the lowest layer of subbase, base, pavement, surfacing or other specified layer which is to be placed.

1-1.07 BIDDER

Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

1-1.08 BRIDGE

Any structure, with a bridge number, which carries a utility facility, or railroad, highway, pedestrian or other traffic, over a water course or over or under or around any obstruction.

1-1.085 CONDUIT

A pipe or tube in which smaller pipes, tubes or electrical conductors are inserted or are to be inserted.

1-1.09 CONTRACT

The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the work. The Contract shall include:

- (a) Notice to Contractors,
- (b) Instructions to Bidders,
- (c) Proposal Form,
- (d) Plans, Specifications, special provisions;
- (e) Addenda and Change Orders thereto;
- (f) Standard Specifications, State of California, Business, Transportation and Housing Agency, Department of Transportation, 2010 edition, Sections 10 through 95, all as modified herein;
- (g) City of Vallejo Standard Specifications and Standard Drawings , December 2011 edition;
- (h) Vallejo Sanitation & Flood Control District Master Bid Document, dated March 2007.

All documents comprising the Contract may also be referred to as the "Contract Documents."

1-1.10 CONTRACTOR

The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who have entered into a Contract with the City of Vallejo, as party or parties of the second part or their legal representatives.

1-1.11 CULVERT

Any structure, other than a bridge, which provides an opening under a roadway for drainage or other purposes.

1-1.12 DAYS

Unless otherwise designated, days as used in the Contract will be understood to mean calendar days.

1-1.13 DEPARTMENT

The City of Vallejo Department of Public Works.

1-1.14 DETOUR

A temporary route for traffic around a closed portion of a road.

1-1.15 DIRECTOR

The City of Vallejo Department of Public Works Director, or his/her authorized representative.

1-1.16 DIVIDED HIGHWAY

A highway with separated traveled ways for traffic, generally in opposite directions.

1-1.17 (BLANK)

1-1.18 ENGINEER

The City of Vallejo, Department of Public Works, Project Engineer, acting either directly or through properly authorized agents, the agents acting within the scope of the particular duties delegated to them.

1-1.19 ENGINEER'S ESTIMATE

The list of estimated quantities of work to be performed as contained in the "Proposal Form."

1-1.20 FEDERAL AGENCIES

Whenever, in the Specifications, reference is made to any Federal agency or officer, the reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction and authority of the agency or officer mentioned.

1-1.21 FIXED COSTS

Any necessary labor, material and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

1-1.22 FRONTAGE ROAD

A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

1-1.23 GRADING PLANE

The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing or other specified layer is placed.

1-1.24 HIGHWAY

The whole right of way or area which is reserved for and secured for use in constructing the roadway and its appurtenances.

1-1.25 LABORATORY

Any testing laboratory identified as such by City of Vallejo.

1-1.255 LEGAL HOLIDAYS

Those days designated as City observed holidays specifically:

a) New Year's Day, b) Martin Luther King, Jr. Day, c) President's Day, d) Memorial Day, e) Independence Day, f) Labor Day, g) Columbus Day, h) Veterans' Day, i) Thanksgiving Day, j) Day after Thanksgiving, k) Christmas Day

1-1.26 LIQUIDATED DAMAGES

The amount prescribed in the Contract Documents, to be paid to the City of Vallejo or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the Contract Documents.

1-1.265 MUTCD OR CAMUTCD

The State of California, Department of Transportation publication entitled "California Manual on Uniform Traffic Control Devices."

1-1.27 MEDIAN

That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.

1-1.275 OFFICE OF STRUCTURE DESIGN

The State of California Office of Structure Design of the Department of Transportation. When the Specifications require working drawings to be submitted to the State Office of Structure Design, the drawings shall be submitted to: Office of Structure Design, Documents Unit, Mail Station 9, 1801 30th Street, Sacramento, CA 95816, Telephone (916) 227-8252.

1-1.28 PAVEMENT

The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

1-1.29 PLANS

The official project plans and Standard Plans, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be performed. These documents are to be considered as a part of the plans. In the above definition, the following terms are defined as follows:

- Project Plans

The project plans are specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same may apply.

- Standard Plans

The Standard Plans issued by the State of California, Business, Transportation and Housing Agency, Department of Transportation.

1-1.30 PROCESSING

Any operation or operations of whatever nature and extent required to produce a specified material.

1-1.31 PROPOSAL

The offer of the Bidder for the work when made out and submitted on the prescribed proposal form, properly signed and guaranteed.

1-1.32 PROPOSAL FORM

The approved form upon which the City of Vallejo requires formal bids be prepared and submitted for the work.

1-1.33 PROPOSAL GUARANTY

The cash, cashier's check, certified check or bidder's bond accompanying the proposal submitted by the bidder, as a guaranty that the bidder will enter into a contract with the City of Vallejo for the performance of the work if the Contract is awarded to the bidder.

1-1.34 ROADBED

The roadbed is that area between the intersection of the upper surface of the roadway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of subbase, base, surfacing or pavement is placed. Where the medians are so wide as to include areas of undisturbed land, a divided highway is considered as including 2 separate roadbeds.

1-1.35 ROADWAY

That portion of the highway included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.

1-1.36 SHOULDERS

The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

1-1.37 SPECIAL PROVISIONS

The special provisions are specific clauses setting forth conditions or requirements peculiar to the work and supplementary to these Specifications.

1-1.38 SPECIFICATIONS

The directions, provisions and requirements contained in the General Provisions, Wage and Equipment Rate, and/or Technical Specifications section as supplemented by the Standard Specifications, City of Vallejo Standard Specifications and Standard Drawings. Whenever the term "these Specifications" or "these Standard Specifications" is used in this Contract, it means the provisions set forth in this Contract. "Specifications" or "Standard Specifications" also means the State of California, Department of Transportation, Standard Specifications, 2010 edition, Sections 10 through 95 only.

1-1.39 STATE

The State of California.

1-1.40 (BLANK)

1-1.41 SUBBASE

A layer of specified material of planned thickness between a base and the basement material.

1-1.42 SUBGRADE

That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.

1-1.43 SUBSTRUCTURE

All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wingwalls of bridges shall be considered as parts of the substructure.

1-1.44 SUPERSTRUCTURE

All that part of the bridge except the bridge substructure.

1-1.45 SURFACING

The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.

1-1.46 TRAFFIC LANE

That portion of a traveled way for the movement of a single line of vehicles.

1-1.47 TRAVELED WAY

That portion of the roadway for the movement of vehicles, exclusive of shoulders.

1-1.48 WORK

All the work specified, indicated, shown, contemplated or inferable from the Contract Documents to construct the improvement, including all alterations, amendments or extensions thereto made by

Contract change order.

SECTION 2: PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 (Not used)

2-1.02 (Not used)

2-1.03 (Not used)

2-1.04 (Not used)

2-1.05 (Not used)

2-1.054 (BLANK)

2-1.056 (Blank)

2-1.06 (Blank)

2-1.07 (Not used)

2-1.08 (Not used)

2-1.09 (Not used)

2-1.095 (Not used)

2-1.10 (Not used)

2-1.105 (Blank)

2-1.108 (BLANK)

2-1.11 (Blank)

2-1.12 (Blank)

SECTION 3: AWARD AND EXECUTION OF CONTRACT

3-1.01 (Not used)

3-1.02 BONDS

Within ten (10) days of Contractor's receipt of Contract from City of Vallejo, the Contractor shall furnish corporate surety bonds to the benefit of the City of Vallejo, issued by a surety company acceptable to the City of Vallejo and authorized and admitted to do business in the State of California, as follows:

- A. Faithful Performance Bond -- In a sum not less than one hundred percent (100%) of the total contract price as set forth in the Contract to guarantee the Contractor's faithful performance of all covenants and stipulations of the Contract. The bond shall contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.
- B. Payment (Labor and Materials) Bond -- In a sum not less than one hundred percent (100%) of the total contract price as set forth in the Contract to guarantee the payment of wage, and bills contracted for materials, supplies, or equipment used in the performance of the Contract. The bond shall be in accordance with the provisions of Sections 3225, 3226, and 3247 to 3252, inclusive, of the Civil Code of the State of California, and Section 13020 of the Unemployment Insurance Code of the State of California. Said bond shall also contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

Faithful Performance Bond and Payment Bond shall be on the forms provided by City of Vallejo.

The surety companies shall familiarize themselves with all provisions and conditions of the Contract. It is understood and agreed that the surety or sureties waive the right of special notification of any modifications or alterations, omissions or reductions, extra or additional work, extensions of time, or any other act or acts by the City of Vallejo or its authorized agents under the terms of the Contract; and failure to so notify the surety companies of such changes shall in no way relieve the surety or sureties of their obligations under this Contract. The surety expressly waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

3-1.03 EXECUTION OF CONTRACT

The Contract shall be signed by Contractor and returned, together with the Contract bonds, within 10 days after the contractor has received the Contract for execution.

3-1.04 (Not used)

3-1.05 (Not used)

SECTION 4: SCOPE OF WORK

4-1.01 INTENT OF PLANS AND SPECIFICATIONS

All work and materials shall be in full accordance with the latest adopted standards and regulations of the State Fire Marshal; the California Building Code; Title 24 of the California Code of Regulations; the California Electrical Code; the California Plumbing Code; Americans with Disabilities Act; and all other applicable codes, laws, rules or regulations. Nothing in these Contract Documents is to be construed to permit work not conforming to these requirements. Contractor agrees that immediately upon signing of the Contract, Contractor will diligently review the Contract Documents and determine if any work described or inferred within the Contract Documents is not in conformance with these requirements. Should Contractor discover work within the Contract Documents not in conformance with these requirements, Contractor agrees to immediately notify Engineer in writing of said nonconformance, and to not proceed with nonconforming work. When the work detailed in the Contract Documents differs from governing codes, it is understood and agreed that the Contract sum is based upon the more costly or expensive standard.

Work performed under the Contract shall result in a complete operating system in satisfactory working condition with respect to the functional purposes of the installation, and no extra compensation will be allowed for anything omitted but fairly implied. The prices paid for the various items in the proposal shall include full compensation for furnishing all labor, materials, tools, equipment, overhead, profit, incidentals, and doing all work necessary to complete the finished product as provided in the Contract Documents. Where the plans or Specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. The Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Contract to the highest possible standard of workmanship.

Should it appear that the work to be done, or any of the matters relative thereto, are not sufficiently detailed or explained in the Contract Documents, or in the event of any doubt or question arising respecting the true meaning of the Contract Documents, the Contractor shall apply to the Engineer in writing for such further explanations as may be necessary, and the Engineer shall render his or her decisions thereon. The Contractor shall thoroughly review all Requests for Information (RFI's) submitted by subcontractors prior to submission to the Engineer to determine whether such RFI's is already answered in the Contract Documents. Contractor represents to City of Vallejo, that by submission of an RFI, Contractor has thoroughly reviewed the RFI and thoroughly reviewed the Contract Documents, and determined that the RFI is not answered or reasonably inferable in the Contract Documents, and that the RFI pertains to an unforeseen condition or circumstance that is not described in the Contract Documents, that there is a conflict or discrepancy in the Contract Documents, or there is an omission in the Contract Documents. In the event any RFI is answered or reasonably inferable from the Contract Documents, Contractor agrees to pay the City of Vallejo the reasonable cost, time and expenses associated with reviewing and responding to RFI's which are already answered or reasonably inferable from the Contract Documents. In the event of a disagreement over such compensation, the judgment of the Engineer shall be final.

4-1.02 FINAL CLEANING UP

Before final inspection of the work, the Contractor shall clean the project site, material sites and all ground occupied by the Contractor in connection with the work of all rubbish, excess materials, falsework, temporary structures and equipment. All parts of the work shall be left in a neat and presentable condition. Full compensation for final cleaning up will be considered as included in the prices paid for the various Contract items of work and no separate payment will be made therefore.

4 -1.03 CHANGES

The City reserves the right without changing the scope of work, to make such alterations deviations, additions to or deletions from the plans and Specifications, including but not limited to, the right to add or delete any portion of the work to be done with no additional compensation or change in lump sum or unit bid prices. The City also reserves the right without changing the scope of work, to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated. Such increases or decreases in quantities shall not be a basis for change in character of the work.

The City of Vallejo may request that Contractor provide City of Vallejo with estimated costs for proposed changes to the work. Contractor agrees to promptly provide City of Vallejo with detailed, itemized costs for proposed changes to the work and scheduling data demonstrating the impact, if any, of the proposed

changes to the work and the time for completion. Adjustments, if any, in the amount to be paid the Contractor by reason of any modifications of the work as set forth in a Contract change order, Construction Change Directive, or arising from claims shall be determined by one or more of the following methods as elected by the City of Vallejo:

- A. Lump Sum Price - By an acceptable lump sum price fixed in agreement between the City of Vallejo and the Contractor.
- B. Unit Prices - By unit prices fixed by agreement between the City of Vallejo and the Contractor.
- C. Force Account - By directing the Contractor to proceed with the work and to keep and present in such form as the City of Vallejo may direct, a correct account of the cost of the change, together with all vouchers therefor. The Contractor will be paid for labor, materials, equipment rental, etc. actually used on change order work performed under Force Account.

The amount of payment agreed upon or, in the absence of agreement, selected by the City of Vallejo shall be set forth in the change order or construction change directive.

Upon receipt of a Contract change order authorized by the Engineer, the Contractor shall proceed with the ordered work. If ordered in writing by the Engineer, the Contractor shall proceed with the work so ordered prior to actual receipt of an authorized Contract change order therefor. In those cases, the Engineer will, as soon as practicable, issue a Contract change order for the ordered work and the provisions in Section 4-1.03A, "Procedure and Protest," shall be fully applicable to the subsequently issued Contract change order.

When the compensation for an item of work is subject to adjustment under the provisions of this Section 4-1.03, the Contractor shall, upon request, furnish the Engineer with adequate detailed cost data for that item of work. If the Contractor requests an adjustment in compensation for an item of work, the cost data shall be submitted with the request.

4-1.03A PROCEDURE AND PROTEST

A Contract change order authorized by the Engineer may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in an authorized Contract change order not executed by the Contractor, the Contractor shall submit a written protest to the Engineer within 15 days after the receipt of the Contract change order. The protest shall state the points of disagreement, and the Contract specification references, quantities and costs involved. If a written protest is not submitted, payment will be made as set forth in the Contract change order, and Contractor agrees that payment shall constitute full compensation for all work included therein or required thereby. Unprotested Contract change orders will be considered as executed Contract change orders.

Where the protest concerning an authorized Contract change order relates to compensation, the compensation payable for all work specified or required by that Contract change order to which the protest relates will be determined as provided in Section 4-1.03D. The Contractor shall keep full and complete records of the cost of that work and shall permit the Engineer to have access thereto as may be necessary to assist in the determination of the compensation payable for that work.

Where the protest concerning an accepted Contract change order relates to the adjustment of Contract time for the completion of the work, the time to be allowed therefor will be determined as provided in Section 8-1.07, "Liquidated Damages."

Proposed Contract change orders may be presented to the Contractor for consideration prior to authorization by the Engineer. If the Contractor signifies acceptance of the terms and conditions of the proposed Contract change order by executing the document and if the Contract change order is accepted by the Engineer and issued to the Contractor, payment in accordance with the provisions as to compensation therein set forth shall constitute full compensation for all work included therein or required thereby. An accepted Contract change order shall supersede a proposed, but unaccepted, Contract change order covering the same work.

The Engineer may provide for an adjustment of compensation as to a Contract item of work included in a Contract change order determined as provided in Section 4-1.03D, if that item of work is eligible for an adjustment of compensation thereunder.

Change orders shall be in the form provided by City of Vallejo in the Contract Documents.

4-1.03B (Not used)

4-1.03C (Not used)

4-1.03D EXTRA WORK

New and unforeseen work will be classed as extra work when determined by the Engineer that the work is not covered by any of the various items for which there is a bid price or by combinations of those items. In the event portions of this work are determined by the Engineer to be covered by some of the various items for which there is a bid price or combinations of those items, the remaining portion of the work will be classed as extra work. Extra work also includes work specifically designated as extra work in the plans or Specifications.

The Contractor shall do the extra work and furnish all labor, material and equipment therefor upon receipt of an accepted Contract change order or other written order of the Engineer, and in the absence of an accepted Contract change order or other written order of the Engineer the Contractor shall not be entitled to payment for the extra work.

Payment for extra work required to be performed pursuant to the provisions in this Section 4-1.03D, in the absence of an executed Contract change order, will be made by force account as provided in Section 9-1.03; or as agreed to by the Contractor and the Engineer.

4-1.04 (not used)

4-1.05 (not used)

SECTION 5: CONTROL OF WORK

5-1.01 AUTHORITY OF ENGINEER

The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions which may arise as to the interpretation of the plans and Specifications; all questions as

to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. The Engineer's decision shall be final, and the Engineer shall have authority to enforce and make effective those decisions and orders which the Contractor fails to carry out promptly.

5-1.02 PLANS AND WORKING DRAWINGS

The Contract plans furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the Contract plans shall be in writing.

The Contract plans shall be supplemented by such working drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working drawing after it has been accepted by the Engineer.

Working drawings for any part of the permanent work shall include, but not be limited to stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the Specifications.

Working drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction the Contractor proposes to use, shall be submitted when required by the Contract Documents or ordered by the Engineer. Working drawings shall be subject to City of Vallejo review insofar as the details affect the character of the finished work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to the Contractor who shall be responsible for the successful construction of the work.

Working drawings shall be reviewed by the Engineer before any work involving the drawings is performed. It is expressly understood that review of the Contractor's working drawings shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the work in conformity with the requirements of the plans and Specifications. Review of working drawings shall not operate to waive any of the requirements of the plans and Specifications or relieve the Contractor of any obligation thereunder, and defective work, materials and equipment may be rejected notwithstanding the review.

Full compensation for furnishing all working drawings shall be considered as included in the prices paid for the Contract items of work to which the drawings relate and no additional compensation will be allowed therefor.

5-1.02A (not used)

5-1.03 CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS

Contractor's work and materials shall strictly conform to the lines, grades, typical cross sections, dimensions and material requirements, including tolerances, required in the Contract Documents. Although measurement, sampling and testing may be considered evidence as to conformity, the Engineer shall be the sole judge as to whether the work or materials deviate from the plans and Specifications, and the Engineer's decision as to any allowable deviations therefrom shall be final.

5-1.04 COORDINATION AND INTERPRETATION OF PLANS, SPECIFICATIONS AND STANDARD SPECIFICATIONS

These project plans, Specifications, special provisions, Contract change orders and all supplementary documents are essential parts of the Contract, and a requirement occurring in one Contract Document is as binding as though occurring in all. They are intended to be complementary, and to describe and provide for a complete work.

In the event of a conflict between the project plans, Specifications or special provisions, and Standard Plans and Standard; Specifications of the State of California, Business, Transportation and Housing Agency, Department of Transportation, 2010 edition, City of Vallejo Standard Specifications and Standard Plans, December 2011 edition, or Vallejo Sanitation & Flood Control District Master Bid Document, dated March 2007, the project plans, and Specifications shall control. Project plans shall govern over Standard Plans; Standard Plans and project plans shall govern over the Standard Specifications; and the special provisions shall govern over both the Standard Specifications and the project plans. The specific shall control over the general.

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply in writing to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Contract Documents, reference in writing shall be made to the Engineer, whose decision thereon shall be final.

In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct. Detail drawings shall prevail over general drawings.

5-1.05A ORDER OF WORK

When required by the Contract Documents, the Contractor shall follow the sequence of operations as set forth therein. Full compensation for conforming to those requirements will be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

5-1.05B HOURS OF WORK

Regular working hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays observed by the City. No work outside of the regular working hours shall be done unless previously requested by the Contractor in writing and approved by the Engineer in writing. Contractor is subject to reimbursing the City for the costs of providing inspection outside of regular working hours.

5-1.06 SUPERINTENDENCE

The Contractor shall designate in writing before starting work, an authorized representative who shall act as Superintendent and have the authority to represent and act for the Contractor. The Superintendent shall have responsibility for overall project operations and shall not be a "working foreman."

When the Contractor is comprised of 2 or more persons, firms, partnerships or corporations functioning on a joint venture basis, the Contractor shall designate in writing before starting work, the name of one authorized representative who shall serve as the Superintendent. And shall have the authority to

represent and act for the Contractor.

The Superintendent shall be present at the site of the work at all times while work is actually in progress on the Contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required.

Whenever the Contractor or the Contractor's Superintendent is not present on any particular part of the work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the foreman or other individual who may have charge of the particular work in reference to which the orders are given.

Any order given by the Engineer, not otherwise required by the Specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

5-1.07 (not used)

5-1.08 INSPECTION

The Engineer shall, at all times, have safe access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the Contract Documents. All work done and all materials furnished shall be subject to the Engineer's inspection.

Neither the inspection by an inspector, City of Vallejo, Engineer, nor any measurement, approved or unapproved modification, Submittals, shop drawing, order, or certificate, nor acceptance of any part or whole of the work, or payment of money, nor any possession or use by the City of Vallejo or its agents, shall operate as a waiver of any provisions of the Contract or of any power or authority reserved therein, or of any right to damages thereunder; nor shall the waiver of any breach of this Contract be held to be a waiver of any subsequent or other breach.

Projects financed in whole or in part with State or Federal funds shall be subject to inspection at all times by the State or Federal agency involved, or their authorized representative.

5-1.09 REMOVAL OF REJECTED AND UNAUTHORIZED WORK

All work which has been rejected shall be remedied, or removed and replaced by the Contractor in a manner acceptable to the Engineer, and no compensation will be allowed to the Contractor for the removal, replacement or remedial work. Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer unauthorized work shall be remedied, removed or replaced at the Contractor's expense.

Upon failure of the Contractor to comply promptly with any order of the Engineer made under this Section 5-1.09, the City of Vallejo may cause rejected or unauthorized work to be remedied, removed or replaced, and to deduct the costs from any moneys due or to become due the Contractor.

5-1.10 EQUIPMENT AND PLANTS

Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the project.

Plants shall be designed and constructed in accordance with general practice for the equipment and shall be of sufficient capacity to ensure the production of sufficient material to carry the work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plants.

The Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross mass of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross mass shall be either the manufacturer's rated mass or the scale weight, expressed in metric units {United States Standard Measures}.

The make, model, serial number and manufacturer's rated capacity in metric units {United States Standard Measures} for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated and marked. Upon request of the Engineer, the Contractor shall furnish a statement by the manufacturer, designating sectional and weighbridge capacities of portable vehicle scales.

5-1.11 ALTERNATIVE EQUIPMENT

While certain of the Contract Documents may provide that equipment of a particular size and type is to be used to perform portions of the work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Engineer to use equipment of a different size or type in place of the equipment specified.

The Engineer, before considering or granting the request, may require the Contractor to furnish, at the Contractor's expense, evidence satisfactory to the Engineer that the equipment proposed for use by the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

If permission is granted by the Engineer, it shall be understood that the permission is granted for the purpose of testing the quality of work actually produced by the equipment and is subject to continuous attainment of results which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment specified. The Engineer shall have the right to withdraw permission at any time that the Engineer determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of permission by the Engineer, the Contractor will be required to use the equipment originally specified and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at the Contractor's expense, any defective or unsatisfactory work produced with the alternative equipment.

The Contractor shall not have any claim against the City of Vallejo for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of the permission.

Permission to use alternative equipment in place of equipment specified will only be granted where the

equipment is new or improved and its use is deemed by the Engineer to be in furtherance of the purposes of this Section 5-1.11. The permission for use of particular equipment on any project shall in no way be considered as permission of the use of the equipment on any other project.

Nothing in this Section 5-1.11 shall relieve the Contractor of the responsibility for furnishing materials or producing finished work of the quality specified in the Contract Documents

5-1.12 ALTERNATIVE METHODS OF CONSTRUCTION

Whenever the plans or Specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the work and leave the selection of the method of construction or the type of material or equipment to be used up to the Contractor, it is understood that the City of Vallejo does not guarantee that every or any specified method of construction or type of material or equipment can be used successfully throughout all or any part of any project. It shall be the Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on any project, full compensation for any additional cost involved shall be considered as included in the Contract price paid for the item of work involved and no additional compensation will be allowed therefor.

5-1.13 DIFFERING SITE CONDITIONS

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the Contractor shall promptly notify the Engineer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the Engineer's determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice. Contractor agrees that failure to provide written notice to Engineer as required herein, or failure to otherwise abide by this Section, shall be a waiver by Contractor of any claim, demand, compensation or adjustment in the Contract time or working days.

No Contract adjustment will be allowed under the provisions specified in this section for any effects caused on unchanged work.

Any Contract adjustment warranted due to differing site conditions will be made in conformance with the provisions in Section 4-1.03, "Changes," except as otherwise provided.

5-1.14 CHARACTER OF WORKERS

If any subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the

request of the Engineer, and that person shall not again be employed on the work.

5-1.15 FINAL INSPECTION

When the work has been completed, the Engineer will make the final inspection.

5-1.16 MEANS AND METHODS

City of Vallejo will not have control over, be in charge of, nor be responsible for construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the work, since these are solely Contractor's responsibility.

The City of Vallejo may perform other work adjacent to or within the project area, concurrent with the Contractor's operations. The Contractor shall cooperate fully with City of Vallejo in all operations which coincide with other work being performed, and provide City of Vallejo with such scheduling and other information as may be required by City of Vallejo to perform such other work. The Contractor shall conduct operations to minimize interference with the work of others. Work performed by a second contractor may include work which is incomplete or in dispute with the Contractor.

Any disputes or conflicts which may arise between the Contractor and any other forces or contractors retained by the City of Vallejo, causing delays or hindrance to each other, shall be referred to the Engineer for resolution.

The City of Vallejo shall have the right at any time during the progress of this work to take over and place in service any completed or partially completed portion of the work, notwithstanding the time for completion of the entire work or such portions which may not have expired; but such taking possession thereof shall not be deemed an acceptance of any of the work, nor work on those portions not completed in accordance with the Contract Documents.

SECTION 6: CONTROL OF MATERIALS

6-1 GENERAL

6-1.01 SOURCE OF SUPPLY AND QUALITY OF MATERIALS

The Contractor shall furnish all materials required to complete the work, except materials that are designated in the Specifications to be furnished by the City of Vallejo and materials furnished by the City of Vallejo in conformance with the provisions in Section 9-1.03, "Force Account Payment."

Only materials conforming to the requirements of the Contract Documents shall be incorporated in the work.

The materials furnished and used shall be new, except as may be provided elsewhere in the Contract Documents. The materials shall be manufactured, handled and used in a workmanlike manner to ensure completed work in accordance with the plans and Specifications.

Materials to be used in the work will be subject to inspection and tests by the Engineer or the Engineer's designated representative. The Contractor shall furnish without charge such samples as may be required.

The Contractor shall furnish the Engineer a list of the Contractor's sources of materials and the locations at which those materials will be available for inspection. The list shall be submitted on a form acceptable to the Engineer and shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished to the listed sources in advance of their use. The Engineer may inspect, sample or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall assure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. It is understood that the inspections and tests if made at any point other than the point of incorporation in the work in no way shall be considered as a guaranty of acceptance of the material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the City of Vallejo shall not relieve the Contractor or the Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain articles or materials incorporated in the work, shall be delivered to the Engineer before acceptance of the Contract.

Reports and records of inspections made and tests performed, when available at the site of the work, may be examined by the Contractor.

6-1.02 (not used)

6-1.03 STORAGE OF MATERIALS

Articles or materials to be incorporated in the work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the work, and to facilitate inspection.

6-1.04 DEFECTIVE MATERIALS

All materials which the Engineer has determined do not strictly conform to the requirements of the Contract Documents will be rejected whether in place or not. The rejected materials shall be removed immediately from the site of the work, unless otherwise permitted in writing by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the work, unless authorization in writing has been given by the Engineer. Upon failure of the Contractor to comply promptly with any order of the Engineer made under the provisions in this section, the Engineer shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due the Contractor.

If nonconforming work, materials, or equipment not meeting the requirements and intent of the Contract Documents is discovered, and the Contractor fails to remedy the nonconforming work, materials, or equipment, or the City of Vallejo agrees in writing to accept the nonconforming work, materials, or equipment, Contractor agrees to sign a Contract Change Order or otherwise reimburse City of Vallejo in a sum equal to the cost to remedy the nonconforming work, materials, or equipment. It is expressly understood and agreed that the City of Vallejo will be entitled to recover from Contractor the full cost of remedying nonconforming work, materials, or equipment, and that diminution in value will not be considered as a method for valuing the City of Vallejo's damages for nonconforming work, materials, or equipment, and further that the doctrine of economic waste will not be a defense to the City of Vallejo's recovery from Contractor of the full and complete cost and expense of remedying nonconforming work, materials, or equipment.

Re-examination of any work may be ordered by the Engineer, and such work must be uncovered by

the Contractor. The Contractor shall pay the entire cost of such uncovering, re-examination, and replacement if the work does not conform to the Contract Documents.

6-1.05 TRADE NAMES AND ALTERNATIVES

For convenience in designation on the Contract Documents, certain articles or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and the manufacturer's catalogue information. The use of an alternative article or material which is of equal or superior quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor, and the Contractor shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials, and the Engineer's decision shall be final.

Whenever the Contract Documents permit the substitution of a similar or equivalent material or article, no tests or action relating to the acceptance of the substitute material will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the material or article proposed. Request for such substitution shall be made in writing by the Contractor within thirty (30) days of the Notice to Proceed. Failure by the Contractor to request substitution within thirty (30) days of the Notice to Proceed constitutes an agreement by Contractor to furnish only the materials or equipment listed in the Contract Documents. Until and unless such substitutions are authorized in writing by the Engineer, no deviations from the specifications shall be allowed.

6-1.06 PLANT INSPECTION

The Engineer may inspect the production of material or the manufacture of products at the source of supply.

Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to those parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City of Vallejo assumes no obligation to inspect materials at the source of supply.

6-1.07 CERTIFICATES OF COMPLIANCE

A Certificate of Compliance shall be furnished prior to the use of any materials for which the Contract Documents require that a certificate be furnished. In addition, when so authorized in the Contract Documents, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract Documents. A

Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.

Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time.

The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection whether in place or not.

The City of Vallejo reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

6-1.08 FOREIGN MATERIALS

Materials which are manufactured, produced or fabricated outside of the United States shall be delivered to a distribution point in California, unless otherwise required in the Contract Documents, where they shall be retained for a sufficient period of time to permit inspection, sampling and testing.

Attention is directed to the provisions in Section 8-1.07, "Liquidated Damages." The Contractor shall not be entitled to an extension of time for acts or events occurring outside of the United States, and it shall be the Contractor's responsibility to deliver materials obtained from outside of the United States to the point of entry into the continental United States in sufficient time to permit timely delivery to the job site.

The Contractor, at no cost to the City of Vallejo, shall supply the facilities and arrange for any testing required in California which the City of Vallejo is not equipped to perform. All testing by the Contractor shall be subject to witnessing by the Engineer.

The manufacturer, producer or fabricator of foreign material shall furnish to the Engineer a Certificate of Compliance in conformance with the provisions in Section 6-1.07, "Certificates of Compliance." In addition, certified mill test reports clearly identifiable to the lot of material shall be furnished where required in the Contract Documents or otherwise requested by the Engineer.

If the welding of steel for structural steel members or the casting and prestressing of precast, prestressed concrete members is to be performed outside of the United States, the following requirements shall apply:

- A. The fabrication shall be performed only within the plants and by fabricators who have previously established, to the satisfaction of the Engineer, that they have the experience, knowledge, trained manpower, quality controls, equipment and other facilities required to produce the quality and quantity of work required. At the option of the Engineer, prequalification of the plant and fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by the Engineer or the Engineer's representative, or both.
- B. The Contractor shall make written application to the Engineer for acceptance for the foreign fabrication at the earliest possible time and in no case later than 50 days in advance of the planned start of fabrication. The application shall list the specific units or portion of a work which will be fabricated outside of the United States.
- C. The Contractor shall advise the Engineer, in writing, at least 20 days in advance of the actual start of any of the foreign fabrication.

- D. All documents pertaining to the Contract, including but not limited to, correspondence, bid documents, working drawings and data shall be written in the English language and all numerical data shall use the International System of Units (SI) {United States Standard Measures} for measurement.

6-1.09 STATE SPECIFICATION NUMBERS

The State Specification number of material furnished on the Contract shall conform to the number specified in these Specifications or the special provisions for the material involved, except that material conforming to a later specification issue will be acceptable.

6-2 LOCAL MATERIALS

6-2.01 General

Local material is rock, sand, gravel, earth or other mineral material, other than local borrow or selected material, obtained or produced from sources in the vicinity of the work specifically for use on the project. Local material does not include materials obtained from established commercial sources.

Local materials shall be furnished by the Contractor from any source the Contractor may elect, except that when mandatory local material sources of certain materials are designated in the Contract Documents, the Contractor shall furnish material from those designated mandatory sources.

The Contractor shall be responsible for making all arrangements necessary to obtain materials from any local material source other than a mandatory local material source. If the Contractor elects to obtain material from a non-mandatory source, the Contractor shall furnish the Engineer with satisfactory evidence that the Contractor has entered into an agreement with the property owner for obtaining material from that source and with copies of any necessary permits, licenses and environmental clearances before removing any material from those sources.

Unless described in the Contract Documents as a mandatory local material source, or authorized in writing by the Engineer, material sources shall not be excavated at locations where the resulting scars will present an unsightly appearance from any highway. No payment will be made for material obtained in violation of this provision.

The Contractor shall, at the Contractor's expense, make any arrangements necessary for hauling over local public and private roads from any source.

When requested by the Contractor in writing, the City of Vallejo will test materials from any local material source, which has not been previously tested, at Contractor's cost and expense.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in conforming to the provisions in this Section 6-2.01, for furnishing and producing materials from any source shall be considered as included in the price paid for the Contract item of work involving the material and no additional compensation will be allowed therefor.

6-2.02 (not used)

6-2.03 (not used)

6-3 TESTING

6-3.01 GENERAL

All materials incorporated in the project shall meet the requirements of tests specified in the Standard Specifications and other minimum requirements specified herein or in the Contract documents.

Upon request, the Contractor shall furnish written laboratory reports from a reputable testing or inspection agency, or written certification from the manufacturer as to compliance with the Specifications as to the composition, durability and performance of the all materials used in the project. Certain specification sections may require special items or materials to be included in the submittal.

These reports on any material must be submitted to the Engineer in writing and approved by the Engineer before incorporating that material in the work. All materials shall be adequately identified by tags or other means as that material which has been tested and approved. Lack of proper identification shall be considered adequate cause for rejection of any material.

The City reserves the right to request such additional inspections or tests as it may require prior to acceptance of any materials, and also reserves the right to reject any material previously approved because of serious defects or damage discovered subsequent to such acceptance. Any material rejected by the City shall immediately be removed from the job site, and no payment will be allowed therefor.

The Contractor shall bear the expense for all unsatisfactory tests and deductions will be made from any moneys due or to become due the Contractor, sufficient to cover the cost of the tests.

Unless otherwise specified, all tests shall be performed in accordance with the methods used by the City of Vallejo Department of Public Works and shall be made by the Engineer or the Engineer's designated representative.

The State of California has developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the Specifications as California Test. Copies of individual California Tests are available at the Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.

Whenever the Specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties	California Test
Relative Compaction	216 or 231
Sand Equivalent	217
Resistance (R-value)	301
Grading (Sieve Analysis)	202
Durability Index	229

Whenever a reference is made in the Specifications to a California Test by number, it shall mean the California Test in effect on the day the Notice to Contractors for the work is dated.

Whenever the Specifications provide an option between 2 or more tests, the Engineer will determine the test to be used.

Whenever a reference is made in the Specifications to a specification, manual or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual or test designation in effect on the day the Notice to Contractors for the work is dated. Whenever the specification, manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of those reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in Section 6, "Control of Materials," and shall not constitute a waiver of the City of Vallejo's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense. The number of the samples and test specimens shall be entirely at the discretion of the Engineer.

When requested by the Engineer, the Contractor shall furnish, without charge, samples of all materials entering into the work, and no material shall be used prior to acceptance by the Engineer, except as provided in Section 6-1.07, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer; otherwise, the samples will not be considered for testing.

6-3.02 TESTING BY CONTRACTOR

The Contractor shall be responsible for controlling the quality of the material entering the work and of the work performed, and shall perform testing as necessary to ensure control. The test methods used for quality control testing shall be as determined by the Contractor. The results of the testing shall be made available to the Engineer upon request. These tests are for the Contractor's use in controlling the work and will not be accepted for use as acceptance tests.

Full compensation for performing quality control tests and making the results available to the Engineer shall be considered as included in the Contract prices paid for the various items of work involved and no additional compensation will be allowed therefor.

SECTION 7: LEGAL RELATIONS AND RESPONSIBILITY

7-1.01 LAWS TO BE OBSERVED

The Contractor shall keep fully informed of all existing and future laws, ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the City of Vallejo, and all officers and employees thereof connected with the work, including but not limited to the Director and the Engineer, against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees. If any discrepancy or inconsistency is discovered in the Contract Documents for the work in relation to any law, ordinance, regulation, order or decree, each Contractor and the Contractor shall forthwith report the same to the Engineer in writing.

7-1.01A LABOR CODE REQUIREMENTS

Attention is directed to the following requirements of the Labor Code:

7-1.01A(1) HOURS OF LABOR

Eight hours labor constitutes a legal day's work. The Contractor or any subcontractor under the Contractor shall forfeit, as a penalty to the State of California, \$25 for each worker employed in the execution of the Contract by the respective Contractor or subcontractor for each calendar day during which that worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the requirements of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

7-1.01A(2) PREVAILING WAGE

The Contractor and any subcontractor under the Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit to the City of Vallejo or political subdivision on whose behalf the Contract is made or awarded a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Contract by the Contractor or by any subcontractor under the Contractor in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime Contractor of the project is not liable for the penalties described above unless the prime Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime Contractor fails to comply with all of the following requirements:

- A. The Contract executed between the Contractor and the subcontractor for the performance of work on the public works project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.
- B. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

- C. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
- D. Prior to making final payment to the subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the City of Vallejo did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the Contractor shall pay all moneys retained from the subcontractor to the City of Vallejo. These moneys shall be retained by the City of Vallejo pending the final decision of an enforcement action.

Pursuant to the requirements in Section 1773 of the Labor Code, the City of Vallejo has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of the Labor Code, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned.

General prevailing wage rates are also available from the California State Department of Industrial Relations' Internet Web Site at:

<http://www.dir.ca.gov/OPRL/dprewagedetermination.htm>

The wage rates determined by the Director of Industrial Relations for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for bids and are good for the life of the Contract. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the Contract. The Contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by the

Contractor at a prominent place at the site of the work.

Changes in general prevailing wage determinations which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when issued by the Director of Industrial Relations at least 10 days prior to the date of the Notice to Contractors for the project.

The City of Vallejo will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the bid, and will not under any circumstances be considered as the basis of a claim against the City of Vallejo on the Contract by Contractor.

7-1.01A(2)(a) TRAVEL AND SUBSISTENCE PAYMENTS

Attention is directed to the requirements in Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each workman, needed to execute the work, in conformance with the requirements in Labor Code Section 1773.8.

Full compensation for conforming to the requirement of this section shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed, therefore.

7-1.01A(3) PAYROLL RECORDS

Attention is directed to the requirements in Labor Code Section 1776, a portion of which is quoted below. Regulations implementing Labor Code Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Code of Regulations.

- A. Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - 1. The information contained in the payroll record is true and correct.
 - 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the Contract, the Division of Labor Standards Enforcement, and the Division of

3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the Contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.
- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.
- D. A Contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated.
- F. The Contractor shall inform the body awarding the Contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- G. The Contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section."

The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which that name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein

are not less than those required by the Contract. The "Statement of Compliance" shall be on forms furnished by the City of Vallejo or on any form with identical wording. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. If by the 15th of the month, the Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, the City of Vallejo may retain an amount equal to 10 percent of the estimated value of the work performed (exclusive of Mobilization) during the month from the next monthly estimate, except that this retention shall not exceed \$10,000 nor be less than \$1,000. Retentions for failure to submit satisfactory payrolls shall be additional to all other retentions provided for in the Contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

The Contractor and each subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the Contract.

7-1.01A(4) LABOR NONDISCRIMINATION

Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

Attention is directed to the following "Nondiscrimination Clause" that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

NONDISCRIMINATION CLAUSE

"During the performance of this Contract, Contractor and its SUBCONTRACTORS shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and SUBCONTRACTORS shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and SUBCONTRACTORS shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its SUBCONTRACTORS shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement."

The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

7-1.01A(5) APPRENTICES

Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works Contract. Responsibility for compliance with this section lies with the Contractor.

It is City of Vallejo policy to encourage the employment and training of apprentices on public works Contracts as may be permitted under local apprenticeship standards.

- A. Only registered apprentices within a written agreement in an approved apprentice-training program providing no less than 2,000 hours of continuous employment and education are eligible for employment on public works (in compliance with Labor Section 3077).
- B. A contractor is no longer required to submit Form DAS-7, but must submit award information to the local applicable joint apprenticeship committee. The award information must include:
 - an estimate of the journeyman hours;
 - the number of apprentices to be employed; and
 - the approximate dates of apprentice employment.
- C. The minimum statutory 1:5 hourly ratio of work stipulates that no less than one hour of apprentice work for every five hours of journeyman labor on any day of work. (Any journeyman work performed beyond 8 hours per day or 40 hours per week shall not be used to calculate the hourly ratio).

This section shall not apply to specialty contractors or general contractors whose contracts involve less than Thirty Thousand Dollars (\$30,000.00) or 20 working days.

The Division of Apprenticeship Standards may grant a certificate exempting the contractor from the minimum 1:5 hourly ratios under any one of the following:

Unemployment exceeds an average of 15% in the area for the previous 3-month period;

The number of apprentices in training in such area exceeds a ratio of 1:5;

The apprentice able craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either locally or statewide;

The specific task would jeopardize the apprentice's life or public safety or no training can be provided to an apprentice by a journeyman for the specific task.

- D. Apprentices employed on public works projects can only be assigned to perform work of the craft or trade to which the apprentice is registered.
- E. All contractors with employees in any apprentice able occupation, regardless of the actual

employment of journeymen or apprentices for the awarded public work, must either contribute to the local training trust fund or to the California Apprenticeship Council, P.O. Box 603, San Francisco, CA 94101 (as set forth in Section 227).

- F. All violations of Section 1777.5 shall pay a civil penalty of Fifty Dollars (\$50.00) for each calendar day of noncompliance.

All willful violations of Section 1777.5 shall pay the \$50.00 fine for each calendar day of noncompliance and shall be denied the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and up to three years for any additional violations.

Compliance disputes arising under Section 177.5 shall be adjudicated under 8 California Code of Regulations, Article 1.

- G. Within five (5) days of a public works contract award, the awarding agency must send a copy of the award to the Division of Apprenticeship Standards under Section 1773.3.

Within five (5) days of finding any discrepancy regarding the hourly ratio of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

- H. The Contractor shall be responsible for compliance for all apprentice able occupations within these sections.

7-1.01A(6) WORKERS' COMPENSATION

Pursuant to the requirements in Section 1860 of the Labor Code, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in conformance with the requirements in Section 3700 of the Labor Code.

Prior to the commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

This certification is incorporated in the Contract by reference, and signature and return of the Contract as provided in Section 3-1.03, "Execution of Contract," shall constitute signing and filing of the certificate.

7-1.01A(7) SUITS TO RECOVER PENALTIES AND FORFEITURES

Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or Contract provisions based on those laws.

Those sections provide that a suit on the Contract for alleged breach thereof in not making the payment is the exclusive remedy of the Contractor or the Contractor's assignees with reference to amounts withheld for those penalties or forfeitures; and that the suit must be commenced and actual notice thereof received by the awarding authority prior to 90 days after completion of the Contract and the

formal acceptance of the job.

7-1.01B FAIR LABOR STANDARDS ACT

The attention of Contractors is invited to the fact that the City of Vallejo has been advised by the Wage and Hour Division, U.S. Department of Labor, that Contractors engaged in highway construction work are required to meet the provisions of the Fair Labor Standards Act of 1938 and as amended (52 Stat. 1060).

7-1.01C CONTRACTOR'S LICENSING LAWS

Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of Contractors. Contractor shall be properly licensed at all times during the performance of the work and performance of the Contract.

All Contractors and Contractors shall be licensed in accordance with the laws of this State and any contractor or Contractor not so licensed is subject to the penalties imposed by those laws.

Attention is also directed to the requirements in Public Contract Code Section 10164. In all projects where Federal funds are involved, the Contractor shall be properly licensed at the time the Contract is awarded.

7-1.01D VEHICLE CODE

Pursuant to the authority contained in Vehicle Code Section 591, the City of Vallejo has determined that within those areas that are within the limits of the project and are open to public traffic, the Contractor shall comply with all the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code.

Attention is directed to the statement in Vehicle Code Section 591 that this section shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of the Contractor's equipment and the protection of the public from injury and damage from the Contractor's equipment.

7-1.01E (not used)

7-1.01F AIR POLLUTION CONTROL

The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the Government Code.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned, either inside or outside the highway right of way.

7-1.01G WATER POLLUTION CONTROL

7-1.01G(1) GENERAL

The intent of these requirements is to enforce federal, state, and other local agency regulation prohibiting storm water pollution from construction sites. The storm drain system discharges directly to creeks and the San Francisco Bay without treatment. Therefore, pollutant discharge into the storm drain system is strictly prohibited. Here pollutant discharge means any substance, material, or waste, and discharges NOT permitted under the National Pollutant Discharge Elimination System (NPDES) regulated by the State of California Regional Water Quality Control Board (RWQCB) or the United States Environmental Protection Agency (EPA) other than uncontaminated stormwater.

The Contractor shall conform to all applicable local, state and Federal regulations and laws pertaining to water pollution control. As applicable, the Contractor shall obtain Water Pollution Control Permits and file all documents including, but not limited to, the State of California Construction General Permit, Stormwater Pollution Prevention Plan. The Contractor shall conduct and schedule operations and follow and implement Best Management Practices (BMPs) in such a manner as to prevent water pollution. The Contractor shall also conform to the following requirements:

- 1) Sediments shall not be discharged to a storm drain system or receiving waters. In this subsection, the term "storm drain system" shall include storm water conduits, storm drain inlets and other storm drain structures, street gutters and paved surfaces. In this subsection "receiving waters" shall include channels, watercourses, creeks, lakes, the Mare Island Strait, the Carquinez Strait, and the San Francisco Bay.
- 2) Sediments generated on the Work site shall be contained within the site using appropriate BMPs.
- 3) No construction-related materials, waste, spill or residue shall be discharged from the Work site to streets, drainage facilities, receiving waters or adjacent property by wind or runoff.
- 4) Non-storm water runoff from equipment, vehicle washing or any other activity shall be contained within the Work site using appropriate BMPs.
- 5) Erosion shall be prevented. Erosion-susceptible slopes shall be covered, planted or otherwise protected in a way that prevents discharge from the Work site.

In this subsection, the term "storm drain system" shall include water conduits, storm drain inlets and other storm drain structures, street gutters and paved surfaces, channels, watercourses, creek, lakes, the estuary, and the San Francisco Bay.

The Engineer will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program.

The City of Vallejo will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the work due to the Contractor's failure to submit an acceptable water pollution control program.

Nothing in the terms of the Contract Documents shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

7-1.01G(2) BEST MANAGEMENT PRACTICES (BMP)

For the purpose of eliminating stormwater pollution, the Contractor shall implement effective control measures known as Best Management Practices (BMPs). BMPs include schedules of activities,

prohibition of practices, general good housekeeping practices, operational practices, pollution prevention practices, maintenance procedures, and other management procedures to prevent pollutant discharge directly or indirectly into the storm drain system. BMPs also include the construction of some facilities that may be required to prevent, control, and abate stormwater pollution.

The Contractor shall implement and maintain such BMPs as are relevant to the work, and as are specifically required by the project plans or Specifications. The Contractor shall be responsible throughout the Contract duration for installing, constructing, inspecting, maintaining, removing and disposing of BMPs for wind erosion control, tracking control, erosion and sediment control, non-storm water control, and waste management and materials pollution control. Unless otherwise directed by the Engineer, the Contractor shall be responsible for BMP implementation and maintenance throughout any temporary suspension of the Work. Guidance for appropriate implementation of BMPs can be found in the 7-1.01G(5) Reference Publications, below.

7-1.01G(3) STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

When so specified in the Specifications, or if so required by a jurisdictional regulatory agency, the Contractor shall prepare and submit a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP shall conform to the requirements specified in the Specifications and those of the jurisdictional regulatory agency. The Notice of Intent will be filed by the City.

7-1.01G(4) (not used)

7-1.01G(5) REFERENCE PUBLICATIONS

Reference publications are as follows:

1. California State Water Resources Control Board (SWRCB) Construction General Permit Order 2009-009-DWQ adopted on September 2, 2009. Available at: the following website:
http://www.swrcb.ca.gov/board_decisions/adopted_orders/water_quality/2012/wqo2012_0006_dwq.pdf
2. California Stormwater Quality Association (CASQA) Stormwater Best Management Practice Handbook. Available at: the following website:
www.casqa.org/resources/bmp-handbooks/construction
3. Erosion and Sediment Control Field Manual, San Francisco Regional Water Quality Control Board (SFRWQCB) Available from Friends of the San Francisco Estuary, 1515 Clay Street, Suite 1400, Oakland, CA 94612 (510) 622-2419 or (510) 622-2337. Available at: the following website:
www.abag.ca.gov/abag/overview/pub/erosion.html
4. Manual of Standards for Erosion and Sediment Control Measures. Association of Bay Area Governments (ABAG.) Available from ABAG, 101 8th Street, Oakland, CA 94607, (510) 464-7900. Available at: the following website:
www.abag.ca.gov/abag/overview/pub/erosion.html
5. CalTrans Stormwater Quality Handbooks. Available at: the following website:
www.dot.ca.gov/hq/construc/stormwater/CSBMPM_303_Final.pdf

7-1.01G(6) MATERIAL STORAGE

Storage and exposure of raw materials, by-products, finished products, and containers shall be controlled as described below:

1. All construction materials shall be stored at least ten feet away from inlets, catch basins, and curb returns. The Contractor shall not allow any material to enter the storm drain system. Measures shall be taken to maintain a neat and protected pile. At the end of each working day, the Contractor shall collect and dispose of all scrap, debris, and waste material excluding materials set aside for recycling and salvage. Materials set aside for recycling and salvage shall be delivered to the recycling station within five days.
2. Materials that can contaminate rainwater or be transported by storm water or other runoff to the storm drain system require special storage. During wet weather or when rain is forecast, the Contractor shall store such materials inside a building or cover them with a tarp or other waterproof material secured with weighted tires or sandbags to prevent contact with rain.
3. The Contractor is reminded that storage and disposal of all hazardous materials such as paints, thinners, solvents, and fuels; and all hazardous wastes such as waste oil, must meet all federal, state and local standards and requirements.

7-1.01G(7) (not used)

7-1.01G(8) (not used)

7-1.01G(9) (not used)

7-1.01G(10) (not used)

7-1.01G(11) SPILL PREVENTION AND CONTROL

The Contractor shall take all precautions to prevent accidental spills during construction. However, in the event of a spill, the Contractor shall immediately contain any leaks/spills to prevent them from entering the storm drain system. The Contractor shall properly clean up and dispose of spilled wastes and resulting clean-up materials. If the spilled waste is hazardous, the Contractor shall comply with all federal, state and local hazardous waste requirements.

- a. The Contractor shall not wash any spilled material into the streets, gutters, storm drains, or creeks.
- b. The Contractor shall report any hazardous materials spill immediately to the Vallejo Fire Department, the Solano County Department of Resource Management Environmental Services Division Hazardous Materials Section and other state and local agencies as required by state and local regulations.

7-1.01G(12) VEHICLE/EQUIPMENT CLEANING

The use of soaps, solvents, de-greasers, steam cleaning equipment or equivalent methods for vehicle or equipment cleaning on-site or in the street is not permitted. Vehicle or equipment may be cleaned

only with water in a designated, bermed area of adequate size. Rinse water may not runoff site or into the storm drain system. The rinse-water shall be permitted to infiltrate in dirt area or shall be discharged to the sanitary sewer with the approval of VSFCDD and the Engineer.

The Contractor shall dispose of wash water from the cleaning of water-based paint equipment and tools to the sanitary sewer.

When using oil-based paint the Contractor shall, to the maximum extent practicable, filter the paint thinner and solvents for reuse. Any waste thinner, solvent, and sludge from the cleaning of equipment and tools shall be disposed as hazardous waste.

7-1.01G(13) CONTRACTOR TRAINING AND AWARENESS

The Contractor shall train all employees on the water pollution prevention requirements contained in these specifications. The Contractor shall inform all subcontractors of the water pollution prevention contract requirements and include appropriate subcontract provisions to ensure that these requirements are met.

The Contractor shall mark all new catch basins constructed as part of the project with storm drain markers with the logo "No Dumping: Drains to the Bay". Storm drain markers shall be approved by the City Engineer.

7-1.01G(14) GOOD HOUSEKEEPING PRACTICES

The Contractor shall implement the following applicable good housekeeping practices.

- a. Store all materials that have the potential to be transported to the storm drain system by storm runoff or by a spill under cover in a contained area or in sealed waterproof containers.
- b. Use ground tarps to collect fallen debris or splatters that could contribute to storm water pollution.
- c. Secure opened bags of cement, and other light materials or powders that can be transported by wind.
- d. Pick up litter, construction debris and other wastes daily from outside areas including the sidewalk area, gutter, street pavement and storm drains impacted by the project. Store all wastes in covered containers or dispose of immediately. Arrange for appropriate collection of those materials separated for recycling.
- e. Dispose of wash water to the sanitary sewer with the approval of VSFCDD and the Engineer or recycle wash water.
- f. Inspect vehicles and equipment arriving on-site for leaking fluids and promptly repair leaking vehicles and equipment. Use drip pans to catch leaks until repairs are made.
- g. Avoid spills by handling materials carefully. Keep a stockpile of spill materials, such as rags or absorbents, readily accessible on-site. Clean up all spills immediately to prevent any material from being discharged to the storm drain system. Refer to 7-1.01G(11) Spill Prevention and Control.
- h. Train employees regularly on good housekeeping practices and BMPs. Assign specific

employees responsibility for BMPs, good housekeeping practices, and actions to take in the event of a spill. Refer to 7-1.01G(13) Contractor Training and Awareness.

- i. Maintain and replace all sediment and water pollution control devices as necessary to ensure that said controls are working effectively (e.g. inspect all sediment ponds or sandbag sedimentation/filtering systems after each rain. Remove accumulated sediment and debris and replace or repair damaged sandbags immediately.)

7-1.01G(15) PAYMENT

Unless otherwise specified in the Specifications, payment for implementation and maintenance of BMPs, implementing SWPPP measures and other work of this section (including dewatering) shall be deemed included in the price paid for associated contract bid items, and no additional payment shall be made therefor.

7-1.01G(16) ENFORCEMENT

Various sections of the Vallejo Municipal Code^{12.41} enforce section 7.101G. City enforcement may include, but is not limited to: citations, abatement orders, bills for City cleanup costs and administration, civil suits, and criminal charges. City enforcement actions do not void or suspend any enforcement actions by other agencies. At a minimum, the Contractor shall implement the storm water Clean Water Program BMPs listed in 7-1.01G(1) General, or implement equally effective alternatives approved by the Engineer on all projects within the City of Vallejo.

7-1.01H (not used)

7-1.01I SOUND CONTROL REQUIREMENTS

The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the Contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler.

The noise level from the Contractor's operations, between the hours of 9:00 p.m. and 7:00 a.m. shall not exceed 50 dBA and between the hours of 7:00 a.m. and 9:00 p.m. shall not exceed 80 dBA at a distance of 50 feet.

Said noise level requirement shall apply to all equipment on the job, including but not limited to trucks, mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided except those required by safety laws for the protection of personnel.

Full compensation for conforming to the requirements of this section shall be considered as included in Contractor's proposal and no additional compensation will be allowed therefore.

7-1.01J ASSIGNMENT OF ANTITRUST ACTIONS

The Contractor's attention is directed to the following requirements in Public Contract Code 7103.5 and Government Code Sections 4553 and 4554, which shall be applicable to the Contractor and the Contractor's subcontractors:

"In entering into a public works Contract or a subcontract to supply goods, services, or materials pursuant to a public works Contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works Contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

7-1.02 LOAD LIMITATIONS

Unless expressly permitted, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not the area is subject to weight limitations under Section 7-1.01D, "Vehicle Code," except as hereinafter provided in this Section 7-1.02.

Within the limits of the project and subject to the control of the Engineer, and provided that the Contractor, at the Contractor's expense, shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by the operations, the Contractor will be permitted to:

Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the load limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:

The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 12,700 kg {28,000 pounds} for single axles, (2) 21,700 kg {48,000 pounds} for tandem axles, nor (3) 27,200 kg {60,000 pounds} total gross load for single vehicles or 50,000 kg {110,000 pounds} total gross load for truck and trailer or semi-trailer combinations.

The loading on bridge structures due to 2 and 3 axle pneumatic-tired earthmovers shall not exceed that shown in the following table.

Allowable Construction Loading On Bridges

For 2 and 3 Axle Earthmovers	
Spacing of Bridge Girders (center to center in meters {feet})	Maximum Axle Loading (in kilograms {pounds})
1.2 {4}	12,700 {28,000}
1.5 {5}	13,100 {29,000}
1.8 {6}	13,600 {30,000}
2.1 {7}	14,500 {32,000}
2.4 {8}	15,400 {34,000}
2.7 {9}	16,700 {37,000}
3.0 {10} and over	18,000 {40,000}
Minimum axle spacing: For 3-axle earthmovers Axles 1 to 2 = 2.4 m {8 feet} Axles 2 to 3 = 6.1 m {20 feet} For 2-axle earthmovers Axles 1 to 2 = 6.1 m {20 feet}	

Move equipment within the limits of the project over completed or existing base, surfacing, pavement and structures, whether or not open to the public, in accordance with the limitations and conditions in the "Permit Policy" of the City of Vallejo of Transportation.

Within the limits of the project and subject to the condition that the Contractor shall repair, at the Contractor's expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If the conditions are not set forth on the plans, the provisions in the first paragraph in this Section 7-1.02 will apply.

Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the Contract, in order to facilitate the Contractor's own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 59 000 kg {130,000 pounds} per single axle or pair of axles less than 2.4 m {8 feet} apart, or above 149 000 kg {330,000 pounds} total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost and date are satisfactory to the Contractor, the Engineer will prepare a change order providing for the agreed upon alterations.

Pursuant to the authority contained in Section 591 of the Vehicle Code, the Department has determined that, within such areas as are within the limits of the project and are open to public traffic, the Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Attention is directed to the statements in Section 591 that this section shall not relieve him or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of his/her equipment and the protection of the public from injury and damage from such equipment.

7-1.03 PAYMENT OF TAXES

The Contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate or any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City of Vallejo, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.

7-1.04 PERMITS AND LICENSES

The City will waive all required City of Vallejo permit fees for this project.

The Contractor and all subcontractors shall obtain and keep current for the duration of the project a City of Vallejo Business License.

The Contractor shall give all notices required by and comply with all laws, codes, ordinances and regulations. Before installing any work, the Contractor shall carefully examine the Contract Documents for compliance with all laws, codes, ordinances and regulations and shall immediately report any discrepancy to the Engineer.

Should the Contractor proceed with the construction and/or install any utility variance, notwithstanding the fact that such installation is in compliance with the Contract Documents, or should the Contractor install any work not in compliance with all laws, codes, ordinances and regulations, the Contractor shall remove such work without cost to the City of Vallejo.

The Contractor shall commit no trespass on any public or private property in any operation due to or connected with the improvements embraced in this contract.

The Environmental Quality Act (Public Resources Code, Sections 21000 to 21176, inclusive) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from local agencies in connection with performing the work of the Contract. The Contractor shall comply with the provisions of those statutes in obtaining the permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.

In the event that the City of Vallejo has obtained permits, licenses or other authorizations, applicable to the work, in conformance with the requirements in the Environmental Quality Act or any other authority, the Contractor shall comply with the provisions of those permits, licenses and other authorizations.

7-1.05 PATENTS

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the work, and agrees to indemnify and save harmless the City of Vallejo, the Director, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

7-1.06 SAFETY AND HEALTH PROVISIONS

The Contractor shall conform to all applicable occupational safety and health standards, rules,

regulations and orders established by the State of California.

Working areas utilized by the Contractor to perform work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.

All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.

Full compensation for conforming to the provisions in this section shall be considered as included in the Contract prices paid for the various items of work involved and no separate payment will be made therefor.

7-1.07 (Blank)

7-1.08 PUBLIC CONVENIENCE

This Section 7-1.08 defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with the Contractor's operations.

Attention is directed to Section 7-1.09, "Public Safety," for provisions relating to the Contractor's responsibility for the safety of the public. The provisions in Section 7-1.09 are in addition to the provisions in this Section 7-1.08, and the Contractor will not be relieved of the responsibilities as set forth in Section 7-1.09 by reason of conformance with any of the provisions in this Section 7-1.08.

In the event of a suspension of the work, attention is directed to Section 8-1.05, "Temporary Suspension of Work."

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor will be required to pay the cost of replacing or repairing all facilities installed under extra work for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged by reason of the Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due the Contractor will be

made to cover the cost.

Except as otherwise provided in this Section 7-1.08 or in the special provisions, full compensation for conforming to the provisions in this Section 7-1.08 shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

Contractor shall furnish, install and maintain all traffic warning and directional signs necessary to maintain the facility in a passable condition at all times. Traffic control shall meet the requirements of the latest State of California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones. The contractor shall submit a Traffic Control Plan for review and acceptance by the Engineer at the pre-construction meeting.

The Contractor shall designate in writing the name, address and telephone number of the employee and the superintendent to contact after working hours for the proper maintenance of barriers and signs, when applicable.

Full compensation for furnishing all flag persons necessary for the direction of public traffic either through or around the work shall be considered as included in the various contract items of work, and no additional compensation will be allowed therefor.

7-1.09 PUBLIC SAFETY

It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

Attention is directed to Section 7-1.08, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the City of Vallejo, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.

Fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the Contract Documents.

The Contractor shall also furnish at Contractor's expense such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered.

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in the current Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor, at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the Specifications. Signs furnished and erected by the Contractor, at the Contractor's expense, shall be approved by the Engineer as to size, wording and location.

The installation of general roadway illumination shall not relieve the Contractor of the responsibility for

furnishing and maintaining any of the protective facilities herein before specified.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workmen and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.

The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the Contract for those facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for the temporary facilities shall be prepared and signed by an engineer who is registered as a Civil

Engineer in the State of California and shall be submitted to the Engineer for review pursuant to Section 5-1.02, "Plans and Working Drawings." The submittals shall designate thereon the standard design criteria or codes used. Installation of the temporary facilities shall not start until the Engineer has reviewed and accepted the drawings.

Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.

Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities by extra work as provided in Section 7-1.08, "Public Convenience," or by Contract item as provided in Section 12, "Construction Area Traffic Control Devices," shall in nowise relieve the Contractor from the responsibility as provided in this Section 7-1.09.

Except as otherwise provided in this Section 7-1.09 or in the special provisions, full compensation for conforming to all of the provisions in this Section 7-1.09 shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

The Contractor shall note that the work may be performed on or in the vicinity of private property. The Contractor shall, at all times, remove all litter, debris, and construction waste, minimize noise, dust, standing water, vibrations, hazardous conditions and provide safe access to these properties. The Contractor is prohibited from using any and all privately owned utilities. The Contractor's materials and

equipment shall not be stored upon private property without written approval from the resident and/or owner.

Construction on private property during overtime, weekend, holiday or any other irregular period shall be performed only when the Contractor has requested and received written approval from the adjacent residents and the City Engineer.

No separate payment shall be made for the above considerations. Full compensation for the above construction restrictions shall be considered as included in the price paid for the various items of work involved.

7-1.10 (not used)

7-1.11 PRESERVATION OF PROPERTY

Attention is directed to Section 7-1.12, "Indemnification and Insurance," and to Section 8-1.10, "Utility and Non-Highway Facilities." Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs and other plants that are not to be removed.

Roadside trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, accepted by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of the Contractor's operations, the objects shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the Specifications accompanying the Contract, if any of the objects are a part of the work being performed under the Contract. The Engineer may make or cause to be made those temporary repairs that are necessary to restore to service any damaged highway facility. The cost of the repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the Contract.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of the responsibility under Section 8-1.10, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Any damage to private property caused by the Contractor and adjudged to be the responsibility of the Contractor by the Engineer shall be rectified to the satisfaction of the Engineer within a reasonable time, depending upon the extent of the damage. Said reasonable time shall be as determined by the Engineer, and if the condition is not rectified, the Engineer shall have the power and authority to rectify said damage and the cost thereof to be paid for by the Contractor, either by direct payment to the City of Vallejo, or by deducting said amount from moneys due the Contractor.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in this Section 7-1.11, shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

7-1.12 INDEMNIFICATION AND INSURANCE

The Contractor's obligations regarding indemnification of the City of Vallejo and the requirements for insurance shall conform to the provisions in Sections 7-1.12A, "Indemnification," and 7-1.12B, "Insurance," of this Section 7-1.12.

7-1.12A INDEMNIFICATION

Contractor shall defend, indemnify, and save harmless City of Vallejo (including its inspectors, project managers, trustees, officers, agents, members, employees, affiliates, consultants, subconsultants, and representatives), and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses, or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with, Contractor's operations to be performed under this Contract, including, but not limited to:

- A. Personal injury (including, but not limited to, bodily injury, emotional injury or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of Contractor, City of Vallejo, or any subcontractor, or damage to property of anyone including the work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor, City of Vallejo, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
- B. Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Contractor;
- C. Alleged infringement of any patent rights which may be brought arising out of Contractor's work;
- D. Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages from such claims or liens;
- E. Contractor's failure to fulfill any of the covenants set forth in these Contract Documents;
- F. Failure of Contractor to comply with the provisions of the Contract Documents relating to insurance; and,
- G. Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational, health, or safety of employees.

The indemnities set forth in this section shall not be limited by the insurance requirements set forth in these Contract Documents.

Contractor's indemnification of City of Vallejo will not include indemnification for claims which arise as the result of the active negligence of City of Vallejo, or the sole negligence or willful misconduct of City, its agents, servants or independent contractors who are directly responsible to City, or for defects in design furnished by such persons.

7-1.12B INSURANCE

Insurance shall conform to the following requirements: The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or

damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his/her agents, representatives, employees or SUBCONTRACTORS. Such insurance shall not be construed to relieve the Contractor of any liability in excess of such coverage. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance Coverage shall be at least as broad as:

1. Comprehensive General Liability Insurance Services.
2. Automobile Liability insurance.
3. Umbrella/Excess Liability insurance.
4. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
5. Pollution Liability Insurance.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence. **\$2,000,000** general aggregate for bodily injury, personal injury, and property damage including blanket contractual liability. **\$2,000,000** completed operations aggregate that shall extend a minimum of three (3) years' beyond project completion..
2. Automobile Liability: **\$1,000,000** per occurrence, including owned, non-owned and hired vehicles.
3. Umbrella/Excess Liability: **\$4,000,000**; for bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages above, including commercial general liability and employer's liability, to include the following terms and conditions:
 - a. A drop down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;
 - i. Pay on Behalf of Insured" wording (NOT reimbursement)
 - ii. Concurrency of effective dates with primary policies; and
 - iii. Policies shall follow form to the underlying primary policies.
4. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of **\$1,000,000** per accident.

5. Pollution Liability Insurance: **\$1,000,000** per claim and in the aggregate.

C. Deductibles and Self Insured Retention

Any deductibles or self - insured retention must be declared to and accepted 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, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

1. General Liability and Automobile Liability Coverage

- a. The City must be named an additional insured on the ACORD form and on an endorsement form using the following language: "The City, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers and the Engineer, its officers, directors, employees and subconsultants."
- b. The endorsement must state that the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self - insurance maintained by the City, its officers, officials, employees or volunteers and the Engineer, its officers, directors, employees and subconsultants shall be excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers and the Engineer, its officers, directors, employees and subconsultants.
- d. The Contractor's coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

- a. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City and the Engineer, its officers, directors, employees and subconsultants.

3. All Coverage

- a. 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 has been given to the City.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and accepted by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Include insurer's NAIC numbers on ACCORD form.

G. Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

H. Owners and Contractors Protective Liability Coverage

Upon commencement of construction, contractor shall obtain and maintain Owners and Contractors Protective Liability Coverage in the amount of \$1,500,000.

I. Exclusions

This insurance does not cover tools owned by mechanics, any tools, equipment, scaffolding, staging, towers, and forms rented or owned by the Contractor, the capital value of which is not included in the cost of the work or any shanties or other structures erected for the sole convenience of the workers.

J. Cancellation or Non-Renewal

Policies must provide that notice of cancellation or non-renewal must be received by the City at least thirty days prior to such event.

7-1.12B(4) ENFORCEMENT

The City of Vallejo may take any steps as are necessary to assure Contractor's compliance with its obligations. Should any insurance policy lapse or be canceled during the Contract period the Contractor shall, within thirty (30) days prior to the effective expiration or cancellation date, furnish the City of Vallejo with evidence of renewal or replacement of the policy. Failure to continuously maintain insurance coverage as herein provided is a material breach of Contract. In the event the Contractor fails to maintain any insurance coverage required, the City of Vallejo may, but is not required to, maintain this coverage and charge the expense to the Contractor or terminate Contractor's control over

the work. The required insurance shall be subject to the review and acceptance of City of Vallejo, but any acceptance of insurance certificates by the City of Vallejo shall in no way limit or relieve the Contractor of the Contractor's duties and responsibilities under the Contract to indemnify, defend and hold harmless the City of Vallejo, its officers, agents, and employees. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the City of Vallejo from taking other actions as is available to it under any other provision of the Contract or law. Failure of the City of Vallejo to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

7-1.12B(5) SELF-INSURANCE

Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and acceptance by the City of Vallejo of evidence of the Contractor's financial capacity to respond. Additionally, self-insurance programs or retentions must provide the City of Vallejo with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance.

7-1.12B(6) MISCELLANEOUS

Nothing contained in the Contract is intended to make the public or any member thereof a third party beneficiary of the Insurance or Indemnity provisions of these Standard Specifications, nor is any term, condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

7-1.125 LEGAL ACTIONS AGAINST THE CITY OF VALLEJO

In the event litigation is brought against the City of Vallejo concerning compliance by the City of Vallejo with State or Federal laws, rules or regulations applicable to public works construction, the provisions of this Section 7-1.125 shall apply.

- A. If, pursuant to court order, the City of Vallejo prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Section 8-1.09, "Right of Way Delays," unless the Contract is terminated as hereinafter provided.
- B. If, pursuant to court order (other than an order to show cause) the City of Vallejo is prohibited from requiring the Contractor to perform all or any portion of the work, the City of Vallejo may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the Contract.
- C. If the final judgment in the action prohibits the City of Vallejo from requiring the Contractor to perform all or any portion of the work, the City of Vallejo will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the Contract.
- D. If the Contract is to be terminated, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions in Section 8-1.11, "Termination of Contract."

7-1.13 DISPOSAL OF MATERIAL OUTSIDE THE PUBLIC RIGHT OF WAY

If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the City of Vallejo, or, if material is to be disposed of and the City of Vallejo has not made arrangements for disposal of the material, the Contractor shall make arrangements for disposing of the materials outside the public right of way and shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the public right of way, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site(s) involved and has obtained the appropriate permits, licenses and clearances.

When any material is to be disposed of outside the public right of way, and the City of Vallejo has not made arrangements for disposal of the material, the Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving the City of Vallejo from any and all responsibility in connection with the disposal of material on the property. Before any material is disposed of on the property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in the authorization.

When material is disposed of as above provided and the disposal location is visible from public view, the Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer.

It is expressly understood and agreed that the City of Vallejo assumes no responsibility to the Contractor whatsoever in respect to the arrangements made to dispose of materials and that the Contractor shall assume all risks in connection with the disposal of materials.

No material may be disposed of unless and until the Contractor has first entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of Vallejo of any and all obligations under the City of Vallejo's arrangement with the owner.

The cost of Contractor shall pay those charges that are provided for in the agreement between the disposal site owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the Contract to cover the charges.

Before acceptance of the Contract, the Engineer may require the Contractor to submit written evidence that the owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of the agreement between the owner and the Contractor.

Full compensation for all costs involved in disposing of materials as specified in this Section 7-1.13, including all costs of hauling, shall be considered as included in the price paid for the Contract item of work involving the materials and no additional compensation will be allowed therefor.

7-1.14 COOPERATION

Should construction be under way by other forces or by other Contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other Contractors or other forces to the end that any delay or hindrance to their work will be avoided. The City reserves the right to perform, or to

have performed, other or additional work at or near the site (including material sources) at any time, by the use of other forces, without changing the character of the work.

When 2 or more Contractors are employed on related or adjacent work, or obtain materials from the same material source, each shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each Contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by their operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

7-1.15 RELIEF FROM MAINTENANCE AND RESPONSIBILITY

Upon request of the Contractor, the Director, or the Director's designated representative, may relieve the Contractor of the duty of maintaining and protecting certain portions of the work as described below, which have been completed in all respects in accordance with the requirements of the Contract and to the satisfaction of the Engineer, and thereafter except with the Contractor's consent, the Contractor will not be required to do further work thereon. In addition, the action by the Director will relieve the Contractor of responsibility for injury or damage to those completed portions of the work resulting from use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence.

Portions of the work for which the Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include, but are not limited to, the following:

- A. The completion of 0.5-km {0.3-mile} of roadway or 0.5-km {0.3-mile} of one roadway of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection work, lighting and any required traffic control and access facilities.
- B. A bridge or other structure of major importance.
- C. A complete unit of a traffic control signal system or of a highway lighting system.
- D. Non-highway facilities constructed for other agencies.

However, nothing in this Section 7-1.15 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good any defective work or materials found at any time before the formal written acceptance of the entire Contract by the Director. Furthermore, nothing in this section shall obligate the Director to relieve the Contractor for responsibility for any portion of the work and the Director may refuse to relieve the Contractor from responsibility for any reason, at the Director's (or his delagee's) sole discretion.

7-1.16 CONTRACTOR'S RESPONSIBILITY FOR THE WORK AND MATERIALS

The Contractor shall be completely responsible for the care and condition of the project improvements in their entirety until completion of the maintenance period and acceptance by the City. The Contractor shall provide all watchmen, guards, and security devices, as he/she deems necessary.

Until the acceptance of the Contract, the Contractor shall have the charge and care of the work and of

the materials to be used therein (including materials for which the Contractor has received partial payment as provided in Section 9-1.06, "Partial Payments," or materials which have been furnished by the City of Vallejo) and shall bear the risk of injury, loss or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work, except as provided in Sections 7-1.08, "Public Convenience," and 7-1.15, "Relief From Maintenance and Responsibility." The Contractor shall rebuild, repair, restore, and make good all injuries, losses or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except as otherwise expressly provided in Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," and except for those injuries, losses, or damages that are directly and proximately caused by acts of the Federal Government or the public enemy. Where necessary to protect the work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the roadway and erect those temporary structures that are necessary to protect the work or materials from damage. The suspension of the work from any cause whatever shall not relieve the Contractor of the responsibility for the work and materials as herein specified. If ordered by the Engineer, the Contractor shall, at the Contractor's expense, properly store materials which have been partially paid for by the City of Vallejo or which have been furnished by the City of Vallejo. Storage by the Contractor shall be on behalf of the City of Vallejo and the City of Vallejo shall at all times be entitled to the possession of the materials, and the Contractor shall promptly return the materials to the site of the work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

7-1.165 DAMAGE BY STORM, FLOOD, TSUNAMI OR EARTHQUAKE

Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials." In the event damage to the work is caused by a storm, flood, tsunami, earthquake or other natural disaster which constitutes an "Occurrence," as hereinafter defined, the provisions in this Section 7-1.165 shall be applicable, and the Contractor may apply in writing to the Engineer for the City of Vallejo to pay or participate in the cost of repairing damage to the work from that cause or, in lieu thereof, and at the sole discretion of the City of Vallejo, terminate the Contract and relieve the Contractor of further obligation to perform the work, subject to the following:

- A. Occurrence - "Occurrence" shall include tsunamis, earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and storms, floods and other natural disasters as to which the Governor has proclaimed a state of emergency when the damaged work is located within the territorial limits to which the proclamation is applicable or, which were, in the opinion of the Engineer, of a magnitude at the site of the work sufficient to have caused such a proclamation had they occurred in a populated area or in an area in which such a proclamation was not already in effect.
- B. Application by Contractor - The Contractor's written request for the City of Vallejo to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the Occurrence shall be submitted to the Engineer before performing any work other than emergency work, including emergency work necessary to provide for passage of public traffic.
- C. Protecting the Work from Damage - Nothing in this section shall be construed to relieve the Contractor of the responsibility to protect the work from damage. The Contractor shall bear the entire cost of repairing damage to the work caused by the Occurrence which the Engineer determines was due to the failure of the Contractor to comply with the requirements of the Contract Documents, take the best measures to protect the work or exercise the best

engineering and construction practices in the conduct of the work, and those repair costs shall be excluded from consideration under the provisions of this section.

- D. Repair Work - Repair of damaged work under the provisions of this section shall be pursuant to a Contract change order issued hereunder and specifying the repair work to be performed on the damaged facility. The repair work shall consist of restoring the in-place construction (for the purposes of this section erected falsework and formwork shall be considered in-place construction) to the same state of completion to which the work had advanced prior to the occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed, will be considered to be part of the repair work.

The City of Vallejo reserves the right to make changes in the plans and Specifications applicable to the portions of the work to be repaired, and if those changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for the increased costs and the increased cost amount shall not be considered in determining the cost of repair to be borne by the Contractor.

Nothing in this section shall be construed to relieve the Contractor of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and equipment (except erected falsework and formwork) used to perform the work, or to relieve the Contractor of responsibility under Section 7-1.12, "Indemnification and Insurance." The provisions of this section shall not be applicable to the repair of damage caused by an Occurrence to any portion of the work as to which the Contractor has been granted relief from maintenance and responsibility pursuant to Section 7-1.15, "Relief From Maintenance and Responsibility."

- E. Determination of Costs - Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section 7-1.165 will be determined in conformance with the provisions in Section 9-1.03, "Force Account Payment," except there shall be no markup allowance pursuant to Section 9-1.03A, "Work Performed by Contractor," unless the Occurrence that caused the damage was a tsunami or earthquake. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the plans and Specifications shall be borne solely by the Contractor, and those costs shall not be considered in determining the cost of repair under this Subsection E.
- F. Payment for Repair Work - BLANK
- G. Termination of Contract - If the City of Vallejo elects to terminate the Contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."

7-1.17 ACCEPTANCE OF CONTRACT

When the Engineer has made the final inspection as provided in Section 5-1.15, "Final Inspection," and determines that the Contract work has been completed in all respects in accordance with the Contract Documents, the Engineer will recommend that the Director formally accept the Work as complete. Upon satisfactory completion of the Work and following the written acceptance of the Work as such by the Director or the Director's designated representative, the Engineer shall recommend the acceptance of the Contract to the City Council. Upon acceptance of the Contract as complete by the City Council,

the said Council shall cause a Notice of Completion to be filed and recorded in the records of the Solano County Recorder's Office.

7-1.18 PROPERTY RIGHTS IN MATERIALS

Nothing in the Contract shall be construed as vesting in the Contractor any right of property, in the materials used after they have been attached or affixed to the work or soil, or after partial payment has been made as provided in Section 9-1.06, "Partial Payments," for material delivered on the ground or stored subject to or under the control of the City of Vallejo and unused. All the material shall become the property of the City of Vallejo upon being so attached or affixed or upon payment for materials delivered on the ground or stored subject to or under the control of the City of Vallejo and unused, as provided in Section 9-1.06.

7-1.19 RIGHTS IN LAND AND IMPROVEMENTS

Nothing in these Contract Documents shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the City of Vallejo and any owner, former owner, or tenant of the land, structure, or building.

The Contractor shall not occupy City of Vallejo-owned property outside the right of way as shown on the plans or maps, unless the Contractor enters into a rental agreement with the City of Vallejo. The agreement will be based on the fair rental values.

7-1.20 PERSONAL LIABILITY

Neither the Director, the Engineer nor any other officer or authorized employee of the City of Vallejo, nor any officer or employee of any county, city or district shall be personally responsible for any liability arising under or by virtue of the Contract.

7-1.21 REPAIR OF EQUIPMENT

The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment or tools used in or upon the work shall be considered a part of the work to be performed under the Contract and any laborers, workers or mechanics working on the machinery, equipment or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops or machine shops, which have been established and operating on a commercial basis for a period of at least 2 months prior to the award of the Contract, shall be subject to all the requirements relating to labor set forth in these Contract Documents.

7-1.22 MATERIAL PLANTS

The construction, erection and operation of material production, proportioning or mixing plants from which material is used wholly on the Contract or on Contracts with the City of Vallejo shall be considered a part of the work to be performed under the Contract and any laborers, workers or mechanics working on those plants shall be subject to all of the requirements relating to labor set forth in these Contract Documents.

SECTION 8: PROSECUTION AND PROGRESS

8-1.01 SUBCONTRACTING

The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the work under the Contractor's control.

No subcontractor will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the Contract Documents.

The Contractor shall perform, with the Contractor's own organization, Contract work amounting to not less than 50 percent of the original total Contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any designated "Specialty Items" performed by subcontract may be deducted from the original total Contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Engineer's Estimate are preceded by the letters (S) or (S-F), those items are designated as "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the Contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the Contract item bid price, determined from information submitted by the Contractor, subject to acceptance by the Engineer.

Subcontracts shall include provisions that the Contract between the City of Vallejo and the Contractor is part of the subcontract, and that all terms and provisions of the Contract are incorporated in the subcontract. Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to the Engineer upon written request, and shall be provided to the Engineer within three (3) days of the Engineer's request.

Before work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be subcontracted.

Pursuant to the provisions of Section 6109 of the Public Contract Code, the Contractor shall not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City of Vallejo, the subcontractor shall be removed immediately on the request of the Engineer and shall not again be employed on the work.

When any portion of the work which has been subcontracted by the Contractor is not being prosecuted in a satisfactory manner, the subcontract for such work shall be terminated immediately by the Contractor upon written notice from the Engineer, and the subcontractor shall not again be employed on the type of work in which his or her performance was unsatisfactory.

In no case shall the use of subcontractors in any way alter the position of the Contractor or Contractor's sureties with relation to this Contract. When a subcontractor is used, the responsibility for every portion of the work shall still remain with the Contractor.

The Contractor shall pay, when due, all valid claims of subcontractors, suppliers, and workmen with respect to the project.

The mention herein of any specific duty or responsibility imposed upon the Contractor shall not be construed as a limitation or restriction of any other responsibility or duty imposed upon the Contractor by the Contract, said reference being made herein merely for the purpose of explaining the specific duty or responsibility.

8-1.02 ASSIGNMENT

The performance of the Contract may not be assigned, except upon the written consent of the Director. Consent will not be given to any proposed assignment which would relieve the original Contractor or the Contractor's surety of their responsibilities under the Contract nor will the Director consent to any assignment of a part of the work under the Contract.

The Contractor may assign moneys due or to become due the Contractor under the Contract and the assignment will be recognized by the City of Vallejo, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the City of Vallejo and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject and subordinate to claims of the City of Vallejo.

8-1.03 BEGINNING OF WORK

The Contractor shall begin work within 10 calendar days after the first working day stated on the Notice to Proceed, and shall diligently prosecute the same to completion within the time limit provided in the Notice to Contractors.

The Contractor shall notify the Engineer, in writing, of the Contractor's intent to begin work at least 72 hours before work is begun. The notice shall be delivered to the Engineer and shall specify the date the Contractor intends to start. If the project has more than one location of work, a separate notice shall be given for each location.

Should the Contractor begin work in advance of receiving written Notice to Proceed, any work performed by the Contractor in advance of the date of Notice to Proceed shall be considered as having been done by the Contractor at the Contractor's own risk and as a volunteer.

The Notice to Proceed shall constitute authority for the Contractor to enter upon the site of the work and to begin operations, upon condition that the Contractor has strictly complied with all requirements of these Contract Documents, including but not limited to, furnishing all required documentation and certificates of insurance. If Contractor has not provided City of Vallejo with all documents required by these Contract Documents as of the date of the Notice to Proceed, Contractor shall not be allowed on the site of the work or allowed to start work on the Project, notwithstanding the issuance of a Notice to Proceed.

When the Contractor has started work on the Project, the Contractor shall diligently prosecute the work to completion within the time limit provided in the Contract Documents.

The counting of working days shall begin on the date stated as the first working day on the Notice to Proceed, whether or not Contractor is allowed on the work site due to Contractor's failure to furnish City of Vallejo with all documentation required by these Contract Documents. In no event shall there be a period of time greater than thirty (30) days, from the time the Contract forms are first received by the Contractor and the commencement of the contract time, regardless of the receipt or lack thereof by City of Vallejo of all documents required by these Contract Documents. The Contractor shall, on

commencing operations, take all precautions required for public safety and shall observe all the provisions in these Specifications and the special provisions.

8-1.04 (BLANK)

8-1.05 TEMPORARY SUSPENSION OF WORK

The Engineer shall have the authority to suspend the work wholly or in part, for any time period as the Engineer deems necessary, due to unsuitable weather, or to such other conditions considered unfavorable for the suitable prosecution of the work, or for any time period as the Engineer deems necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract, or for any other reason. The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or accepted in writing by the Engineer, or as directed by the Engineer.

In the event that a suspension of work is ordered as provided above, and should that suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the Contract; or by reason of weather conditions being unsuitable for performing any item or items of work, which work, in the sole opinion of the Engineer, could have been performed prior to the occurrence of the unsuitable weather conditions had the Contractor diligently prosecuted the work when weather conditions were suitable; the Contractor, at the Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic during the period of that suspension as provided in Sections 7-1.08, "Public Convenience," and 7-1.09, "Public Safety," and as specified in the special provisions for the work. In the event that the Contractor fails to perform the work above specified, the City of Vallejo will perform that work and the cost thereof will be deducted from moneys due or to become due the Contractor.

In the event that a suspension of work is ordered by the Engineer due to unsuitable weather conditions, and in the sole opinion of the Engineer, the Contractor has prosecuted the work with energy and diligence prior to the time that operations were suspended, the cost of providing a smooth and unobstructed passageway through the work will be paid for as extra work as provided in Section 4-1.03D or, at the option of the Engineer, that work will be performed by the City of Vallejo at no cost to the Contractor.

If the Engineer orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to other conditions considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of work at the time of the suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract, the days on which the suspension order is in effect shall be considered working days if those days are working days within the meaning of the definition set forth in Section 8-1.06, "Time of Completion."

No Contract adjustment will be allowed under the provisions specified in this section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any term or condition of this Contract.

Any Contract adjustment warranted due to suspension of work ordered by the Engineer will be made in the same manner as provided for right of way delays in Section 8-1.09, "Right of Way Delays."

In the event of a suspension of work under any of the conditions set forth in this Section 8-1.05, the suspension of work shall not relieve the Contractor of the responsibilities as set forth in Section 7, "Legal Relations and Responsibility."

8-1.06 TIME OF COMPLETION

The Contractor shall complete all or any designated portion of the work called for under the Contract Documents in all parts and requirements within the time set forth in the Contract Documents.

A working day is defined as any day, except as follows:

- A. Saturdays, Sundays and legal holidays;
- B. Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on that operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations; or
- C. Days on which the Contractor is prevented, by reason of requirements in "Maintaining Traffic" of the special provisions, from working on the controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

Should the Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during that day and the major portion of the day could be considered to be suitable for those construction operations.

The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the Contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the Contract for the preceding week, the number of working days of time extensions being considered or accepted, the number of working days originally specified for the completion of the Contract and the number of working days remaining to complete the Contract and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

8-1.07 LIQUIDATED DAMAGES

It is agreed by the parties to the Contract that in case all the work called for under the Contract in all parts and requirements is not completed within the number of working days as set forth in the Contract Documents, damage will be sustained by the City of Vallejo, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City of Vallejo will sustain in the event of and by reason of the delay; and it is therefore agreed that the Contractor will pay to the City of Vallejo, the sum set forth in the Contract Documents per day for each and every calendar day's delay in completing the work in excess of the number of working days prescribed; and the Contractor agrees to pay the liquidated damages herein provided for, and further agrees that the City of Vallejo may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the Contract Documents for the completion of the work caused by acts of God or of the public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided that the Contractor shall notify the Engineer in writing of the causes of delay within 3 days from the beginning of that delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that the Contractor has made every effort to obtain the materials from all known sources in a diligent and timely manner, and further proof in the form of supplementary progress schedules, that the inability to obtain the materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials," as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the work. The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the Contract. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

Except for the additional compensation provided for in Section 8-1.09, "Right of Way Delays," the Contractor shall have no claim for damage or compensation for any delay or hindrance.

It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in this Section.

8-1.08 TERMINATION OF CONTROL

Whenever, in the opinion of the City of Vallejo, the Contractor has failed to supply an adequate force of labor, equipment, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence specified in the Contract; or if Contractor should refuse or fail to comply with laws, ordinances, or directions of the Engineer; or if Contractor should fail to make prompt payments to subcontractors or for labor or materials; or otherwise be in breach of this Contract; the City of Vallejo may give written notice of at least five (5) calendar days to the Contractor and Contractor's sureties that

if the defaults are not remedied within a time specified in such notice, the Contractor's control over the work will be terminated.

If the Contractor should be adjudged a bankrupt, or make an assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor's insolvency, the City of Vallejo may declare the Contractor's control over the work terminated, and so notify the Contractor and Contractor's sureties.

Upon such termination, the City of Vallejo may take possession, and use all or any part, of the Contractor's materials, tools, equipment, and appliances upon the premises to complete the work; the City of Vallejo assuming responsibility for the final relinquishment of such equipment at the conclusion of the work, or sooner, at its option, in as good condition as when it was taken over, reasonable wear and tear excepted; and the City of Vallejo agrees to pay for such materials and the use of said equipment at a reasonable compensation.

Upon such termination or the City of Vallejo's declaration that the Contractor is in default, the City of Vallejo may direct the surety to complete, or cause to be completed, the Contract work, or the City of Vallejo may direct that all or any part of the work be completed by day labor, or by employment of other contractors on informal contracts, or both. If the City of Vallejo directs the surety to complete or cause to be completed, the Contract work, Contractor's performance bond surety agrees to immediately undertake to complete or cause to be completed, all Contract work. If surety fails or refuses to immediately complete or cause to be completed, all Contract work, surety agrees that damage will be sustained by the City of Vallejo, and that it is and will be impracticable to determine the actual amount of damage by reason of such acts; and the Contractor and surety agree that in addition to any other damages City of Vallejo may sustain and may be recovered pursuant to these Contract Documents, including but not limited to, other liquidated damages for delay, or actual damages, the sum of FIVE HUNDRED DOLLARS (\$500.00) is a reasonable amount to be charged as liquidated damages for each day surety fails or refuses to complete or cause to be completed, all Contract work, and it is therefore agreed that the Contractor and surety will pay to the City of Vallejo this sum, for each and every calendar day surety fails or refuses to complete or cause to be completed, the Contract work; and the Contractor and surety further agree that the City of Vallejo may deduct and retain the amount thereof from any monies due the Contractor under the Contract.

If the Contractor's control over the work is terminated as provided above, the Contractor is not entitled to receive any portion of the amount to be paid under the Contract until it is fully completed. After completion, if the unpaid balance exceeds the sum of the amount expended by the City of Vallejo in finishing the work, plus all damages sustained, or to be sustained, by the City of Vallejo, plus any unpaid claims on account of labor, materials, tools, equipment, or supplies contracted for by the Contractor for the work herein contemplated, the excess not otherwise required by these Contract Documents to be retained shall be paid the Contractor. If the sum so expended exceeds the unpaid balance, the Contractor and Contractor's surety are liable to the City of Vallejo for the amount of such excess. If the surety completes the Contract work as provided above, such surety shall be subrogated to money due under the Contract, and to money which shall become due in the course of completion by the surety. However, Contractor and surety agree that any subrogation rights of surety are subordinate to and inferior to rights of City of Vallejo.

The City of Vallejo reserves the right to terminate the work for its convenience upon written notice to Contractor. In such event, the Contractor shall be paid its reasonable costs for that portion of the work performed to the date of termination, reasonable costs associated with demobilization, plus fifteen percent (15%) of all such costs for overhead and profit.

8-1.09 RIGHT OF WAY DELAYS

If, through the failure of the City of Vallejo to acquire or clear right of way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor that amount that the Engineer may find to be a fair and reasonable compensation for that part of the Contractor's actual loss, that, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, with the following exceptions:

- A. The right of way delay factor for each classification of equipment shown in the State Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is a part of the Contract, will be applied to that equipment rental rate.
- B. The time for which the compensation will be paid will be the actual normal working time during which the delay condition exists, but in no case will exceed 8 hours in any one day.
- C. The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the delay, except that when rental of equipment is paid for under the provisions in Section 9-1.03A (3b), "Equipment not on the Work," no payment will be made for right of way delays in conformance with the provisions in this Section 8-1.09.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, cost of extra moving of equipment and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section 8-1.09 and compensation for idle time of workers will be determined as provided in Section 9-1.03A(1), "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 4-1.03D.

If performance of the Contractor's work is delayed as the result of the failure of the City of Vallejo to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

8-1.10 UTILITY AND NON-HIGHWAY FACILITIES

Attention is directed to the possible existence of underground facilities and utilities not indicated in the Contract Documents and to the possibility that utilities may be in a location different from that which is indicated in the Contract Documents. The Contractor shall ascertain the exact location of all utilities, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities prior to doing work.

If the Contractor cannot locate an underground facility or utility whose presence is indicated in the Contract Documents after a diligent search and investigation, the Contractor shall immediately so notify the Engineer in writing. If the facility for which the notice is given is in a substantially different location from that indicated on the plans or in the special provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section 4-1.03D.

If the Contractor discovers utilities not indicated in the Contract Documents, the Contractor shall

immediately give the Engineer and the Utility Company written notification of the existence of those facilities. The utilities shall be located and protected from damage as directed by the Engineer, and the cost of that work will be paid for as extra work as provided in Section 4-1.03D. The Contractor shall, if directed by the Engineer, repair any damage which may occur to the utilities. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care or to comply with the terms of the Contract Documents, will be paid for as extra work as provided in Section 4-1.03D. Damage due to the Contractor's failure to exercise reasonable care or comply with the Contract Documents shall be repaired at the Contractor's cost and expense.

Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the improvement, and the plans and Specifications do not provide that the facility is to be rearranged, the Engineer will provide for the rearrangement of the facility by other forces or the rearrangement shall be performed by the Contractor and will be paid for as extra work as provided in Section 4-1.03D.

Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate the Contractor's construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in the special provisions, the Contractor shall make whatever arrangements are necessary with the owners of the utility or other non-highway facility for the rearrangement and bear all expenses in connection therewith.

Any delays to the Contractor's operations as a direct result of utility or other non-highway facilities not being rearranged as provided in this Section 8-1.10, due to a strike or labor dispute, will entitle the Contractor to an extension of time as provided in Section 8-1.07, "Liquidated Damages." The Contractor shall be entitled to no other compensation for that delay.

8-1.11 TERMINATION OF CONTRACT

The Contract may be terminated by the Director when termination is authorized by Section 7-1.125, "Legal Actions Against the City of Vallejo," Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," or by other provisions of the Contract which authorize termination. The City of Vallejo also reserves the right to terminate the Contract at any time upon a determination by the Director that termination of the Contract is in the best interest of the City of Vallejo.

If the Director elects to terminate the Contract, the termination of the Contract and the total compensation payable to the Contractor shall be governed by the following:

- A. The Engineer will issue the Contractor a written notice signed by the Director, specifying that the Contract is to be terminated. Upon receipt of the written notice, the Contractor will be relieved of further responsibility for damage to the work (excluding materials) as specified in Section 7-1.16, "Contractor's Responsibility for the Work and Materials," and, except as otherwise directed in writing by the Engineer, the Contractor shall:
 - 1. Stop all work under the Contract except that specifically directed to be completed prior to acceptance.
 - 2. Perform work the Engineer deems necessary to secure the project for termination.
 - 3. Remove equipment and plant from the site of the work.

4. Take action that is necessary to protect materials from damage.
 5. Notify all subcontractors and suppliers that the Contract is being terminated and that their Contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
 6. Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location, and such other information as the Engineer may request.
 7. Dispose of materials not yet used in the work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City of Vallejo with good title to all materials purchased by the City of Vallejo hereunder, including materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and with bills of sale or other documents of title for those materials.
 8. Subject to the prior written acceptance of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City of Vallejo all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
 9. Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract.
 10. Take other actions directed by the Engineer.
- B. Acceptance of the Contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:
1. The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and for materials furnished by the City of Vallejo for use in the work and unused shall terminate when the Engineer certifies that those materials have been stored in the manner and at the locations the Engineer has directed.
 2. The Contractor's responsibility for damage to materials purchased by the City of Vallejo subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of those materials has been taken by the City of Vallejo.

When the Engineer determines that the Contractor has completed the work under the Contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Engineer will recommend that the Director formally accept the Contract.

- C. Termination of the Contract shall not relieve the Contractor or surety of their obligation for any claims arising out of the work performed.

D. The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

1. The reasonable cost to the Contractor, without profit, for all work performed under the Contract, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the Contract is terminated under the authority of Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," for the cost of materials damaged by the "occurrence."

When, in the opinion of the Engineer, the cost of a Contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed.

2. A reasonable allowance for profit on the cost of the work performed as determined under Subsection (1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed 4 percent of the cost.
3. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City of Vallejo or otherwise disposed of as directed by the Engineer.
4. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.

SECTION 9: MEASUREMENT AND PAYMENT

9-1.01 (not used)

9-1.015 FINAL PAY ITEMS

When an item of work is designated as (F) or (S-F) in the Engineer's Estimate, the estimated quantity for that item of work shall be the final pay quantity, unless the dimensions of any portion of that item are revised by the Engineer, or the item or any portion of the item is eliminated. If the dimensions of any portion of the item are revised, and the revisions result in an increase or decrease in the estimated quantity of that item of work, the final pay quantity for the item will be revised in the amount represented by the changes in the dimensions. If a final pay item is eliminated, the estimated quantity for the item will be eliminated. If a portion of a final pay item is eliminated, the final pay quantity will be revised in the amount represented by the eliminated portion of the item of work.

The estimated quantity for each item of work designated as (F) or (S-F) in the Engineer's Estimate shall be considered as approximate only, and no guarantee is made that the quantity which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantity based on computations

does not equal the estimated quantity.

In case of discrepancy between the quantity shown in the Engineer's Estimate for a final pay item and the quantity or summation of quantities for the same item shown on the plans, payment will be based on the quantity shown in the Engineer's Estimate.

Under no circumstances will Contractor be entitled to payment for any final pay quantity that is greater than the unit quantity price for the final pay quantity item set forth in the proposal form.

9-1.02 SCOPE OF PAYMENT

The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work required under the Contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the Director and for all risks of every description connected with the prosecution of the work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the Contract; and for completing the work according to the Contract Documents.

No compensation will be made in any case for loss of anticipated profits.

9-1.03 FORCE ACCOUNT PAYMENT

When extra work is to be paid for on a force account basis, the labor, materials and equipment used in the performance of that work shall be subject to the review and acceptance of the Engineer and compensation will be determined as follows:

9-1.03A WORK PERFORMED BY CONTRACTOR

The Contractor will be paid the direct costs for labor, materials and equipment used in performing the work determined as hereinafter provided in Sections 9-1.03A(1), "Labor," 9-1.03A(2), "Materials," and 9-1.03A(3), "Equipment Rental," except where agreement has been reached to pay in conformance with the provisions in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs computed as provided in Sections 9-1.03A(1), "Labor," 9-1.03A(2), "Materials," and 9-1.03A(3), "Equipment Rental," there will be added a markup of 33 percent to the cost of labor, 15 percent to the cost of materials and 15 percent to the equipment rental.

The above markups shall constitute full compensation for all overhead costs which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in Sections 9-1.03A(1), "Labor," 9-1.03A(2), "Materials," and 9-1.03A(3), "Equipment Rental." The total payment made as provided above shall be deemed to be the actual cost of the work and shall constitute full compensation therefor.

When extra work to be paid for on a force account basis is performed by a subcontractor, approved in conformance with the provisions in Section 8-1.01, "Subcontracting," an additional markup of 5 percent will be added to the total cost of that extra work including all markups specified in this Section 9-1.03A. The additional 5 percent markup shall reimburse the Contractor for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a

subcontractor.

9-1.03A(1) LABOR

The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor, subcontractor or other forces, will be the sum of the following:

9-1.03A(1A) ACTUAL WAGES

The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes.

9-1.03A(1B) LABOR SURCHARGE

To the actual wages, as defined in Section 9-1.03A(1a), will be added a labor surcharge set forth in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished. The labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 9-1.03A(1A) and subsistence and travel allowance as specified in Section 9-1.03A(1C).

9-1.03A(1C) SUBSISTENCE AND TRAVEL ALLOWANCE

The actual subsistence and travel allowance paid to the workers.

9-1.03A(2) MATERIALS

The City of Vallejo reserves the right to furnish any materials it deems advisable, and the Contractor shall have no claims for costs and markup on those materials.

Only materials furnished by the Contractor and necessarily used in the performance of the work will be paid for. The cost of those materials will be the cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:

9-1.03A(2A)

If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the City of Vallejo notwithstanding the fact that the discount may not have been taken.

9-1.03A(2B)

If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of the materials.

9-1.03A(2C)

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the price paid by the purchaser for similar materials furnished from

that source on Contract items or the current wholesale price for those materials delivered to the jobsite, whichever price is lower.

9-1.03A(2D)

If the cost of the materials is, in the opinion of the Engineer, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the jobsite, less any discounts as provided in Section 9-1.03A(2a).

9-1.03A(2E)

If the Contractor does not furnish satisfactory evidence of the cost of the materials from the actual supplier thereof within 60 days after the date of delivery of the material or within 15 days after acceptance of the Contract, whichever occurs first, the City of Vallejo reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in the quantities concerned delivered to the location of the work, less any discounts as provided in Section 9-1.03A(2a).

9-1.03A(3) EQUIPMENT RENTAL

Full compensation for all equipment use and/or rental costs shall be considered as included in the Contract price, and no additional compensation, other than as described in Section 9-1.03A(3), will be allowed therefor.

All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used.

Equipment owned by the Contractor, required to perform force account work, and not already on the job site shall only be paid for actual hours of usage as documented on daily extra work reports and the cost of mobilization to bring to the job site. The Engineer shall determine if equipment not on the job site is required to be mobilized to perform extra work.

If it is deemed necessary by the Engineer to use equipment not listed in the Labor Surcharge and Equipment Rental Rates publication to complete extra work, a suitable rental rate for that equipment will be established by the Engineer. The Contractor shall furnish all cost data which might assist the Engineer in the establishment of the rental rate. If the rental rate established by the Engineer is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

The rental rates paid for extra work as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

Operators of rented equipment will be paid for as provided in Section 9-1.03A(1), "Labor."

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

Individual pieces of equipment or tools not listed in the Labor Surcharge and Equipment Rental Rate

publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

9-1.03A(3A) EQUIPMENT ON THE WORK

The rental time to be paid for equipment on the work shall be the time the equipment is in operation on the extra work being performed, and in addition, shall include the time required to move the equipment to the location of the extra work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time will not be paid for if the equipment is used at the site of the extra work on other than the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra work on other than the extra work.

The following shall be used in computing the rental time of equipment on the work:

- A. When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5-hour of operation.
- B. When daily rates are listed, less than 4 hours of operation shall be considered to be 0.5-day of operation.

9-1.03A(3B) EQUIPMENT NOT ON THE WORK

When extra work, other than work specifically designated as extra work in the plans and specifications, is to be paid for on a Force Account basis and the Engineer determines that such extra work requires the Contractor to move on to the work equipment which could not reasonably have been expected to be needed in the performance of the contract, the Engineer may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following additional conditions:

- A. The Engineer shall specifically approve the necessity for the use of particular equipment on such work.
- B. The Contractor shall establish to the satisfaction of the Engineer that such equipment cannot be obtained from his/her normal equipment source or sources and those of his/her subcontractors.
- C. The Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for such equipment from his/her proposed source is reasonable and appropriate for the expected period of use.
- D. The Engineer shall approve the equipment source and the equipment rental rate to be paid by the City of Vallejo before the Contractor begins work involving the use of said equipment.

For the use of equipment moved in on the work and used exclusively for extra work paid for on a force account basis, the Contractor will be paid the rental rates listed in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Contract, or determined as provided in Section 9-1.03A(3) and for the cost of transporting the equipment to the location of the work and its return to its original location, all in accordance with the following provisions:

- A. The original location of the equipment to be hauled to the location of the work shall be agreed to by the Engineer in advance.
- B. The City of Vallejo will pay the costs of loading and unloading the equipment.
- C. The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
- D. The rental period shall begin at the time the equipment is unloaded at the site of the extra work, shall include each hour that the equipment is actually used at the site of the extra work, excluding Saturdays, Sundays and legal holidays unless the equipment is used to perform the extra work on those days, and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of the equipment. The rental time to be paid for equipment not on the work shall be the time the equipment is actually in operation on the extra work being performed and in accordance with the following:

The hours to be paid for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 hours less the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5-hour of operation.

When daily rates are listed, less than 4 hours of operation shall be considered to be 4 hours of operation. No payment will be made if the equipment is not used. If the equipment is used more than 4 hours of operation, payment will be made for one day.

- E. Should the Contractor desire the return of the equipment to a location other than its original location, the City of Vallejo will pay the cost of transportation in accordance with the above provisions, provided the payment shall not exceed the cost of moving the equipment to the work.
- F. Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the work in any other way than upon extra work paid for on a force account basis.

9-1.03A(3C) OWNER-OPERATED EQUIPMENT

When owner-operated equipment is used to perform extra work to be paid for on a force account basis, the Contractor will be paid for the equipment and operator, as follows:

- A. Payment for the equipment will be made in conformance with the provisions in Section 9-1.03A(3), "Equipment Rental."
- B. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the project or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers and location of the work, whether or not the owner-operator is actually covered by an agreement. A labor surcharge will be added to the cost of labor described herein, in conformance with the provisions in Section 9-1.03A(lb), "Labor Surcharge."

- C. To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Section 9-1.03A, "Work Performed by Contractor."

9-1.03A(3D) DUMP TRUCK RENTAL

Dump truck rental shall conform to the provisions in Sections 9-1.03A(3), "Equipment Rental," 9-1.03A(3a), "Equipment on the Work," and 9-1.03A(3b), "Equipment not on the Work," except as follows:

Fully maintained and operated rental dump trucks used in the performance of extra work paid for on a force account basis will be paid for at the same hourly rate paid by the Contractor for use of fully maintained and operated rental dump trucks in performing Contract item work.

In the absence of Contract item work requiring dump truck rental, the Engineer will establish an hourly rental rate to be paid. The Contractor shall provide the Engineer with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks.

The provisions in Section 9-1.03A(1), "Labor," shall not apply to operators of rented dump trucks.

The rental rates listed for dump trucks in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates shall not apply.

To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup of 15 percent. An additional markup of 5 percent will be added by reason of performance of the work by a subcontractor. No separate markup will be made for labor.

The provisions in Section 9-1.03A(3c), "Owner-Operated Equipment," shall not apply to dump truck rentals.

9-1.03B WORK PERFORMED BY SPECIAL FORCES OR OTHER SPECIAL SERVICES

When the Engineer and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of the Contractor's subcontractors, that service or extra work item may be performed by a specialist.

9-1.03C RECORDS

The Contractor and all subcontractors shall maintain records in such a manner as to provide a clear distinction between the direct costs of extra work paid and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily extra work reports, either on forms furnished by the City of Vallejo or on computerized facsimiles of the City of Vallejo's forms acceptable to the Engineer, for each day's extra work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall state the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor or other forces, except for charges described in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names, identifications, and classifications of all workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. The invoices shall be

submitted with the daily extra work reports, or if not available, the invoices shall be submitted within 30 days after the submittal of the daily extra work report or 30 days after the date of delivery of the material, whichever occurs first. Contractor waives payment for material charges not substantiated by valid copies of vendor's invoices submitted within the times provided.

Daily extra work reports shall be signed by the Contractor, and shall be submitted to the City within 24 hours of the day work was performed. Daily extra work reports shall be signed by the designated representative of the City to acknowledge the labor hours, materials, and equipment used to perform the work. Signature by the City's representative does not constitute approval for payment. All daily extra work reports are subject to review and approval by the Engineer for conformance to the Contract Documents prior to payment. The City reserves the right to make adjustments to the amount to be paid for extra work based upon daily extra work reports. Contractor waives payment for that portion of Force Account work in which a daily extra work report has not been signed by the City's designated representative and/or submitted to the City within the time specified above.

The Engineer will compare the Engineer's records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, the reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit by the City of Vallejo.

The Contractor's and all subcontractors' records pertaining to the Project shall be open to inspection or audit by representatives of the City of Vallejo, during the life of the Contract and for a period of not less than 3 years after the date of acceptance thereof, and the Contractor and all subcontractors shall retain those records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to ensure that the cost records of those other forces will be open to inspection and audit by representatives of the City of Vallejo on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than 60 days after the acceptance date of the Contract, the Contractor will be given a reasonable notice of the time when the audit is to begin.

9-1.03D PAYMENT

Payment as provided in Sections 9-1.03A, "Work Performed by Contractor," and 9-1.03B, "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of work paid for on a force account basis and no additional compensation will be allowed therefor. The payment will be made in conformance with the provisions in Section 9-1.06, "Partial Payments."

The Engineer's receipt of a proposed progress schedule and monthly updated progress schedules, all in strict compliance with these Contract Documents shall be conditions precedent to the Engineers acceptance of the Contractor's periodic pay requests and/or the City of Vallejo's obligation to pay Contractor.

9-1.04 (BLANK)

9-1.05 STOP NOTICES

The City of Vallejo, may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 3179 et seq. of the Civil Code. In cases where the contractor chooses to Bond around the Stop Notice, the Bond shall be of a form approved by the

City.

9-1.06 PARTIAL PAYMENTS

The City of Vallejo, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of work done and acceptable materials furnished, provided the acceptable materials are listed as eligible for partial payment as materials in the special provisions and are furnished and delivered by the Contractor on the ground and not used or are furnished and stored for use on the Contract, if the storage is within the City of Vallejo and the Contractor furnishes evidence satisfactory to the Engineer that the materials are stored subject to or under the control of the

City of Vallejo, to the time of the estimate, and the value thereof. The estimate shall also include any amounts payable for mobilization. Daily extra work reports furnished by the Contractor less than 5 calendar days, not including Saturdays, Sundays and legal holidays, prior to the preparation of the monthly progress estimate shall not be eligible for payment until the following month's estimate.

The amount of any material to be considered in making an estimate will in no case exceed the amount thereof which has been reported by the Contractor to the Engineer on City of Vallejo-furnished forms properly filled out and executed, including accompanying documentation as therein required, less the amount of the material incorporated in the work to the time of the estimate. Only materials to be incorporated in the work will be considered. The estimated value of the material established by the Engineer will in no case exceed the Contract price for the item of work for which the material is furnished.

Unless otherwise approved by the Engineer in writing, Contractor shall submit to Engineer on or before the tenth (10th) day of the month, an itemized application for payment for the cost of the work in permanent place, which has been completed in strict accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The application for payment shall be prepared in a form acceptable to Engineer, and shall contain itemized amounts in accordance with the Contract Documents. The applications for payment shall not include requests for payment on account of changes which have not been authorized by Change Orders, or for amounts Contractor does not intend to pay a subcontractor because of a dispute or other reason.

If requested by the City of Vallejo, an application for payment shall be accompanied by a summary showing payment that will be made to subcontractors covered by such application, and unconditional waivers and releases of claims and stop notices, from each subcontractor listed in the preceding application for payment covering sums disbursed pursuant to that preceding application for payment.

Contractor warrants that upon submittal of an application for payment, all work has been performed in strict compliance with the Contract Documents, and all work for which certificates of payment have been previously issued and payment has been received from City of Vallejo, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, subcontractors or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment related to the work.

Payment of all, or any part, of an application for payment may be withheld, a certificate of payment may be withheld, all or part of a previous certificate for payment may be nullified and that amount withheld from a current certificate for payment, or the City of Vallejo may withhold from payment, on account of any of the following:

Defective work not remedied;

Third-party claims against Contractor or City of Vallejo arising from the acts or omissions of Contractor or subcontractors;

Stop notices;

Failure of Contractor to make timely payments due to subcontractors for material or labor;

A reasonable doubt that the work can be completed for the balance of the Contract price then unpaid;

Damage to the City of Vallejo or others for which Contractor is responsible;

Reasonable evidence that the work cannot be completed within the Contract time, and the unpaid balance of the Contract price would not be adequate to complete the work and cover City of Vallejo's damages for the anticipated delay;

Failure of Contractor to maintain, update, and submit record documents;

Failure of Contractor to submit schedules or their updates as required by the Contract Documents;

Performance of the work by Contractor without properly processed shop drawings;

Liquidated damages assessed;

Any other failure of Contractor to perform its obligations under the Contract Documents.

By resolution of the City of Vallejo's City Council, a fund has been established, money appropriated in the current budget, and assigned to the account(s) which is/are the sole source(s) of funds available for payment of the Contract price. Contractor understands and agrees that Contractor will be paid only from this special fund and if for any reason this fund is not sufficient to pay Contractor, Contractor will not be entitled to payment. The availability of money in this fund, and City of Vallejo's ability to draw from this fund, are conditions precedent to City of Vallejo's obligation to make payments to Contractor.

Within thirty (30) days of receipt of an approved certificate for payment, properly executed by the Contractor, City of Vallejo's Engineer and Director, City of Vallejo agrees to pay Contractor, subject to all of the terms and conditions of these Contract Documents, an amount equal to ninety five percent (95%) of the sum of the following (less any amounts withheld as permitted by the Contract Documents):

Cost of the work in permanent place as of the end of the preceding month as set forth and approved on the certificate for payment; and

Less amounts previously paid.

9-1.065 PAYMENT OF WITHHELD FUNDS

Upon the Contractor's request, the City of Vallejo will make payment of funds withheld from progress payments to ensure performance of the Contract if the Contractor deposits in escrow with the City of Vallejo, or with a bank acceptable to the City of Vallejo, securities equivalent to the amount withheld. The Contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Upon satisfactory completion of the Contract, the securities shall be

returned to the Contractor.

Alternatively, upon the Contractor's request, the City of Vallejo will make payment of retentions earned directly to the escrow agent. The Contractor may direct the investment of the payments into securities, and the Contractor shall receive the interest earned on the investments upon the same terms provided for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the City of Vallejo.

Alternatively, and subject to the acceptance by the City of Vallejo, the payment of retentions earned may be deposited directly with a person licensed under Division 6 (commencing with Section 17000) of the Financial Code as the escrow agent. Upon written request of an escrow agent that has not been approved by the City of Vallejo under subdivision (c) of Section 10263 of the Public Contract Code, the City of Vallejo will provide written notice to that escrow agent within 10 business days of receipt of the request indicating the reason or reasons for not approving that escrow agent. The payments will be deposited in a trust account with a federally chartered bank or savings association within 24 hours of receipt by the escrow agent. The Contractor shall not place any retentions with the escrow agent in excess of the coverage provided to that escrow agent pursuant to subdivision (b) of Section 17314 of the Financial Code. In all respects not inconsistent with subdivision (c) of Section 10263 of the Public Contract Code, the remaining provisions of Section 10263 of the Public Contract Code shall apply to escrow agents acting pursuant to subdivision (c) of Section 10263 of the Public Contract Code.

Securities eligible for investment shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit or any other security mutually agreed to by the Contractor and the City of Vallejo.

The escrow agreement used pursuant to this Section 9-1.065 shall be substantially similar to the "Escrow Agreement for Security Deposits In Lieu of Retention" in Section 10263 of the Public Contract Code, deemed as incorporated herein by reference.

The Contractor shall obtain the written consent of the surety to the agreement.

9-1.07 PAYMENT AFTER ACCEPTANCE

After the work has been accepted in writing by the Director, as provided in Section 7-1.17, "Acceptance of Contract," payments will be made to the Contractor subject to the provisions in this Section 9-1.07.

9-1.07A PAYMENT PRIOR TO PROPOSED FINAL ESTIMATE

After acceptance of the work by the Director, the Engineer will make an estimate of the total amount of work done under the Contract and the City of Vallejo will make a final monthly payment pending issuance of the proposed final estimate. The City of Vallejo will pay the balance thereon found to be due after deduction of all previous payments, all amounts to be kept or retained under the provisions of the Contract and those further amounts that the Engineer determines to be necessary pending issuance of the proposed final estimate and payment thereon.

9-1.07B FINAL PAYMENT

After written acceptance of Work as complete by the Director, or the Director's designee, the Engineer will prepare and issue the Contractor a proposed final estimate in writing of the total amount payable to the Contractor, including therein an itemization of the total amount, segregated as to Contract item

quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the Contract. All prior estimates and payments shall be subject to correction in the proposed final estimate.

The Contractor shall submit written approval of the proposed final estimate or a written statement of all claims arising under or by virtue of the Contract so that the Engineer receives the written approval or statement of claims no later than close of business of the thirtieth day after receiving the proposed final estimate. If the thirtieth day falls on a Saturday, Sunday or legal holiday, then receipt of the written approval or statement of claims by the Engineer shall not be later than close of business of the next business day. No claim will be considered that was not included in the written statement of claims, nor will any claim be allowed as to which a notice or protest is required unless the Contractor has strictly complied with the notice or protest requirements of the Contract Documents.

On the Contractor's approval, or if the Contractor files no claim within the specified period of 30 days, the Engineer will issue a final estimate in writing in accordance with the proposed final estimate submitted to the Contractor. The City of Vallejo will pay any remaining moneys unpaid and found to be due in the proposed final estimate 35 days after the recordation of the Notice of Completion in the records of the Solano County Recorder's Office as per Section 7-1.17, "Acceptance of Contract". That final estimate and payment thereon shall be conclusive and binding against Contractor on all questions relating to the amount of work done and the compensation payable therefor.

If the Contractor within the specified period of 30 days files claims, the Engineer will issue a semifinal estimate in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the City of Vallejo will pay the sum so found to be due. The semifinal estimate and payment thereon shall be conclusive and binding against the Contractor on all questions relating to the amount of work done and the compensation payable therefor, except insofar as affected by the claims filed within the time and in the manner required hereunder.

9-1.07C CLAIMS

A. General. A "Claim" means a written demand or written assertion by Contractor to adjust, alter, modify, or otherwise change the Contract price or the Contract time, or both. All claims filed hereunder shall strictly comply with all requirements of the Contract Documents.

In order to qualify as a "Claim," the written demand must state that it is a claim submitted under Section 9-1.07C of the Contract Documents. A letter, voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim under the Contract Documents. If such a request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.

A Claim must be stated with specificity, including identification of the event or occurrence giving rise to the Claim, the date of the event, and the asserted affect on the Contract price and the Contract time, if any. The Claim shall include adequate supporting data. Adequate supporting data for a Claim for an adjustment of the Contract time shall include scheduling data demonstrating the impact of the event on the controlling operation and completion of the Project. Adequate supporting data for a Claim for an adjustment in the Contract price shall include a detailed cost breakdown of items included within the Claim and documentation supporting each item of cost.

Notwithstanding and pending the resolution of any Claim, the Contractor shall diligently

prosecute the disputed work to final completion of the work. Contractor shall impose the Claim notice and documentation requirements in this Contract on Contractor's subcontractors of all tiers, and require them to submit to the Contractor all Claims against Contractor and/or City within the times and containing the documentation required by these provisions. The Claim notice and documentation procedure described in these provisions applies to all claims and disputes arising under the Contract Documents, whether or not specifically referred to in any specific portion of the Contract.

If additional information or details are required by the Engineer to determine the basis and amount of any Claims, the Contractor shall furnish additional information or details so that the additional information or details are received by the Engineer no later than the fifteenth day after receipt of the written request from the Engineer. If the fifteenth day falls on a Saturday, Sunday or legal holiday, then receipt of the information or details by the Engineer shall not be later than close of business of the next business day. Contractor understands and agrees that failure to submit the information and details to the Engineer within the time specified shall be result in Contractor waiving that Claim.

The Contractor and all subcontractors shall keep full and complete records of the costs and additional time incurred for any work for which a Claim for additional compensation is made. The Engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the Engineer to determine the facts or contentions involved in the claims. Contractor agrees that failure to permit access to those records waives Contractor's Claims.

The City of Vallejo, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to Contractor and subcontractors' books, documents and accounting records, including but not limited to, bid worksheets, bids, subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, project correspondence including but not limited to all correspondence between Contractor and its sureties and subcontractors/vendors, project files, scheduling information, and other records of the Contractor and all subcontractors directly or indirectly pertinent to the work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order, prospective or completed, or any claim for which additional compensation has been requested or claim has been tendered. Such access shall include the right to examine and audit such records, and make excerpts, transcriptions, and photocopies at City of Vallejo's cost.

The parties agree that in the event Contractor or any subcontractor fails to comply with this section, it would be difficult for the City of Vallejo to determine its actual damages; therefore, Contractor agrees to pay City of Vallejo, as liquidated damages, the sum of Two hundred fifty dollars (\$250.00), which Contractor agrees is reasonable under the circumstances, for each and every calendar day which Contractor or a subcontractor fails or refuses to provide the City of Vallejo, access to the materials specified in this section.

B. Disputes

Contract Interpretation Disputes: Should it appear to the Contractor that the work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract

Documents, the Contractor shall give written notice to the City of Vallejo. The Contractor shall bear all costs incurred in the giving of such notice.

All issues regarding the interpretation of the plans or specifications shall be referred to the City for interpretation. The City shall have the right but not the obligation to affirm or disaffirm any interpretation of the plans or specifications, which affirmation or disaffirmance shall be final. If the Contractor should disagree with the City's decision, the Contractor's sole and exclusive remedy is to file a Claim in accordance with these provisions.

Work Disputes: Should any dispute arise under the Contract Documents respecting the true value of any work performed, the implementation of the Work required by the Contract Documents, any Work omitted, any extra work which the Contractor may be required to perform or time extensions, respecting the size of any payment to the Contractor during the performance of the Contract Documents, or of compliance with Contract Documents procedures, the dispute shall be decided by the City of Vallejo and its decision shall be final and conclusive. If the Contractor disagrees with the City's decision, the Contractor's sole and exclusive remedy is to file a claim in accordance with these provisions.

C. Delays. As used herein, the following terms shall have the following meanings:

"Excusable Delay" means any delay of the completion of the Project beyond the expiration of the Contract time caused by conditions beyond the control and without the fault or negligence of the Contractor such as strikes, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions in which the work cannot continue. The financial inability of the Contractor or any subcontractor and default of any subcontractor, without limitation, shall not be deemed conditions beyond the Contractor's control. An Excusable Delay may entitle the Contractor to an adjustment in the Contract time.

"Compensable Delay" means any delay of the completion of the work beyond the expiration date of the Contract time caused by the gross negligence or willful acts of the City of Vallejo, and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract time and/or Contract price. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

"Inexcusable Delay" means any delay of the completion of the Project beyond the expiration of the Contract time resulting from causes other than those listed above. An Inexcusable Delay shall not entitle the Contractor to an extension of the Contract time or an adjustment of the Contract price.

The Contractor may make a Claim for an extension of the Contract time, for an Excusable Delay or a Compensable Delay, subject to the following:

1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.
2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract time shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Inexcusable Delay.

3. If an Inexcusable Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension in the Contract time shall be the number of days, if any, by which the number of days determined pursuant to Subparagraph (a) exceeds the number of days of the Inexcusable Delay.
4. For a Compensable Delay, the Contractor shall only be entitled to an adjustment in the Contract price in an amount equal to the actual additional labor costs, material costs, and unavoidable equipment costs incurred by the Contractor as a result of the Compensable Delay, plus the actual additional wages or salaries and fringe benefits and payroll taxes of supervisory and administrative personnel necessary and directly employed at the Project site for the supervision of the work during the period of Compensable Delay. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. There shall be no Compensable Delay unless the event or occurrence giving rise to the Compensable Delay extends the actual completion of the Project past the Contract time.

The parties agree that the City of Vallejo's exercise of its right to order changes in the work, regardless of the extent and number of changes, or to suspend the work, is within the contemplation of the parties and shall not be the basis for any Claim for Compensable Delay. The rights of the Contractor to adjustments of the Contract time and the Contract sum, based on changes ordered in the work or suspension of the work, shall be governed by this provision.

Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, Contractor shall not cause any delay, cessation, or termination in or of Contractor's performance of the work, but shall diligently proceed with performance of the work in accordance with the Contract Documents.

Contractor agrees that the daily Contractor Delay Damages as set forth in the Proposal Form shall be full compensation to Contractor, all subcontractors and anyone for whom they may be legally responsible, for each day of delay that may be caused by City of Vallejo or anyone for whom City of Vallejo is legally responsible, including but not limited to, extended field costs, extended home overhead costs, impact, inefficiency, unabsorbed home office overhead, underabsorbed home office overhead, hindrance, disruption or any other damage arising from delay, no matter how characterized and regardless of the cause, extent or duration of the delay. Inclusion of Contractor Delay Damages within the Proposal Form is solely for the purpose of determining the low bidder and establishing the City of Vallejo's maximum daily liability as a result of City of Vallejo delays to Contractor, if any, and City of Vallejo has no obligation to pay any daily Contractor Delay Damages except as provided for in these Contract Documents for Compensable Delays. In the event that City of Vallejo becomes liable to Contractor for compensable delays, City of Vallejo agrees to pay Contractor the daily Contractor Delay Damages set forth in the Proposal Form or Contractor's actual daily delay damages, whichever is less, for each day of Compensable Delay as provided for by these Contract Documents.

- D. Claim Procedures. Should any clarification, determination, action or inaction by the City, Work, or any event, in the opinion of the Contractor, exceed the requirements of or not comply with the Contract Documents, or otherwise result in the Contractor seeking additional compensation in time or money for any reason (collectively "Disputed Work"), then the Contractor and the City shall make good faith attempts to resolve informally any and all such issues and/or disputes. The Contractor must file a written Notice of Potential Claim with the City on the form provided in the Contract Documents before commencing the Disputed Work, or within seven (7) calendar

days after Contractor's first knowledge of the Disputed Work, whichever is earlier, stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract Documents. If a written Notice of Potential Claim is not filed within this time period, or if the Contractor proceeds with the Disputed Work without first having filed the notice required by these provisions, the Contractor shall waive any rights to further claim on the specific issue.

The City will review the Contractor's timely Notice of Potential Claim and provide a decision. The City may require supplemental information from the Contractor to clarify that contained in the Notice of Potential Claim. If, after receiving the City's decision, the Contractor disagrees with the decision, the Contractor shall so notify the City, in writing, within seven (7) calendar days after receiving the decision, that a formal Claim will be filed. The Contractor shall submit the Claim in the form specified herein and all arguments, justification, costs or estimates, schedule analyses, and detailed documentation supporting the Contractor's position within thirty (30) calendar days after receiving the City's decision on the Notice of Potential Claim. The Contractor's failure to furnish notification within seven (7) calendar days and all justifying documentation within thirty (30) calendar days will result in the Contractor waiving all rights to the subject Claim.

If Disputed Work persists longer than thirty (30) calendar days after receiving the City's decision on the Notice of Potential Claim, then the Contractor shall, every thirty (30) calendar days until the Disputed Work ceases, submit to the City a document titled "Claim Update" which shall update and quantify all elements of the Claim as completely as possible. The Contractor's failure to submit a Claim Update or to quantify all costs and impacts every thirty (30) days shall result in waiver of that portion of the Claim for that thirty (30) day period. Claims or Claim Updates stating that damages will be determined at a later date shall not comply with the requirements of these provisions and shall result in the Contractor waiving such Claim(s) and/or Claim Updates.

All Claims must be submitted to Engineer before the issuance of the final estimate. Contractor hereby expressly waives all Claims not submitted on or before date of issuance of final estimate. Upon receipt of the Contractor's formal Claim including all arguments, justifications, costs or estimates, schedule analyses, and documentation supporting the Contractor's position as previously stipulated, the City or its designate will review the Claim and render a final determination. If the Contractor's Claims at project completion total less than \$375,000, then claims resolution shall proceed in the manner prescribed by Article 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code.

Claims shall be calculated in the same manner as extra work using the procedures set forth in Section 9-1.03 "Force Account Payment." This method applies in all cases of Claims, regardless of type, whether in negotiation, arbitration, litigation, and even applies in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. No other costs arising out of or connected to with the performance of Claims, of any nature, may be recovered by the Contractor. Except where provided by law, or elsewhere in these Contract Documents (if applicable), the City shall not be liable for special or consequential damages, and Claims shall not include special or consequential damages. Contractor shall be limited in its recovery on Claims to the calculations set forth in Section 9-1.03 of these provisions.

E. Claim Format. The Contractor shall submit the Claim justification in the following format:

1. Cover letter and certification of the accuracy of the contents of the Claim;
2. Summary of Claim including underlying facts, entitlement, quantum calculations and Contract Document provisions supporting relief;
3. List of documents relating to Claim including plans, specifications, clarifications/requests for information, schedules and others;
4. Chronology of events and correspondence;
5. Analysis of Claim merit;
6. Analysis of Claim costs;
7. Attached supporting documents referenced in Item 3 above.

F. Exclusive Remedy. The Contractor's performance of its duties and obligations specified in these provisions and submission of a Claim as provided in these provisions is the Contractor's sole and exclusive remedy for the payment of money, extension of time, adjustment or interpretation of Contract Documents terms or other contractual or tort relief arising from the Contract Documents. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or the Contract Documents, negligence or strict liability by the City of Vallejo, its representatives, consultants or agents, or the transfer of the Work or the Project to the City for any reason whatsoever. The Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the Claim submission requirements. Compliance with the notice and Claim submission procedures described in these provisions is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No claim or issues not raised in a timely protest and timely Claim submitted under these provisions may be asserted in any Government Code Claim, subsequent litigation, or legal action. The City of Vallejo shall not have deemed to waive any provision under this Section, if at the City's sole discretion, a Claim is accepted in a manner not in accord with this Section.

G. Mediation. All Claims not subject to the Claim resolution procedures set forth in these provisions shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties, and, if the parties cannot agree, a mediator selected by the American Arbitrator Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

9-1.075 FALSE CLAIMS

California Penal Code section 72, provides that any person who presents for payment with intent to defraud any district board or officer, any false or fraudulent claim, bill, account, voucher, or writing, is punishable by fines not exceeding ten thousand dollars (\$10,000.00) and/or imprisonment in the state prison.

Government Code sections 12650, et seq., pertains to civil penalties that may be recovered from

persons (including corporations, etc.) for presenting a false claim for payment or approval, presents a false record or statement to get a false claim paid or approved, or other acts, to any officer or employee of any political subdivision of the State of California. Any person or corporation violating the provisions of Government Code sections 12650, et seq., shall be liable for three times the amount of the damages of the political subdivision, plus a civil penalty, plus costs.

All Claims by Contractor, shall include the following certification, properly completed and executed by Contractor or an officer of Contractor:

I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

Contractor agrees that submission of a Claim, in strict conformance with all of the requirements of this Contract, and rejection of all or part of said Claim by City of Vallejo, is a condition precedent to any action by Contractor against City of Vallejo, including but not limited to, the submission of a claim pursuant to Government Code section 900, et seq., and the filing of a lawsuit.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant provided by Contractor with the claim.

Contractor agrees that any costs or expenses incurred by the City of Vallejo in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records, or the Contract, shall be deemed to be damages incurred by the City of Vallejo within the meaning of the California False Claims Act.

Upon final determination of the claims, the Engineer will then make and issue the Engineer's final estimate in writing and within 30 days thereafter the City of Vallejo will pay the entire sum, if any, found due thereon. That final estimate shall be conclusive and binding against Contractor on all questions relating to the amount of work done and the compensation payable therefor.

9-1.08 (BLANK)

9-1.09 CLERICAL ERRORS

Notwithstanding the provisions in Section 9-1.07, "Payment After Acceptance," for a period of 3 years after acceptance of the work, all estimates and payments made pursuant to Section 9-1.07, including the final estimate and payment, shall be subject to correction and adjustment for clerical errors in the calculations involved in the determination of quantities and payments. The Contractor and the City of Vallejo agree to pay to the other any sum due under the provisions of this Section 9-1.09, provided, however, if the total sum to be paid is less than \$200, no payment shall be made.

9-1.10 (BLANK)

9-1.11 CONTRACTOR NOT AN AGENT OF THE CITY OF VALLEJO

The right of general supervision shall not make the Contractor an agent of the City of Vallejo, and the liability of the Contractor for all damages to persons or to public or private property arising from the performance of the work shall not be lessened because of such general supervision.

9-1.12 THIRD-PARTY CLAIMS

The Contractor shall be responsible for all third-party claims, and for costs or injuries incurred by a third party which result from the operations of the Contractor, or its performance under the Contract.

9-1.13 GUARANTEE

Should any failure of the work occur within a period of one year after recordation of the notice of completion of the project or portions thereof, which can be attributed to faulty materials, poor workmanship, or defective equipment, the Contractor shall promptly make the needed repairs at Contractor's expense.

The City of Vallejo is hereby authorized to make such repairs if the Contractor fails to make or undertake with due diligence the aforesaid repairs within ten (10) days after Contractor is given written notice of such failure and without notice to the surety provided, however, that in case of emergency where, in the opinion of the City of Vallejo, delay would cause serious loss or damages, or a serious hazard to the public, the repairs may be made or lights, signs, and barricades erected, without prior notice to the Contractor or surety, and the Contractor shall pay the entire costs thereof.

9-1.14 MISCELLANEOUS PROVISIONS

This Contract shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor, and to the successors in interest of City of Vallejo, in the same manner as if such parties had been expressly named herein.

This Contract shall be governed by the laws of the State of California.

If any one or more of the provisions contained in the Contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

This Contract constitutes the full and complete understanding of the parties, and supersedes any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may only be modified by a written instrument signed by both parties.

Contractor hereby assigns to City of Vallejo all its first-tier subcontracts now or hereafter entered into by Contractor for performance of any part of the work. The assignment will be effective upon acceptance by City of Vallejo in writing, and only as to those subcontracts which City of Vallejo designates in writing. Such assignment is part of the consideration to City of Vallejo for entering into the Contract with Contractor, and may not be withdrawn.

The provisions of the Contract Documents shall be included in all subcontracts.

Public Contract Code section 20104, et seq., requires that the following language be set forth in the specifications:

§ 20104. Application of article; provisions included in plans and specifications

- (i)
 - (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
 - (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (ii)
 - (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.
 - (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the local agency.
- (iii) The provisions of this article or a summary thereof shall be set forth in the plans or specification for any work which may give rise to a claim under this article.
- (iv) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2. Claims; requirements; tort claims excluded

For any claim subject to this article, the following requirements apply:

- (v) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (vi)
 - (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
 - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the

additional information, whichever is greater.

- (vii)
 - (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
 - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (viii) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (ix) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (x) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses

The following procedures are established for all civil actions filed to resolve claims subject to this article:

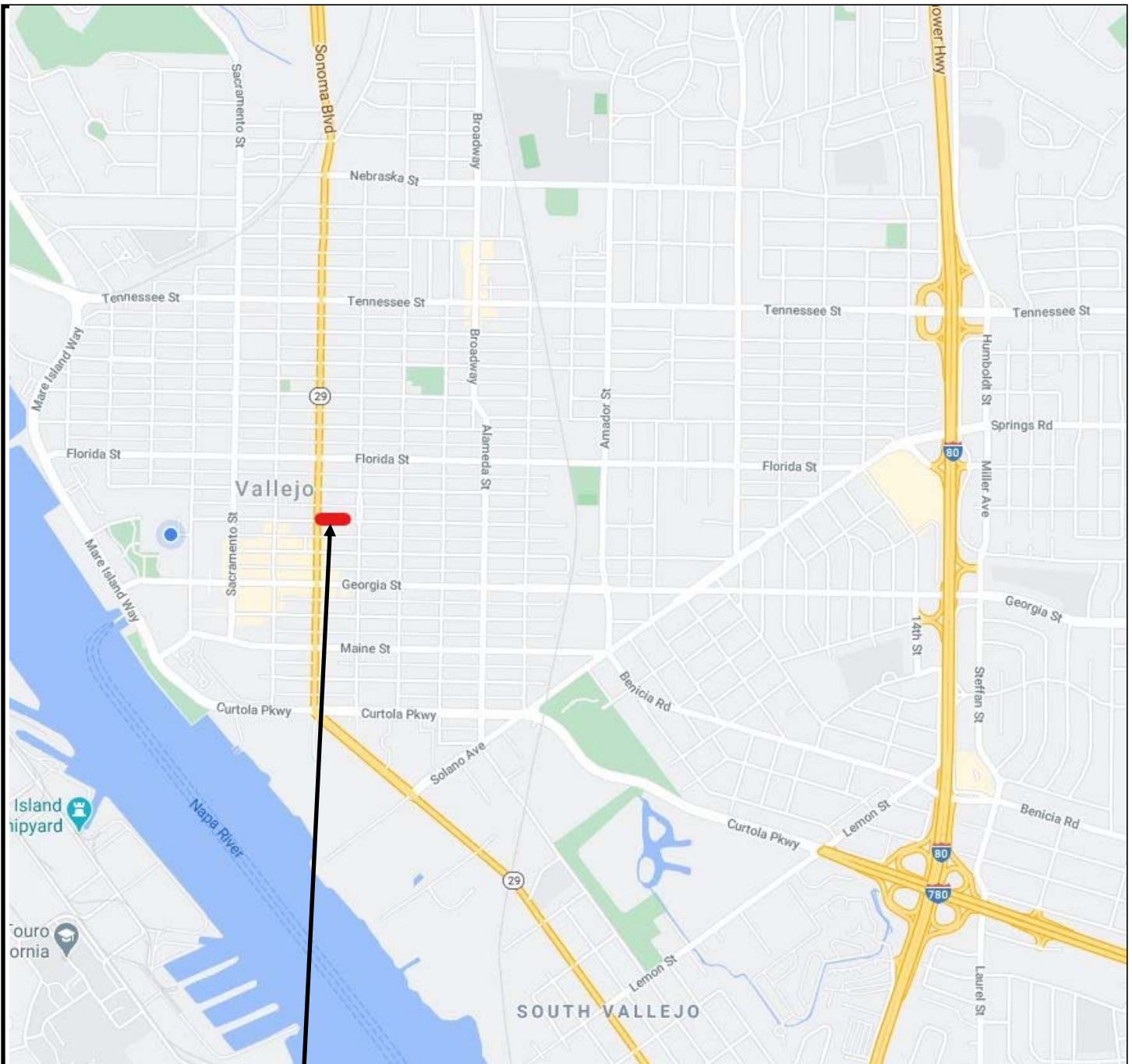
- (i) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

- (ii) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
- (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
- (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
- (4) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.



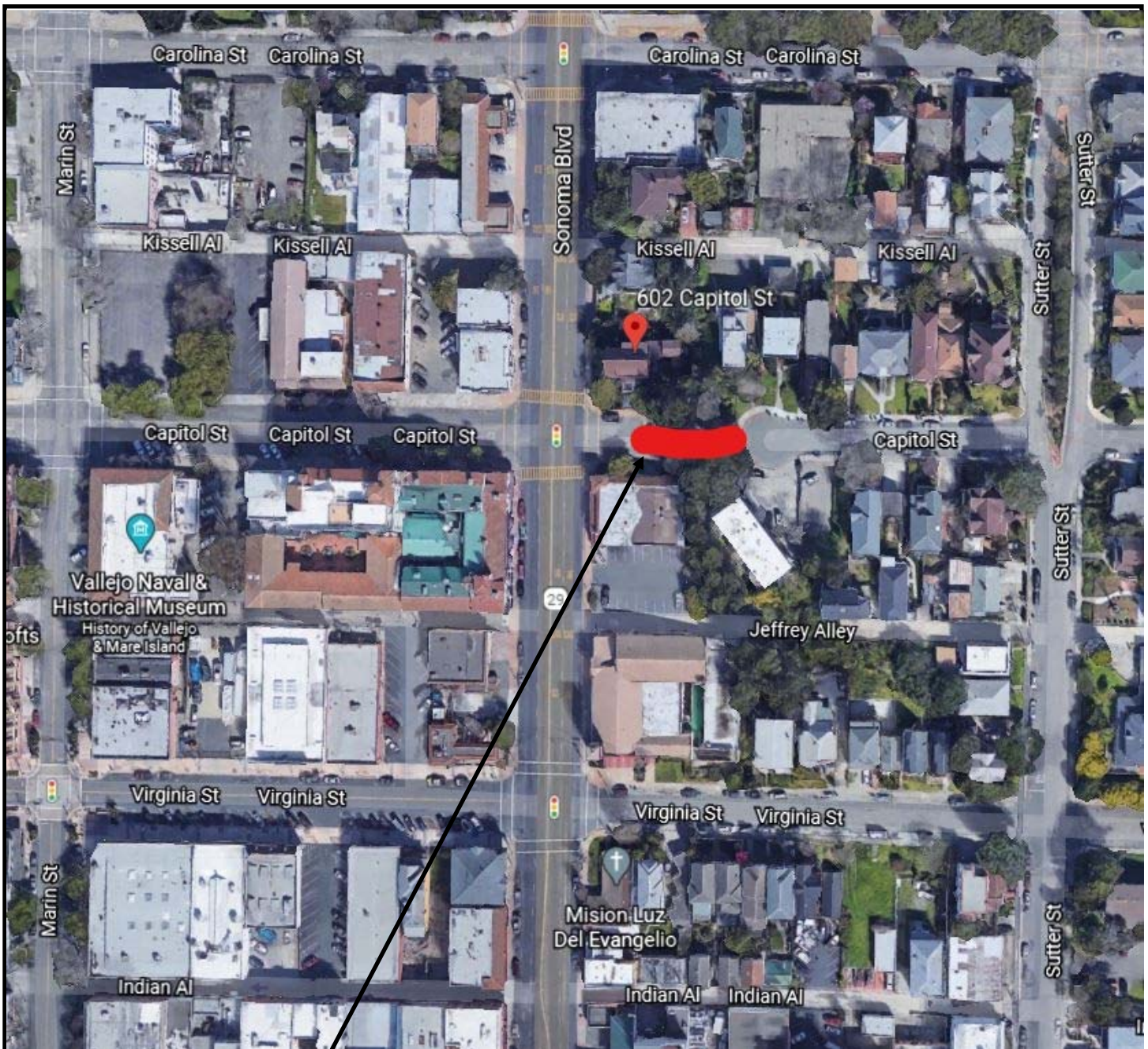
Project Location



Capitol Street Stairs Mosaic Project PWAR01

Location Map

11/13/2020
Attachment 3



Project Location



Capitol Street Stairs Mosaic Project PWAR01

Vicinity Map

11/16/2020
Attachment 4



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Mike Malone, Water Director
SUBJECT: **AGREEMENT WITH E SOURCE FOR ADVANCED METERING INFRASTRUCTURE CONSULTING SERVICES**

RECOMMENDATION

Authorize the City Manager to execute a Consultant and Professional Services Agreement with E Source (formerly UtiliWorks) of Boulder, Colorado, in the amount of \$214,560, to provide specialized Advanced Metering Infrastructure (AMI) consulting services to the City of Vallejo's Water Department.

REASONS FOR RECOMMENDATION

The Water Department is preparing for a large and very complex project of implementing a new Advanced Metering Infrastructure (AMI) for its 38,000+ water meters, across the entire City of Vallejo and in the Lakes Water System. This complex project involves migrating multiple sizes and types of meters to an integrated system of smart meters (and registers), communications networks, and data management systems resulting in more precise meter reading, prompt detection of leaks, and robust water-use data for customers, fostering easier two-way communication and conservation partnerships between the City and its Water customers. A transition of this magnitude and complexity requires the highly specialized and seasoned expertise that E Source offers, to aid the City in the planning, procurement, selection and implementation of this project.

BACKGROUND AND DISCUSSION

Vallejo's Water and Finance departments jointly manage the City's 38,000+ water meters (Water manages them physically and Finance manages the meter reading and billing). The City's meter infrastructure is old, with many meters requiring costly repair or replacement, using obsolete touch read and drive by technology. As part of the Water Department's Meter Replacement Program, staff will be replacing the vast majority of the City's outdated meters with new, technologically-relevant meters, in a phased approach. Additionally, meters with a significant useful life (10+ years) will receive registers upgrades in order to communicate with an Advanced Metering Infrastructure (AMI) system.

AMI is the standard for water metering across the water industry, and Vallejo is a late-adopter of this technology. However, being a late-adopter provides the benefit of Vallejo being able to research "lessons-learned" from early-adopters and allows this Water/Finance project to be implemented in a more thoughtful and cost-efficient way, with the latest, proven technologies, and with the aid of proven experts in the industry. AMI increases the precision of meter reading, provides robust and timely data on usage and early detection of leaks, and results in additional water conservation. Implementation of AMI technology will allow the Water Department to detect service breaks and leaks in near real-time, allow the City to implement monthly billing (presently bi-monthly), and provide a user-friendly customer interface allowing customers to better manage

their individual water usage. AMI is a robust tool for the collection and management of water usage data including billing, conservation and customer service, but that potential can only be realized if the best qualified AMI vendor is identified, nuanced negotiations handled properly, and the complex City-specific implementation is managed by seasoned experts.

The AMI project will be a major technological and operational change for the City, modifying not only how meters are read, but how the meter data is processed and transformed into water bills and how it will provide first alerts of leaks and other meter issues. The selected AMI system will need to integrate with Vallejo's current state of technology (our current financial and computerized maintenance management software are separately-phased but connected processes). To move to a significantly advanced system, such as an AMI, that can address our numerous and unique needs, specialized knowledge in drafting specifications for a Request for Proposal is required.

E Source (previously UtiliWorks) is an expert in the AMI industry, having provided AMI implementation services for very large cities and water districts throughout California and across the country. The firm was referred to City staff at a water-industry convention as being the firm with the best and proven expertise to pinpoint Vallejo's precise needs, and work in-step with Vallejo staff in the Water, Finance, and Information Technology Departments to create a highly sophisticated Request for Proposal for AMI technology and other services that will address this important and complex implementation. E Source will educate Vallejo staff on all of the various options and technologies, develop specific use cases for the AMI system, work to develop a comprehensive RFP, assist the City with the complex evaluation of potential vendors, and support our negotiations with the preferred vendor. This work will be essential for Vallejo's success in selecting the best technology and implementation plan for the good of the City and our customers.

The Water Department is not aware of any other company with such specialized knowledge and breadth of seasoned experience in AMI systems, and Water staff is seeking approval to enter into a Professional and Consulting Agreement with E Source for legal or professional services that are highly specialized.

Section 3.20.090 of the Vallejo Municipal Code sets forth various exemptions to the competitive purchasing process, which include exemptions for highly specialized professional services and other cases when Council finds and determines that it is in the City's best interests to not engage in the competitive purchasing process.

FISCAL IMPACT

This proposed action will not have any effect on the City's General Fund. The agreement in the amount of \$214,560 will be fully funded from the Water Enterprise Fund professional services budget.

ENVIRONMENTAL REVIEW

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project that 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.	UtiliWorks Potential SOW Overview Presentation slides Aug-6-2020 CityOfVallejo_CA V2.0 - Copy
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2.	DRAFT E Source Agreement - with Exhibits
3.	Draft E Source Agreement - No Exhibits (1) CAO stamp

CONTACT

Mike Malone, Water Director (707) 648-4308

mike.malone@cityofvallejo.net

Mark Quady, PE, Water Engineering Manager (650) 648-4309

mark.quady@cityofvallejo.net



UtiliWorks Consulting Overview of Scope of Work Options

August 6, 2020



Advancing Utility
Technology Programs...
100 Clients and Growing!



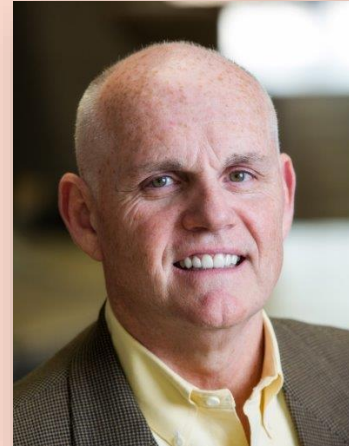
Agenda

- Brief Re-Introduction To UtiliWorks Consulting
- Our Experience
- City of Vallejo - Our Impression of Scope of Work Desired
- Q&A

Introductions - UtiliWorks



Nicole Naassan
Director of Consulting
Services 20+ years of
utility experience,
as SME, and Executive
support for UtiliWorks
Consulting projects



Jim Leever,
Director of Business
Development
Over 35 years
experience assisting
clients in energy,
utilities, and water
business sectors

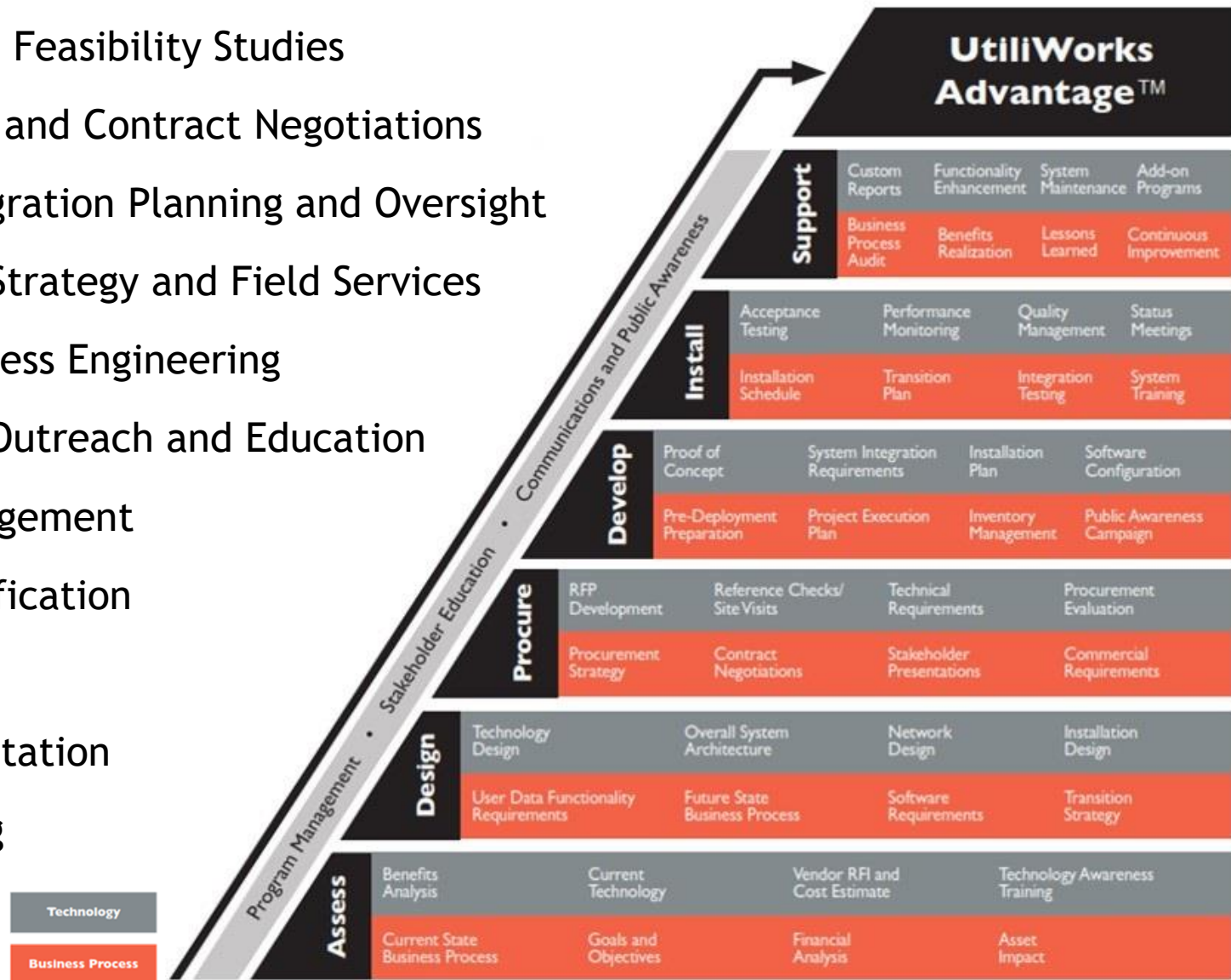
What is UtiliWorks?

- A professional services advisory firm headquartered in Baton Rouge, LA; with associates/staff across the entire U.S.
- Founded in 2005 to address the AMI/smart metering market
- Specialize in smart grid/water/gas and smart city initiatives
- Average staff member has 20+ years experience
- Our clients are electric, water, and gas utilities, as well as multi-service providers
- UtiliWorks has joined together with E Source, and TROVE Data as of February 2020

Together with our clients, UtiliWorks advances business and technology solutions that strategically enhance utility operations.

What Smart Utility / Smart City Services Do We Offer?

- Assessments/ Feasibility Studies
- Procurement and Contract Negotiations
- Systems Integration Planning and Oversight
- Deployment Strategy and Field Services
- Business Process Engineering
- Stakeholder Outreach and Education
- Project Management
- Benefits Verification
- Data Services
- Staff Augmentation
- Grant Writing

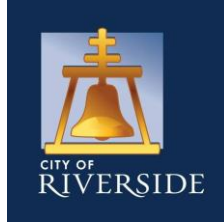


Where Have We Worked?





Albuquerque Bernalillo County
Water Utility Authority



Long Beach Water



UtiliWorks California Utility Client List & Meter Count

Alameda County Water District	CA	Water	82,400
Alameda Municipal Power	CA	Electric	35,000
Azusa Light and Water	CA	Electric/Water	53,000
Burbank Water and Power	CA	Electric/Water	50,000
California Public Utility Commission	CA	Electric/Gas	N/A
City of Buena Park	CA	Water	20,000
City of Oceanside	CA	Water	44,000
City of Palo Alto	CA	Electric/Water/Gas	72,000
City of Riverside	CA	Electric/Water	165,000
City of Roseville	CA	Electric/Water	93,000
City of Santa Ana	CA	Water	45,000
City of Santa Barbara	CA	Water	27,000
City of Santa Rosa	CA	Water	53,000
City of Seal Beach	CA	Water	5,400
City of Shasta Lake	CA	Electric	4,600
City of Signal Hill	CA	Water	3,000
Crescenta Valley Water District	CA	Water	8,000
Electric Power Research Institute	CA	N/A	N/A
Glendale Water & Power	CA	Electric/Water	119,000
Las Virgenes Municipal Water District	CA	Water	22,000
Long Beach Gas and Oil	CA	Gas	144,000
Long Beach Water Department	CA	Water	100,000
Los Angeles Department of Water and Power	CA	Electric/Water	2,060,000
North Marin Water District	CA	Water	20,800
Utility Consumer's Action Network	CA	N/A	N/A

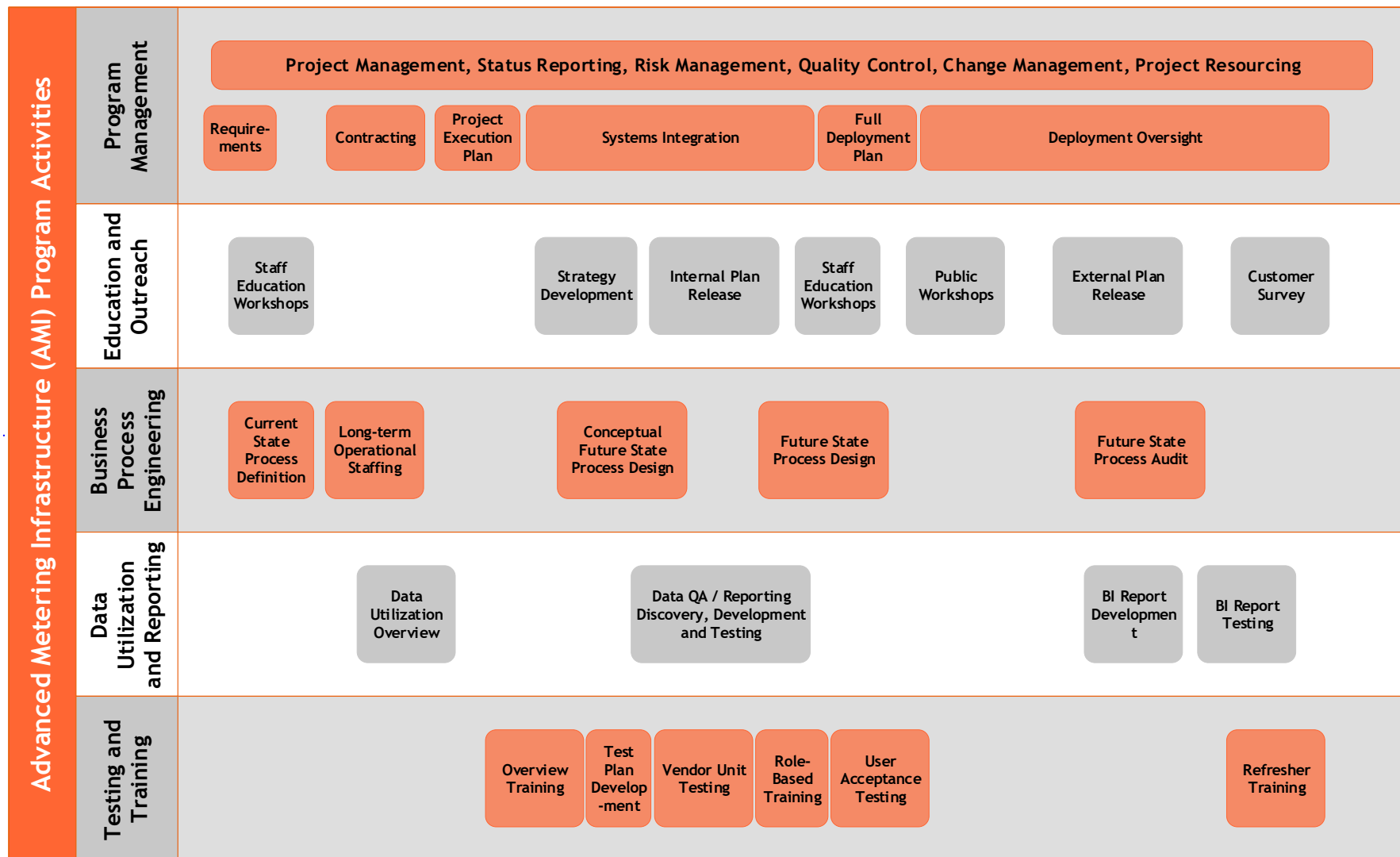
City of Vallejo - Scope or Work Desired



**Specific dates vary for each project*

Jan 2019

Dec 2021



Procurement and Vendor Contract Negotiations

- Technology Overview/Education
- Goals and Objectives
- Use Case Prioritization / Development
- Requirements Development
- RFP Draft
- Proposal Solicitation, pre-proposal meeting, Q&A, RFP Admin
- Response Evaluation, Shortlist, and Selection
- Vendor Contracting



**Topeka CIS RFP
Scope of Work**

UtiliWorks, LLC
2351 Energy Dr., STE 1200
Kewanee, IL 60087
235.766.4188 – Office
235.812.6404 – Fax
www.utiliworks.com

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“UWC assisted with the AMI/MDMS contract negotiations with two separate vendors which proved to be a huge success.”

– **Dennis Pimentel, Vice President Grid Operations**
Bermuda Electric Light Company (BELCO), Bermuda

Program Management

- Dedicated Project Manager to manage scope, schedule, budget
- Project Charter / Project Execution Plan
- Identify and track issues, risks, and any changes that impact schedule and budget
- Status reporting
- Vendor management
- Orchestrate the subject matter experts

 	
Project Charter: City of Santa Rosa AMI Implementation Project Management Services	
Date: August 30, 2016	
Project Overview	
This Charter formally authorizes a full Advanced Metering Infrastructure (AMI) implementation project that will:	
a) Employ Alpha and Beta POC (Proof of Concept) Project Management b) Include system c) Provide for B d) Utilize a com e) Require Full	
The project will enable numerous years of study fixed base, AMI system	
• Reduce the Utility's met • Improve cust functions • Consistent an	
Key Stakeholders	
The UtiliWorks Program Manager, Bret Vonder R required, negotiate for	
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Project Phasing

Planning & Startup

Develop and institute project governance and initiate requirements definition through planning and discovery

Alpha POC

Prove basic connectivity and functionality, verifying read accuracy, alerts, and systems configuration

Beta POC

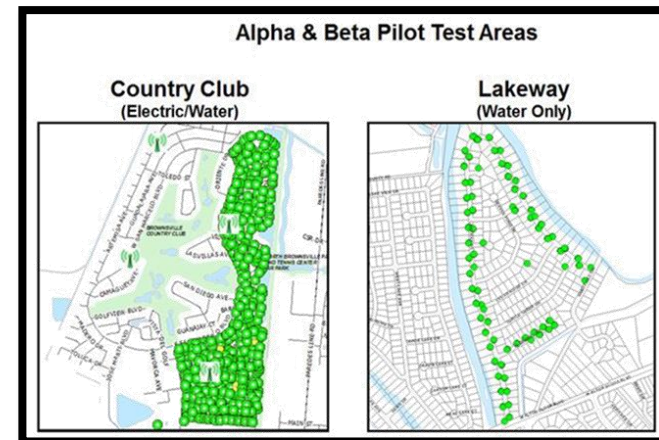
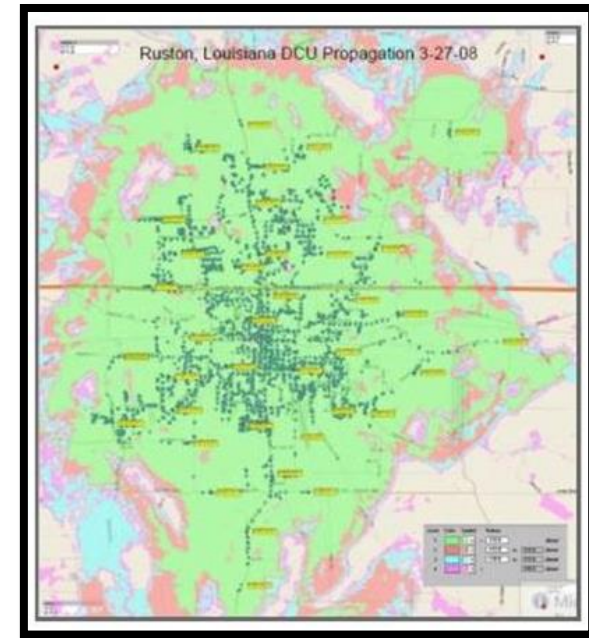
Test the network, systems, and integrations through the “meter-to-bill” process with actual field conditions

Full Deployment

Efficiently and accurately perform a mass meter replacement and endpoint deployment

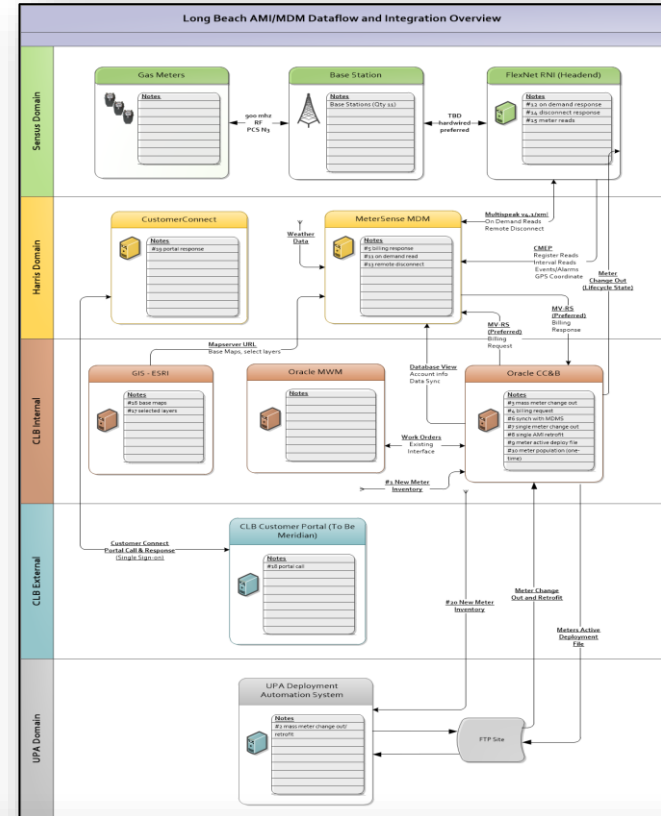
Project Phasing - Proof of Concept

- The **heavy lifting** occurs during the POC Phase. The POC is often split into two distinct phases, each with its own goals:
- ALPHA
 - Document detailed requirements and systems configuration
 - Establish and test the connectivity between a small number of test meters and the AMI Headend
 - Test meter read accuracy and simulation of alarms
- BETA
 - Deploy pre-established numbers of meters in the field
 - Develop and test the systems interfaces
 - Conduct comprehensive training
 - Perform system/user Acceptance Testing



Systems Integration

- Integration kickoff with all vendors
- The POC Implementation Plan will detail the Integration plan by phase
- Weekly cross-vendor status meetings in order to mitigate issues/risks
- Discovery for each vendor to develop / document system design
- Business process discussions will overlap

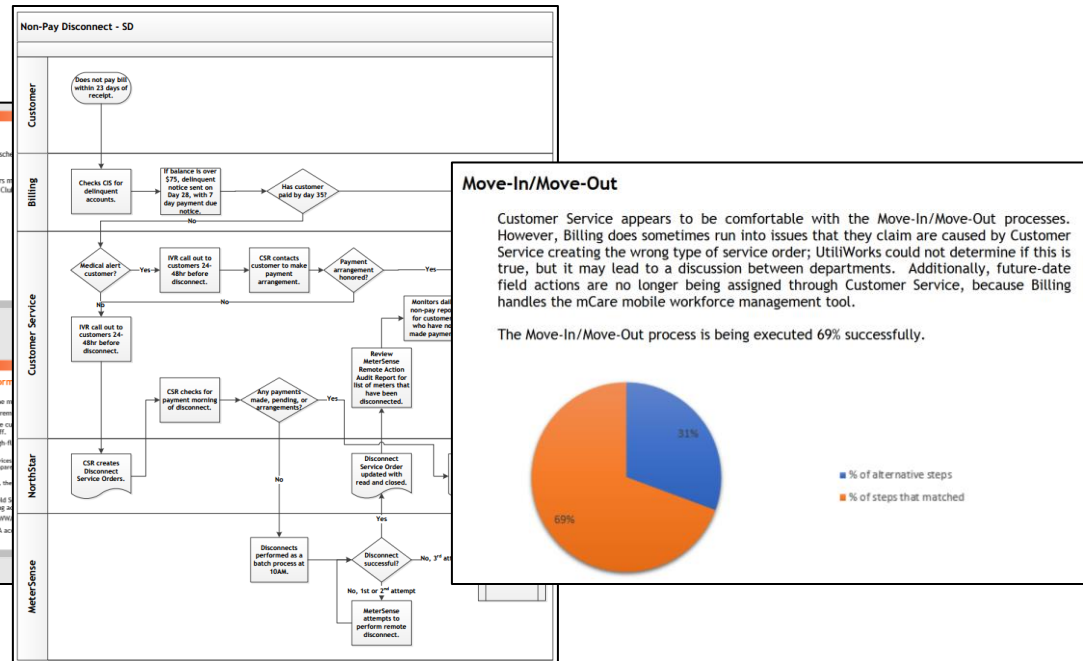
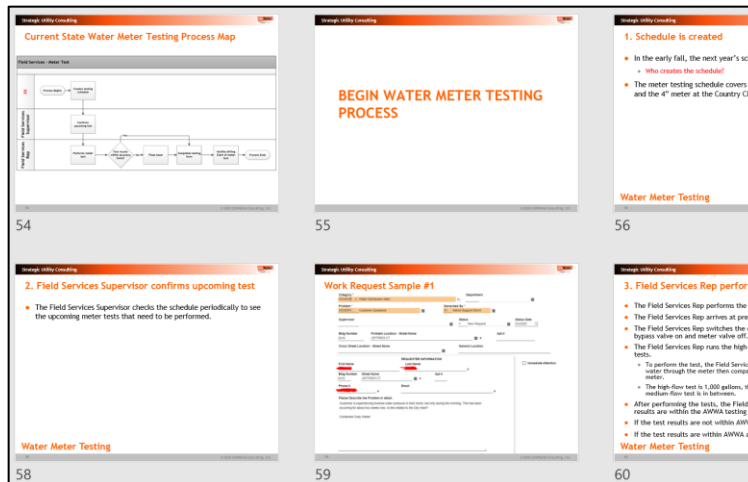


A #	B Name	C Description / Purpose	D From System	E To System	F Phase	G Business Process information	H File Type / Format	I Method of Communication	J Frequency	K Development Approach / Additional Information	L Start Date	M End Date	N Status
1	CC&B Meter Inventory Load	Load of Meter Data into CC&B upon purchase and inventory of meters from Meter Manufacturers	Meter Manufacturer	CC&B	Beta	This data will be loaded into CC&B using the Sensus Test file after the meters have been accepted by Installer for mass inventory process and Long Beach for ongoing inventory process. We will need to make sure the Test file contains everything we need to load into CC&B. Are there other Meter Manufacturers? This needs a lot of lead time to ensure the required fields are provided in the test file. The test file should include: 1. removed meter id 2. removed meter out read 3. new meter id 4. new meter in read 5. GPS location of new meter 6. service point. Initial thought is to create and auto close a field activity in CC&B for each install/change out as part of the interface to lessen the amount of development. When doing this interface will need to populate the GPS coordinates to pass along to the RMI.	*.csv	FTP	Upon shipment of new product to CLB	File based. Current File Upload process in CC&B can be used. Have code that puts it into inventory.			0-Not Started
2	Mass Meter Change Out and Index/Register/Comm Module Retrofit	Load of Meter Change Out data from Installer Daily Change Out File into CC&B upon installation of meter in the field. Replace and Retrofit to be delivered in one file.	UPA Deployment Automation System	CC&B	Beta			FTP	Daily	Have code that puts it into inventory. Model retrofit after meter change out BUT may be as simple as putting the Flexnet ID on the existing meter. For simple process MUST confirm the business process will be to set the new register to the read value on the old register.			0-Not Started
3	Meter Change Out Flexnet RMI Load from CC&B	Extract and Load of Meter Installation data from CC&B for Flexnet RMI upon installation of meter in the field. This will be used both for the mass deployment and single meter change outs. It will also be used for both meter changes out and retrofit of existing meters with new	CC&B	RMI	Alpha	This is to change the status in RMI. The new meter goes to "Installed" and the old meter, if applicable goes to "Inventory". It also will put GPS coordinates in RMI and any other location related data needed.		MultiSpeak	Daily minimum	Web Services Leverage logic but potentially convert to Web Services based on feedback from Sensus.			0-Not Started

AMI Program Business Process Design

- A series of workshops is held to:

1. Baseline current state business processes impacted by core AMI functionality and desired use cases
2. Design of the future state processes that will support all desired end use cases for the AMI program
3. Audit the future state processes to ensure proper design, training, and adoption



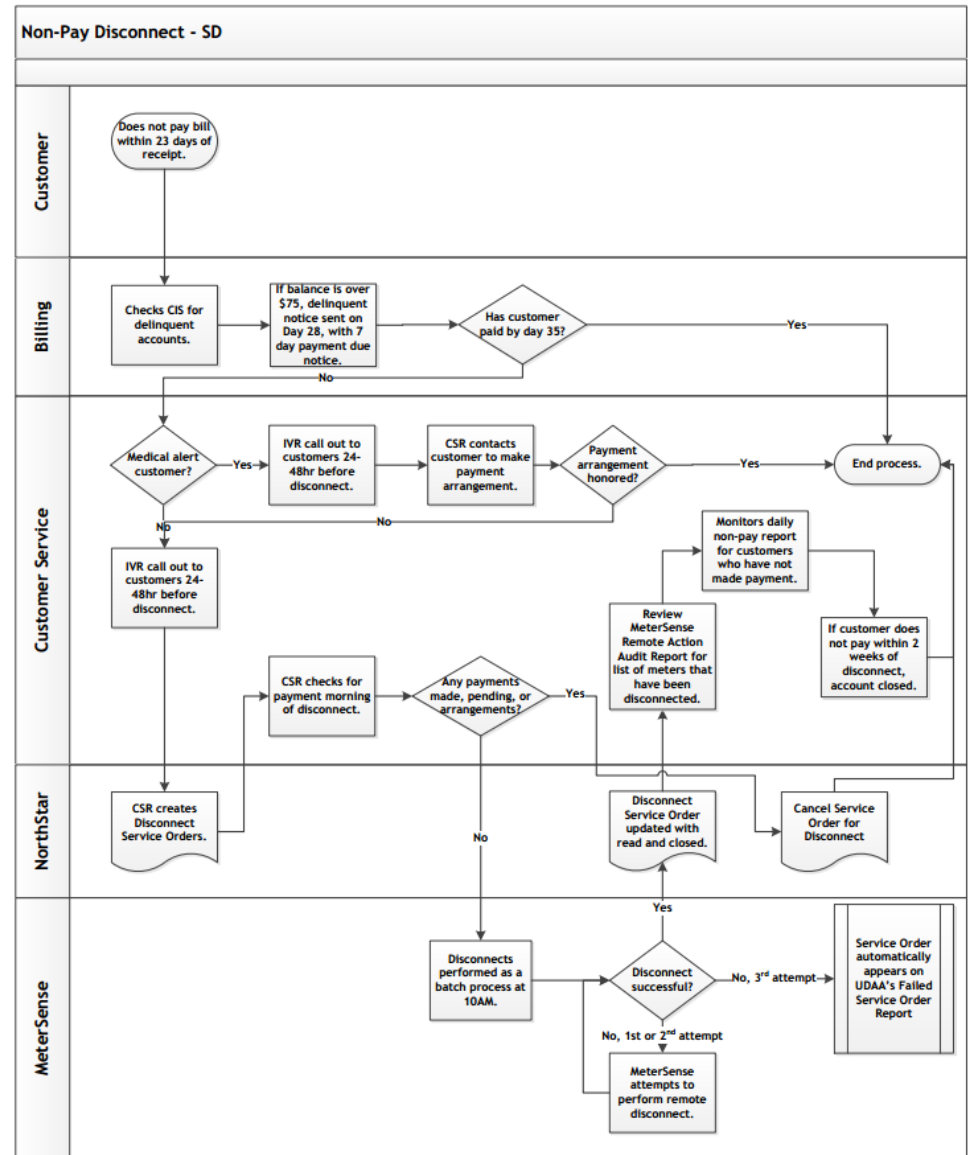
Business Processes

Core Utility Processes

- Billing & Read Validation
- Customer Inquiry & Response
- Meter Change-Out/Retrofit
- Move-In/Move-Out
- Non-Pay Disconnect/Reconnect

Operational Value-Add

- Theft Detection
- Leak Detection and Notification
- Load Forecasting
- Water Loss Analysis
- More...



Smart Utility Communications Campaigns

- The awareness and education campaign is designed to communicate the utility's initiative through the most appropriate communication channels. We help to design the strategy and develop the outreach plan for your customers, community and employees
- Tasks include:
 - Define Objectives
 - Determine Communication Channels
 - Define Target Audience
 - Develop the Campaign Strategy
 - Define Methods to Analyze Campaign Results
 - Implement
 - Analyze Results



Full Deployment Oversight and Quality Assurance

- Once the system functionality and new business processes and stakeholder communications have been tested, verified, and accepted, deployment of hardware can begin on a large scale
- Full system functionality is available with acceptance gates to release devices into the automated billing process
- Full Deployment of meter hardware and associated equipment is managed with the intent to minimize interruption to daily operations
- *UtiliWorks provides:*
 - *Oversight of the day to day deployment activities*
 - *Quality Assurance Management of the Installation*

Key Steps to Ensure Success

- Establish and Track Project Goals and Objectives
- Institute Robust Project Governance / Program Management
- Develop a Project and Post-Project Staffing Plan
- Craft Employee and Customer Education and Communication
- Capture Detailed Requirements across all Departments
- Publish a Comprehensive / Well-informed Request for Proposals (RFP)
- Define and Include clear Acceptance Criteria in all Vendor Contracts
- Create a Partnership with the solution vendors
- Stage the rollout with a well-defined Phased Approach
- Re-Engineer your Business Processes
- Utilize the Data to fully realize your Investment

Thank You!

UtiliWorks Consulting Contacts:

Jim Leever - Director of Business Development (Houston, TX)

Phone: +1 832-890-9169

Email: jleevers@utiliworks.com

Ms. Nicole Naassan - Director of Consulting Services

Phone: +1-703-216-5752

Email: nnaassan@utiliworks.com

Assessment

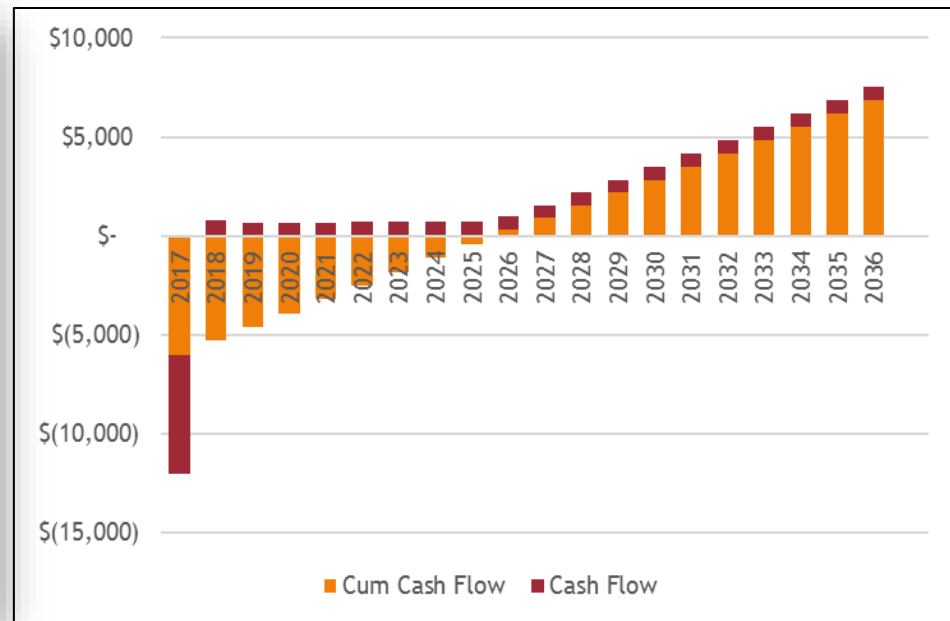
- A thorough assessment (or feasibility study) is a critical building block to the success of an AMI project
 - Aids in the identification of the underlying business reasons that are motivating the effort
 - Reveals the critical success factors
- The fundamentals include:
- Kickoff and Technology Workshop
 - Project Goals and Objectives
 - Gaps and Opportunities
 - Business Case
 - Implementation Strategy
 - Final Assessment Report

City of Belmont	
Business Goal	Business Objective
Institute a fully automated meter reading solution (AMI - Advanced Metering Infrastructure, MDMS - Meter Data Management System)	Eliminate the need for a re-read truck roll for billing read, inquiry or move in/out
Institute a fully automated meter reading solution (AMI - Advanced Metering Infrastructure, MDMS - Meter Data Management System)	Reduce errors brought on by manual data entry and business processes
Institute a fully automated meter reading solution (AMI - Advanced Metering Infrastructure, MDMS - Meter Data Management System)	Reduce the number of estimated meter reads
Institute a fully automated meter reading solution (AMI - Advanced Metering Infrastructure, MDMS - Meter Data Management System)	Replace old, inaccurate meters
Institute a fully automated meter reading solution (AMI - Advanced Metering Infrastructure, MDMS - Meter Data Management System)	Remotely disconnect/reconnect customers (delinquent or move in/out)
Institute a fully automated meter reading solution (AMI - Advanced Metering Infrastructure, MDMS - Meter Data Management System)	Leverage utility backhaul communications system to support smart metering effort

Business Case

- The Business Case will identify and estimate Capital Costs, Operation & Maintenance Costs, and anticipated Benefits over the project lifecycle
- Outputs include Return on Investment / Payback Period
- UtiliWorks' approach is to be conservative and holistic when representing anticipated costs and benefits capture

System Automation Business Model										
Prepared for:					Prepared by:					
										
Business Case Results										
Benefits	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Metering	\$ 90,286	\$ 260,384	\$ 435,480	\$ 615,696	\$ 801,142	\$ 894,778	\$ 907,998	\$ 921,417	\$ 935,036	\$ 948,861
Customer Service	\$ 22,211	\$ 64,022	\$ 107,020	\$ 151,229	\$ 196,676	\$ 219,551	\$ 222,680	\$ 225,856	\$ 229,078	\$ 232,348
System Operations	\$ 47,330	\$ 136,812	\$ 230,017	\$ 328,800	\$ 432,602	\$ 487,242	\$ 498,034	\$ 508,611	\$ 519,564	\$ 530,814
System Resources	\$ 174,712	\$ 515,936	\$ 879,196	\$ 1,286,332	\$ 1,750,264	\$ 1,989,230	\$ 2,049,934	\$ 2,102,434	\$ 2,155,318	\$ 2,207,550
Total Benefits	\$ 333,998	\$ 977,174	\$ 1,651,643	\$ 2,382,056	\$ 3,180,684	\$ 3,590,800	\$ 3,678,645	\$ 3,758,318	\$ 3,838,997	\$ 3,913,652
OpEx	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Metering	\$ 57,341	\$ 82,177	\$ 103,194	\$ 124,776	\$ 146,943	\$ 159,839	\$ 161,309	\$ 162,802	\$ 163,317	\$ 165,854
Customer Service	\$ 16,958	\$ 18,500	\$ 18,500	\$ 18,500	\$ 18,500	\$ 18,500	\$ 18,500	\$ 18,500	\$ 18,500	\$ 18,500
System Operations	\$ 112,575	\$ 158,650	\$ 197,281	\$ 238,131	\$ 280,250	\$ 306,513	\$ 310,967	\$ 315,400	\$ 320,150	\$ 325,217
System Resources	\$ 59,109	\$ 123,827	\$ 178,675	\$ 229,407	\$ 277,997	\$ 325,855	\$ 329,774	\$ 333,701	\$ 337,628	\$ 341,555
Total OpEx	\$ 245,984	\$ 383,149	\$ 513,666	\$ 658,319	\$ 817,290	\$ 936,889	\$ 996,183	\$ 1,057,192	\$ 1,120,344	\$ 1,184,584
CapEx	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Metering	\$ 727,152	\$ 207,660	\$ 212,941	\$ 219,036	\$ 224,922	\$ 14,616	\$ 14,814	\$ 15,048	\$ 15,264	\$ 15,498
Customer Service	\$ 185,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
System Operations	\$ 1,425,000	\$ 380,000	\$ 380,000	\$ 418,000	\$ 456,000	\$ 38,000	\$ 38,000	\$ 38,000	\$ 38,000	\$ 76,000
System Resources	\$ 949,950	\$ 659,920	\$ 774,320	\$ 887,875	\$ 1,022,540	\$ 526,369	\$ 526,474	\$ 526,496	\$ 526,417	\$ 627,888
Total CapEx	\$ 3,287,057	\$ 1,247,165	\$ 1,367,241	\$ 1,524,861	\$ 1,703,462	\$ 579,425	\$ 595,548	\$ 618,044	\$ 623,681	\$ 674,386
Pro Forma Financials	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Benefits	\$ 333,998	\$ 977,174	\$ 1,651,643	\$ 2,382,056	\$ 3,180,684	\$ 3,590,800	\$ 3,678,645	\$ 3,758,318	\$ 3,838,997	\$ 3,913,652
OpEx	\$ 245,984	\$ 383,149	\$ 513,666	\$ 658,319	\$ 817,290	\$ 936,889	\$ 996,183	\$ 1,057,192	\$ 1,120,344	\$ 1,184,584
EBITDA	\$ 88,015	\$ 594,025	\$ 1,137,977	\$ 1,723,737	\$ 2,363,394	\$ 2,653,911	\$ 2,682,462	\$ 2,701,125	\$ 2,718,653	\$ 2,729,068
Depreciation	\$ 328,709	\$ 452,422	\$ 501,348	\$ 572,632	\$ 672,978	\$ 770,921	\$ 1,034,476	\$ 1,052,280	\$ 1,154,648	\$ 1,222,087
Net Income	\$ (240,693)	\$ 140,603	\$ 636,629	\$ 1,151,105	\$ 1,690,416	\$ 1,882,990	\$ 1,647,985	\$ 1,648,845	\$ 1,564,005	\$ 1,506,981
CapEx	\$ 3,287,057	\$ 1,247,165	\$ 1,367,241	\$ 1,524,861	\$ 1,703,462	\$ 579,425	\$ 595,548	\$ 618,044	\$ 623,681	\$ 674,386
Cash Flow	\$ (3,199,042)	\$ (1,031,140)	\$ (730,612)	\$ (373,756)	\$ (18,046)	\$ 603,917	\$ 2,084,436	\$ 2,083,082	\$ 2,084,971	\$ 2,094,682
Cum Cash Flow	\$ (3,199,042)	\$ (1,852,181)	\$ (2,581,793)	\$ (3,382,549)	\$ (3,222,638)	\$ (1,148,111)	\$ 936,743	\$ 3,021,865	\$ 5,116,816	\$ 7,171,498
Financial Metrics										
NPV	\$ 12,654,095									
IRR	31.4%									
Peak Funding	\$ (4,081,440)									
Ten-Year CapEx	\$ 12,220,868									



Data Utilization and Reporting

- Use case methodology shows insight into utility data usage with individual stakeholders
- Used to determine what data is valuable to customer relations, engineering, operations and asset management
 - Identify valuable data that is not readily utilized
 - Seeking improvements in cost of service, quality, safety, etc.

Utility Data Optimization Example Use Cases:



System Loss
Reporting &
Maintenance
Planning



Customer
Perception &
Engagement
Strategy



Customer-Side
Leak
Notifications



Conservation &
Energy Efficiency
Program
Evaluation



Consumption
Versus Revenue
Trends &
Forecasting



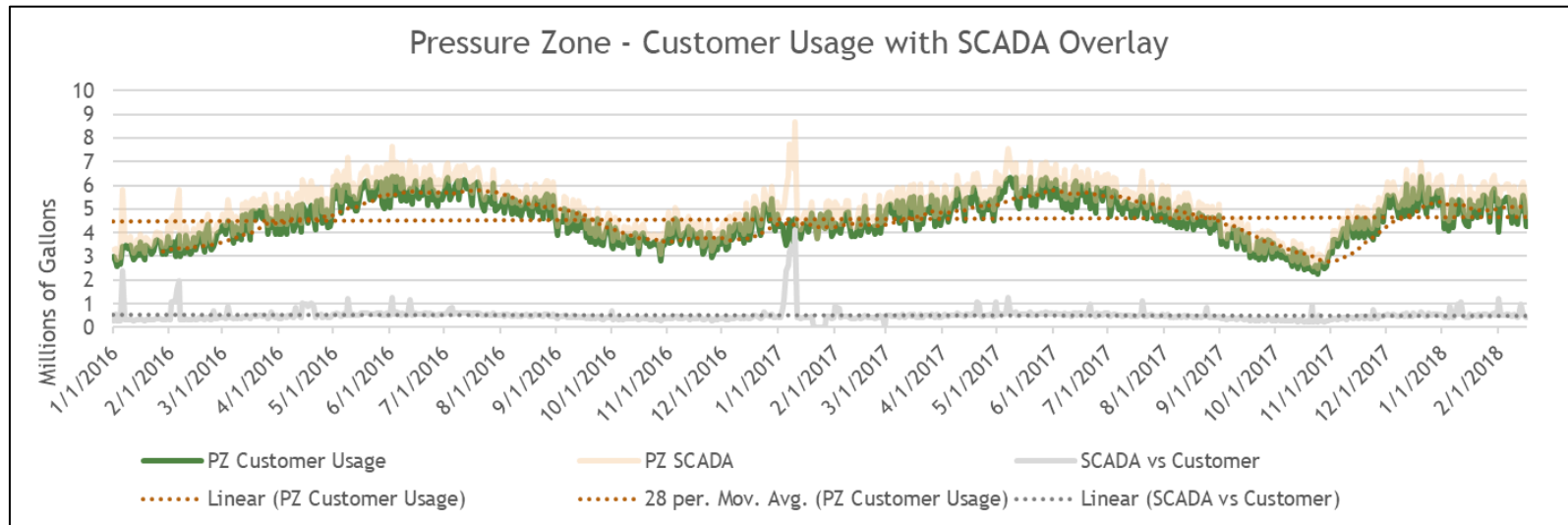
Pressure
Zone
Profiling



Theft
Identification &
Revenue Recovery
Estimation

Water Reports Examples

- Business Intelligence Dashboards
- Zone Demand vs Actual Pumped
- Water Loss Analysis by P. zone and /or overall
- Consumption Trend Analysis
- Consumption by meter size analysis
- Fireline abuse (requires endpoints on detect meters)
- Backflow Reports



Staffing Considerations

- There is risk to the project for not having the right people in the right roles at the right time
- Three critical staffing activities:
 - **Skills Gap Analysis** - review current organizational structure, available staff, and skills to generate a utility skills gap analysis; this information will be useful for future staffing and training development.
 - **Project Team Staffing Plan** - plan includes the project Steering Committee, the Core Project Team, and subject matter experts (SMEs) that will contribute through the project; also, additional temporary (or permanent) positions needed during deployment.
 - **Long-Term Operational Staffing Plan** - plan for utility operational staff that will support the steady-state operations post-deployment; it occurs early, to allow the appropriate staff to join the project team.

Field Services

- Surveys
 - Pre-Deployment
 - Assess conditions of field equipment prior to RFP
 - AMI Network Infrastructure
 - Survey utility/city owned assets prior to vendor selection
 - Research new sites for tower construction
- Alpha Phase Test Bench Construction
 - Design, develop and build test benches for Alpha Phase system acceptance
- Rework Full Deployment Contract Structure
 - i.e., Front load fees



Reasons why utilities should Hire a Qualified AMI Consultant

- The value gained from the project is proportionate with effort expended,
 - i.e. Utility staff or teams have full-time day jobs which keep them busy enough without undertaking a comprehensive project of this type
- Smart metering/grid project skills are not a typical/widespread within most utilities
- A Consultant will provide the Utility additional bargaining/negotiating leverage against the Meter and other vendors
 - you may represent just one client, as with the consulting representing many
- A Consultant brings a laundry list of skills and experiences with a wide range of utilities that will likely add value to a successful project verses one/two internal staff
- A proven process has been established due to the vast number of projects undertaken, verses you being only one utility project
 - Practice makes perfect
- Typically, Meter Vendors primary concern is selling and getting the equipment installed, then they wish to move on to the next utility as fast a possible
- We have heard from countless utilities that “If we had the project to do all over again, we would have hired outside experts to help us.”

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

This Consultant and Professional Services Agreement ("Agreement") is made at Vallejo, California, dated for reference this ____ day of _____, 20__, by and between the City of Vallejo, a municipal corporation ("City"), and E Source Companies, LLC (formerly Utiliworks Consulting), a Delaware corporation, hereinafter referred to as "Consultant", who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
- 2. Payment.** City shall pay Consultant for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement.
- 3. Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
- 4. Indemnification.** Consultant shall indemnify, hold harmless, and defend City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, consultant's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Consultant's operations, or any subcontractor's operations, to be performed under this agreement for Consultant's or subcontractor's tort negligence including active or passive, or strict negligence, including but not limited to personal injury including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Consultant, or any subcontractor, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by the law, regardless to any limitation by insurance, with the exception of the sole negligence or willful misconduct of the City.

The provisions of this section shall survive the expiration or termination of this Agreement.

- 5. Insurance Requirements.** Consultant agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for Consultant." Failure to maintain required insurance at all times shall constitute a default and material breach.

6. Accident Reports. Consultant shall immediately report (as soon as feasible, but not more than 24 hours) to the City Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses, and telephone numbers of any known witnesses, (c) the date, time, and description of the accident or other occurrence.

7. Conflict of Interest. Consultant warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Consultant's family, business, real property or financial interests and the services to be provided under this Agreement. Consultant shall comply with the City of Vallejo Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Consultant's family, business, real property, or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Consultant shall disclose such conflict in writing to City. Every individual who performs services on behalf of Consultant pursuant to this Agreement must file a full Statement of Economic Interests (also known as Form 700) with the City Clerk if the work of the individual involves making a governmental decision whether to issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement; authorizes the City to enter into, modify, or renew a contract; grants City approval of specifications for a contract; adopts or approves for the City any policy, standard or guideline; lobbies on behalf of the City, or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

8. Independent Contractor. Consultant is an independent contractor. Neither Consultant nor any of Consultant's officers, employees, agents, or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplishes services pursuant to this Agreement.

9. Licences, Permits, Etc. Consultant represents and warrants to City that all consultant services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Consultant has all the permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession.

10. Business License. Consultant, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Consultant until such business license(s) has been obtained.

11. Standard of Performance. Consultant shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Consultant's profession currently practicing in California.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Consultant's responsibilities under this section shall not be delegated. Consultant shall be responsible to City for acts, errors, or omissions of Consultant's subcontractors.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Consultant is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant.

12. Force Majeure. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by causes or circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Consultant is unable to meet the completion date or schedule of services, Consultant shall immediately inform the City Representative of this in writing. If additional time is required to perform the work, the City Representative may adjust the schedule.

13. Time is of the Essence. Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

14. Personnel. Consultant agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant and Consultant's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Consultant nor Consultant's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Consultant. The City shall not be required to pay any workers' compensation insurance on behalf of Consultant.

Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

15. Consultant Not Agent. Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Consultant shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

16. Term. The term of this Agreement shall commence on January 1, 2021 and shall continue in full force and effect until October 31, 2021.

City shall, at its discretion, have the right to extend the term of this Agreement, in intervals of one year, by written notice to Consultant. The total duration of this Agreement, including the exercise of any options under this section, shall not exceed five years.

If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the City Council of the City of Vallejo.

If funds to effect such continued payment are not appropriated, Consultant agrees to terminate any services supplied to City of Vallejo under this Agreement, and relieve City of any further obligation therefore.

17. Termination or Abandonment by City. The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving notice to Consultant. Upon receipt of a notice of termination, Consultant shall perform no further work except as specified in the notice. Before the date of termination, Consultant shall deliver to City all City records and documents, all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Consultant for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Consultant for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Consultant for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

18. Products of Consulting Services. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Consultant resulting from services rendered pursuant to this Agreement, shall become the property of City. Consultant agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office Suite (2002) format as appropriate for the particular work product or, if directed by the City Representative in Adobe Acrobat PDF format.

19. Cooperation by City. City shall, to the extent reasonable and practicable, assist and cooperate with Consultant in the performance of Consultant's services hereunder.

20. Assignment and Subcontracting. Consultant shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Consultant shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Consultant. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Consultant to use subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Consultant's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

Any subcontractor or assignee consented to by City shall be bound by all terms and conditions of this agreement and the same shall be incorporated into and made a part of any assignment or subcontractor agreement.

21. Successors and Assigns. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

22. Non-Discrimination/Fair Employment Practices.

(a) Consultant shall not, because of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation of any person, refuse to hire or employ, or to bar or discharge from employment, or to discriminate in compensation, or in terms, conditions or privileges any person, and every employee will receive equal opportunity for employment and shall be granted equal treatment with respect to compensation, terms, conditions or other privileges of employment, without regard to his race, religious creed, color, sex, national origin, ancestry, or disability, medical condition, age, marital status or sexual orientation.

Consultant warrants and represents it is an equal opportunity employer and agrees it shall not discriminate on the basis of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation in the selection and retention of employees, subcontractors or procurement of materials or equipment.

In all solicitations either by competitive bidding or negotiations made by Consultant for work to be performed under any subcontract, including procurement of

materials or equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligation under this Agreement relative to nondiscrimination and fair employment practices.

Consultant shall include the above provisions of this section in every subcontract, including procurement of materials or equipment.

(b) Consultant agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations and City ordinances and regulations hereinafter enacted.

23. 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:

Mark Quady
Engineering Manager
Water Department
555 Santa Clara Street
Vallejo CA 94590

If to Consultant:

Dale Pennington
President
1745 38th Street
Boulder, Colorado 80301

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.

24. Integration Clause. This Agreement, including all Exhibits, 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.

25. 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.

26. Law Governing. This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern District of California, Sacramento, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

27. 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.

28. 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.

29. Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

30. 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.

31. Compliance with Laws. Consultant will comply with all statutes, regulations and ordinances in the performance of all services under this Agreement.

32. Confidentiality of City Information. During the performance of services under this Agreement, Consultant may gain access to and use City information regarding, but not limited to, procedures, policies, training, operational practices, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. Consultant agrees that it will not use any information obtained as a consequence of the performance of services under this Agreement for any purpose other than fulfillment of Consultant's scope of work, to protect all City Information and treat it as strictly confidential and proprietary to City, and that it will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party, other than its own employees, agents or subcontractors who have a need for the City Information for the performance of services under this Agreement, without the prior written consent of City, or as required by law.

Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this Agreement as confidential.

A violation by Consultant of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Consultant's obligations under this section shall survive the completion of services, expiration or termination of this Agreement.

33. News and Information Release. Consultant agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

34. City Representative. The City Representative specified in Exhibit A, or the representative's designee, shall administer this Agreement for the City.

35. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

36. 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.

37. Authority. The person signing this Agreement for Consultant hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Consultant.

38. 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

Exhibit C, entitled "Insurance Requirements," including attachments

[SIGNATURES ON FOLLOWING PAGE]

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

a Delaware corporation

CITY OF VALLEJO,
a municipal corporation

By: _____

Consultant

By: _____
Greg Nyhoff
City Manager

DATE: _____

DATE: _____

ATTEST:

(City Seal)

By: _____
Dawn Abrahamson
City Clerk

APPROVED AS TO FORM:

Veronica Nebb
City Attorney

APPROVED AS TO INSURANCE:

Armond Sarkis
Risk Manager

EXHIBIT A

SCOPE OF WORK

1. **Representatives.** The City Representative for this Agreement is:

Mark Quady
Engineering Manager
Water Department
555 Santa Clara Street
Vallejo CA 94590
(707) 648-4309
(707) 648-4060

The Consultant's Representative for this Agreement is:

Nicole Naassan
Vice President
E Source Companies, LLC
2351 Energy Drive, Suite 1010
Baton Rouge, LA 70808
(703) 216-5752
(225) 612-6404

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission, or electronic mail as agreed between the Consultant Representative and City's Representative.

2. **Services to be Provided.** The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference.

3. **Time for Performance.** Consultant will perform the services according to the schedule contained in Attachment 2 of Exhibit A. If the schedule calls for the services to be performed in phases or discrete increments, Consultant shall not proceed from one phase or increment to the next without written authorization from the City's Representative. Consultant will complete all services by October 31, 2021.

4. **Key Personnel.** All of the individuals identified below are necessary for the successful prosecution of the services due to their unique expertise and depth and breadth of experience. There shall be no change in the personnel listed below, without written approval of the City Representative. Consultant recognizes that the

composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

Key personnel are as follows:

Name	Title
Nicole Naassan	Director
Steve Burge	Senior Associate
Don Rankin	Manager
Jon Mitchell	Senior Analyst
Alyssa Pourciau	Analyst



Exhibit A, Attachment 1 - Scope of Services

UtiliWorks Consulting Proposal Advanced Metering Infrastructure System Procurement Consulting Services

October 13, 2020



City of Vallejo
Water Department
555 Santa Clara Street
Vallejo, CA 94590

Attn: Mark Quady

UtiliWorks Consulting, LLC.
2351 Energy Dr. STE 1010
Baton Rouge, LA 70808

225.766.4188 Office
225.612.6404 Fax
www.utiliworks.com

UtiliWorks™

Strategic Utility Consulting

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Transmittal Letter

UtiliWorks Consulting, LLC (“UtiliWorks”) appreciates the opportunity to submit this proposal to the City of Vallejo (“Vallejo” or “City”) in response to their expressed interest in seeking AMI consulting services. UtiliWorks understands that The City of Vallejo has just over 38,000 connections, three (3) treatment plants and nine (9) pressure zones with just under 600 miles of water transmission and distribution mains. The Water Department provides administrative, engineering, water treatment, and maintenance support for the City’s potable water treatment and distribution.

UtiliWorks is a highly specialized providing professional services to assist only municipal utilities in the evaluation, design, procurement, and implementation of advanced metering and related technology solutions; this is the exclusive focus of our company. UtiliWorks has worked on behalf of other nearby municipalities/utilities to the City of Vallejo, such as Santa Rosa, Roseville, along with working with numerous similar size utilities within the great State of California. We have completed or have active project work for a total of 22 California utilities, and engaged on behalf of the California Public Utility Commission. Our firm’s key differentiators include:

1. Agile and Adaptable Consulting Firm that Specializes in this Market Space. We are a smaller, highly focused company with subject matter experts who have deep roots in the AMI market. Being a smaller consulting firm focused on AMI, we typically have a lower cost compared to large multi-national engineering firms. We will provide the City of Vallejo and its members full access to our senior staff and executives. We have excellent client references from utilities who desire a more agile organization with a tailored delivery strategy. Our team is known for our “hands-on” experience with technology, vendors, and owners in both pilot and full deployment environments. You will see evidence of our work with virtually all the leading vendors in this space. We believe our team has more true deployment experience (versus theoretical understanding) than any other consulting firm in this sector. Our references are the best way to confirm this.
2. A Tailored Solution for Your Unique Environment. As part of our regular engagements, UtiliWorks helps our clients determine which technology applications make sense for their unique environment. This includes budgeting, planning, selection of the appropriate technology, and providing implementation support and oversight. Working in conjunction with utility personnel, the UtiliWorks team can create an optimum solution for Vallejo because we do not associate our recommendations with a particular technology, and ***we have no vendor affiliations***. This allows us to independently guide utilities towards a “best-fit” solution without outside influence. Although independent, our executives at UtiliWorks have strong working relationships and direct access to top level personnel at AMI vendor organizations. This helps to expedite resolution of any issues that may arise during a project. Our team also has a robust pricing database which further assists in negotiating the most favorable terms possible for our utility clients.
3. Industry Recognition: UtiliWorks has worked with over 100 utilities on AMI engagements over the past 15 years and is very familiar with utility operations across all functional areas. By utilizing a strategic approach, we have been able to assist our clients in receiving industry accolades. These include:
 - a. Orangeburg Department of Public Utilities (DPU), SC (*“Best Smart Infrastructure Project of the Year”, CS Week*)
 - b. Albuquerque Bernalillo County Water Utility Authority, NM (*“Best Smart Infrastructure Project”, CS Week*)
 - c. Ruston, LA (*“Smart Grid Project of the Year”, Utility Automation and Engineering T&D Magazine*)
 - d. San Marcos, TX (*“Best Smart Infrastructure/Grid Project”, CS Week and “AMI Project of the Year”, DistribuTECH*)

Many of our clients have been featured in both international trade journals and local newspapers based on the success of their AMI projects. UtiliWorks is very proud of our clients’ accomplishments and will always seek to gain them the recognition they deserve.

UtiliWorks is a wholly owned subsidiary of E Source Companies, LLC (“E Source”). E Source offers a broad portfolio of customer-first and technology-driven solutions to help utilities effectively manage the customer and infrastructure sides of their business reliably, efficiently, safely, and sustainably. The Technology Planning and Implementation (TPI) Division of E Source consists of UtiliWorks Consulting and Excergy Corporation. This combination of the two leading firms in the utility operational technology consulting space offers significant innovation, expertise, and experience to customers. The guidance E Source offers helps customers make data-driven decisions to strengthen their customer relationships, plan for tomorrow’s infrastructure needs, and further their environmental sustainability goals while becoming more innovative and responsive in the rapidly evolving market.

Additionally, E Source’s TROVE Predictive Data Science and StrategyWise subsidiaries provide predictive data science solutions for the utility industry, delivering data-driven artificial intelligence (AI) solutions for utilities’ customer and infrastructure related challenges.

UtiliWorks is prepared to begin working on this project as soon as possible, with the issuance of a Notice to Proceed. Our team has expertise in performing all tasks requested by the RFP and proposed in our Scope of Work. We are confident in our ability to meet the time schedules and complete the work for a budget that is acceptable to Vallejo. The experience and qualifications of our proposed staff are exceptional and demonstrate their expertise.

UtiliWorks is enthusiastic about the opportunity to work with Vallejo. In summary, we believe that UtiliWorks is an excellent fit for the work requested. We are confident that our team will connect with your utility in a cost-effective way that will yield great results.

As the President of UtiliWorks Consulting, I am authorized to submit this proposal on behalf of UtiliWorks Consulting, LLC.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DP', is positioned above the printed name and title of the signatory.

Dale Pennington
President
UtiliWorks Consulting, LLC

2351 Energy Drive Suite 1010
Baton Rouge, LA 70808
P (225) 766-4188

Section 1 - Firm Profile

UtiliWorks Consulting is a wholly owned subsidiary of E Source. Since our founding in 2005, we have provided services for over 100 clients with a core focus on AMI/Smart Metering technology. UtiliWorks has a clear understanding of the costs and benefits derived from AMI and other associated technology solutions for utilities, as well as the operational impacts of deploying such technology. Additionally, UtiliWorks has performed program management oversight of all major vendors. A profile of our services and areas of expertise is as follows:

UtiliWorks Consulting, LLC		
Contact Information	2351 Energy Drive Suite 1010 Baton Rouge, Louisiana 70808 Website: www.utiliworks.com	Contact: Dale Pennington Phone: (631) 807-4063 Fax: (225) 612-6404 Email: dpennington@utiliworks.com
Business Focus, Attributes	· Utility-focused professional services firm · Advanced metering and associated technology design and deployment · Project management and implementation support	
Company Information	Founded: 2005 Limited Liability Company	FEIN: 20-4402870 DUNS: 825164713
Services	· Feasibility Studies · Strategic Planning · Financial Modeling and Data Analytics · RFP Development and Procurement · Business Process Improvement · Systems Design and Integration · Program Management · Communications · Grant Writing and Reporting · Field Surveys · Change Management · Deployment Strategy Development · Utility Technology Vision and Roadmap Development	
Company Mission	Together with our clients, UtiliWorks advances business and technology solutions which strategically enhance utility operations. We focus on the delivery of your technology system and the requisite business process changes that will drive performance throughout your organization.	
Location	· Corporate Headquarters in Boulder, Colorado · UtiliWorks Divisional Office in Baton Rouge, Louisiana · Associate offices in Colorado, California, Florida, Illinois, Indiana, Kansas, Minnesota, New York, North Carolina, Virginia, Oregon, Tennessee, Texas, Washington, and Alberta, Canada	
Banking	Chase Bank 1125 17 th Street, Floor 03; Denver, CO 80202 Attention: Sean Smythe Phone: (303) 244 -3269	
Insurance and Bonding	RBN Insurance Services 303 E. Wacker Drive, Suite 650, Chicago IL 60601 Attn: Telisa Gibson Email: tgibson@rbninsurance.com Phone: (312) 801-8085	
Legal	Fairfield & Woods, P.C. 1801 California Street, Suite 2600 Denver, CO 80202 Attention: Peter Edwards Email: pedwards@fwlaw.com Phone: (303) 830-2400; Fax: (303) 830-1033	

Section 2 - Past & Present Clients

Our team has worked across the United States and abroad with utilities in relation to their various AMI initiatives. The map below demonstrates the breadth of our experience across the lower 48 states and speaks to our ability to provide benefits for a diverse clientele. Our recommendations are informed by a detailed review of your utility's unique culture, practices, and characteristics.



Utility	State	Client Type	Meters
Alameda County Water District	CA	Water	82,400
Alameda Municipal Power	CA	Electric	35,000
Azusa Light and Water	CA	Electric/Water	53,000
Burbank Water and Power	CA	Electric/Water	50,000
California Public Utility Commission	CA	Electric/Gas	N/A
City of Buena Park	CA	Water	20,000
City of Oceanside	CA	Water	44,000
City of Palo Alto	CA	Electric/Water/Gas	72,000
City of Riverside	CA	Electric/Water	165,000
City of Roseville	CA	Electric/Water	93,000
City of Santa Ana	CA	Water	45,000
City of Santa Barbara	CA	Water	27,000
City of Santa Rosa	CA	Water	53,000
City of Seal Beach	CA	Water	5,400
City of Shasta Lake	CA	Electric	4,600
City of Signal Hill	CA	Water	3,000
Crescenta Valley Water District	CA	Water	8,000
Electric Power Research Institute	CA	N/A	N/A
Glendale Water & Power	CA	Electric/Water	119,000
Las Virgenes Municipal Water District	CA	Water	22,000
Long Beach Gas and Oil	CA	Gas	144,000
Long Beach Water Department	CA	Water	100,000
Los Angeles Department of Water and Power	CA	Electric/Water	2,060,000
North Marin Water District	CA	Water	20,800

Section 3 - Scope of Work

Assumptions

UtiliWorks developed this scope of work considering the following assumptions:

- Vallejo will assign a Project Manager (PM) to participate in regularly scheduled status calls with the UtiliWorks Project Manager, to review open issues, and to remove barriers to progress.
- Vallejo will designate the necessary Subject Matter Experts (SMEs) from all functional teams to actively participate throughout all phases of the project.
- Vallejo will have reasonable responsiveness to data requests, document/deliverable reviews, and meeting requests.
- Work will be performed by UtiliWorks resources either on-site or off-site in the completion of SOW deliverables.
- During on-site sessions, Vallejo will provide meeting space, teleconference line, projector, and wireless Internet connection for all relevant participants for all meetings.
- Vallejo will be responsible for all terms and conditions outlined in the final contract with vendor(s). UtiliWorks will provide input on certain terms and conditions but will not provide legal review or opinion.

Task 1 – Procurement and Vendor Contract Negotiations

This task will cover development of use case specifications; the planning, preparation, and development of the Request for Proposal (RFP); assistance with the evaluation and selection of an AML solution; and vendor contract negotiations. Specific tasks and deliverables associated with this task are outlined below.

Task 1.1 - Technology Review / Education

During our customized technology review workshop, UtiliWorks will discuss the critical success factors and relative advantages/disadvantages of AML platforms as they relate to Vallejo. We delve into the success stories of other utilities and discuss how Vallejo can avoid potentially pitfalls. We will provide you with a market vendor overview along with explanations of how the products and system characteristics could impact your operations and customer base. The technology review will be an interactive discussion designed to provoke thought, prompt questions, and bring Vallejo's team base-level knowledge up to a level suitable for making decisions going forward with an AML initiative.

Deliverables:

- *Technology Workshop*
- *Technology Workshop Agenda (*.doc)*
- *Vendor product overview (*.ppt)*

Task 1.2 - Project Goals and Objectives

Our team forms a solid foundation for success by conducting a workshop with executives, stakeholders, and key SMEs to establish a common understanding of Vallejo project goals, drivers, success factors, and risks. This approach is designed to stimulate discussion around project goals and objectives that otherwise may not have been considered. This task will serve as the foundation for future work to ensure what is ultimately deployed directly addresses the utility's goals and objectives.

Deliverables:

- *Goals and Objectives Workshop*
- *Goals and Objectives Workshop Agenda (*.doc/*.ppt)*
- *Project Goals and Objectives included in the RFP*

Task 1.3 - Use Case Prioritization

As part of discovery, UtiliWorks will host a workshop with Vallejo with a focus on understanding use cases that will support Vallejo goals and objectives as well as other desired use cases for an AMI implementation. Through this effort, our team will identify the appropriate technology, add-on applications, and/or additional data integrations related to your AMI program.

With input from stakeholders across your organization, our team will suggest relevant applications of AMI data and system event information. Our starting list includes use cases outlined by the National Institute of Standards and Technology (NIST), the American Water Works Association (AWWA), and other industry working groups, in addition to information derived from our past and present AMI projects. UtiliWorks will work with the Vallejo team to understand the possible applications for AMI data to support operational analysis and beyond.

UtiliWorks will leverage discovery information compiled about Vallejo to customize and group relevant use cases by specific business process, domain, and user roles that will interact for each specific outcome as defined in the use case. We work with your team to relate each use case to the desired business requirements to answer the “How?” for achieving strategic goals and objectives. This task serves as the basic building block for working towards functional and business requirements for your AMI program.

Assumptions:

- *UtiliWorks will provide a starting list of use cases for this Task.*

Deliverables:

- *Workshop Agenda (*.doc)*
- *Master Use Case List (*.xls)*

Task 1.4 - Use Case Development

From the master list of use cases that were prioritized based on program needs, the engagement shifts to one-on-one involvement with the Vallejo staff to detail out functional requirements for the project. UtiliWorks develops the use case specifications with direct engagement with impacted stakeholders (actors) in the organization. The use case specifications include a purpose or description of the use case's end goal, information to be exchanged, actor(s) involved, preconditions, list of steps to accomplish the use case, and postconditions. From these specifications, our team will draw system requirements that will be relevant during procurement of related AMI technology.

Assumptions:

- *UtiliWorks has proposed this task assuming the development of twenty (20) use cases. If additional use cases are desired, UtiliWorks will submit a change request for additional funding.*

Deliverables:

- *Use Case Specifications (*.doc)*

Task 1.5 - Requirements Development

UtiliWorks' approach to the procurement of technology is premised on the need to identify tight, detailed requirements. Based on the work performed in the previous tasks, UtiliWorks will package the technical requirements necessary to fulfill the use cases and provide specifications based on the project scope.

In addition to the compilation of these requirements, UtiliWorks will work with Vallejo to develop a strategy for the release and solicitation of proposals, relative to a number of factors including:

- IT practices, physical infrastructure, staffing, software development, software support, software integration, data management, security, and project management
- RFP policies, administration, cost considerations, terms & conditions, vendor communications, and timeline
- Appendices, attachments, vendor response format, and evaluation methodology

Deliverables:

- *Procurement and Requirements Workshop*
- *Procurement and Requirements Workshop Agenda (*.doc)*
- *Supporting Workshop Notes (*.ppt)*
- *Requirements Workbook(s) (*.xls)*

Task 1.6 - RFP Draft

UtiliWorks will prepare the RFP with the intent to provide the vendor community with the essential information to prepare a robust response that is tailored to Vallejo. UtiliWorks will incorporate the SOW into Vallejo's standard RFP boilerplate and review with the Vallejo team (including representatives of purchasing and legal) to ensure that all requirements are accurately reflected. It is anticipated that there will be several iterations for the RFP draft creation and the RFP draft review until we reach to the point where the RFP is complete and acceptable for publication.

UtiliWorks will also compile a comprehensive list of potential proposers (which may or may not include: Telecom/Network, AMI, MDMS, Meters/Materials, Installation) that would represent viable options to satisfy the goals and requirements of Vallejo.

Deliverables:

- *Publish-ready RFP (*.doc), including finalized Requirements Workbook(s) (*.xls), finalized Vendor Questionnaire Workbook (*.xls), and Cost Proposal Workbook (*.xls)*
- *Vendor List and Contact Information (*.xls)*
- *Evaluation criteria and scoring weights, scorecard, and evaluation materials (*.xls)*

Task 1.7 - RFP Administration

UtiliWorks will assist Vallejo with those tasks that must be managed once the RFP is released including: (a) advertising the RFP; (b) setting the agenda and leading a pre-proposal meeting, and coordinating a service area field tour; (c) receiving and responding to vendor questions in conjunction with Vallejo; and (d) publishing any necessary addenda.

Deliverables:

- *RFP management activities*
- *Reference check templates and evaluation process materials (*.xls)*
- *Pre-Proposal Meeting Agenda (*.doc)*
- *Pre-Proposal Presentation (*.ppt)*
- *Pre-Proposal Meeting Field Assessment Agenda (*.doc)*
- *Responses to proposer questions (*.doc)*

Task 1.8 - Response Evaluation Support

Prior to the receipt of responses, the UtiliWorks PM will work with the Vallejo PM to organize and schedule the proposal review process. As the responses are received, UtiliWorks' team of SMEs immediately starts the evaluation process alongside the Vallejo-designated Evaluation Team. UtiliWorks will summarize key components of each proposal in matrices to allow for easy comparison of proposals across different areas of the solicitation. To aid in this comparison, UtiliWorks will provide Vallejo with a comprehensive, systematic note-taking methodology that will allow evaluators to document and compare any notes, questions, and concerns. This open nature of this evaluation process will provide clarity and understanding to all participants involved, as well as serve as a repository for any additional follow-up questions to vendors that may need to be addressed during this task.

UtiliWorks will also analyze each cost proposal. When lining up the cost proposals side-by-side, it is common to discover that each vendor quote differs in some fashion, making it difficult to perform an apples-to-apples comparison. We minimize this challenge with how we structure the RFP response requirements and our analytical approach to cost normalization.

UtiliWorks will work with Vallejo throughout the evaluation process to arrive at a shortlist of recommended candidates. We will work with the Vallejo Evaluation Team to customize the shortlist meeting agenda and outline questions for each vendor interview. Our team will attend the shortlist interviews and ensure that candidates answer questions comprehensively and to Vallejo's satisfaction. UtiliWorks will also assist Vallejo with reference checks and potentially arrange site visits, so that Vallejo may obtain useful feedback from the experiences of other water utilities.

At the end of the evaluation process, we will work with Vallejo team to weigh the pros and cons of each shortlist candidate so that Vallejo can arrive at a final selection.

Deliverables:

- *High-Level Proposal Summary Comparison Matrix (*.xls)*
- *Vendor Questionnaire Proposer Response Comparison Matrix (*.xls)*
- *Requirements Proposer Response Comparison Matrix (*.xls)*
- *Cost Normalization (*.xls)*
- *Consolidated proposal clarifications, notes, and/or questions (*.doc)*
- *Shortlist interview agenda/questions (*.doc)*
- *Shortlist interview participation*
- *Shortlist interview summaries (*.doc)*
- *Reference checks and scorecards (*.doc, *.xls)*
- *Evaluation summary memorandum (*.doc)*

Task 1.9 - Vendor Contract Negotiations

UtiliWorks will provide guidance and support to Vallejo during contract negotiations with the selected vendor(s). Our experts will review and provide editorial for the proposed vendor contract and SOW,

determine whether the SOW complies with Vallejo requirements/contract, and negotiate terms that are as favorable as possible to Vallejo. UtiliWorks will work with Vallejo and the respective vendor(s) to identify and document Vallejo-specific systems acceptance criteria; identify and document expected deliverables to be produced; and identify price concessions. UtiliWorks will actively participate in discussions and negotiations with the selected vendor on behalf of Vallejo.

UtiliWorks will work with Vallejo to develop the final vendor contract presentation to the City Council and attend the City Council meeting to answer questions / provide clarification if desired

Assumptions:

- *UtiliWorks estimated the fee for this task assuming the duration of vendor contract negotiations is two (2) months. If the duration extends beyond the two (2) month duration, UtiliWorks will submit a change request for additional funding.*
- *Vallejo will be responsible for all terms and conditions outlined in the final agreement with vendor(s). UtiliWorks will provide input on certain terms and conditions but will not provide legal review or opinion.*

Deliverables:

- *Draft notes of contracting meetings to memorialize critical details in the contract underlying the systems the vendor is offering (*.doc and/or *.xls)*
- *Draft edits to vendor's SOW(s), including review of compliance with technical and business requirements, project approach, payment schedule, system acceptance criteria, and integration diagram (*.doc or *.pdf)*
- *City Council-Ready Vendor Contract (*.doc)*

Task 1.10 - Project Management and Services

UtiliWorks will provide structured project management to ensure that all project components are executed in a timely, organized fashion and completed to the project definition and expectations. Project Management activities include:

- maintaining the overall project schedule
- working with all project participants to monitor progress and adjust the work plan as needed to stay on schedule
- facilitating regular project progress and other meetings
- creating project status reports as required with input from Vallejo
- tracking project budget

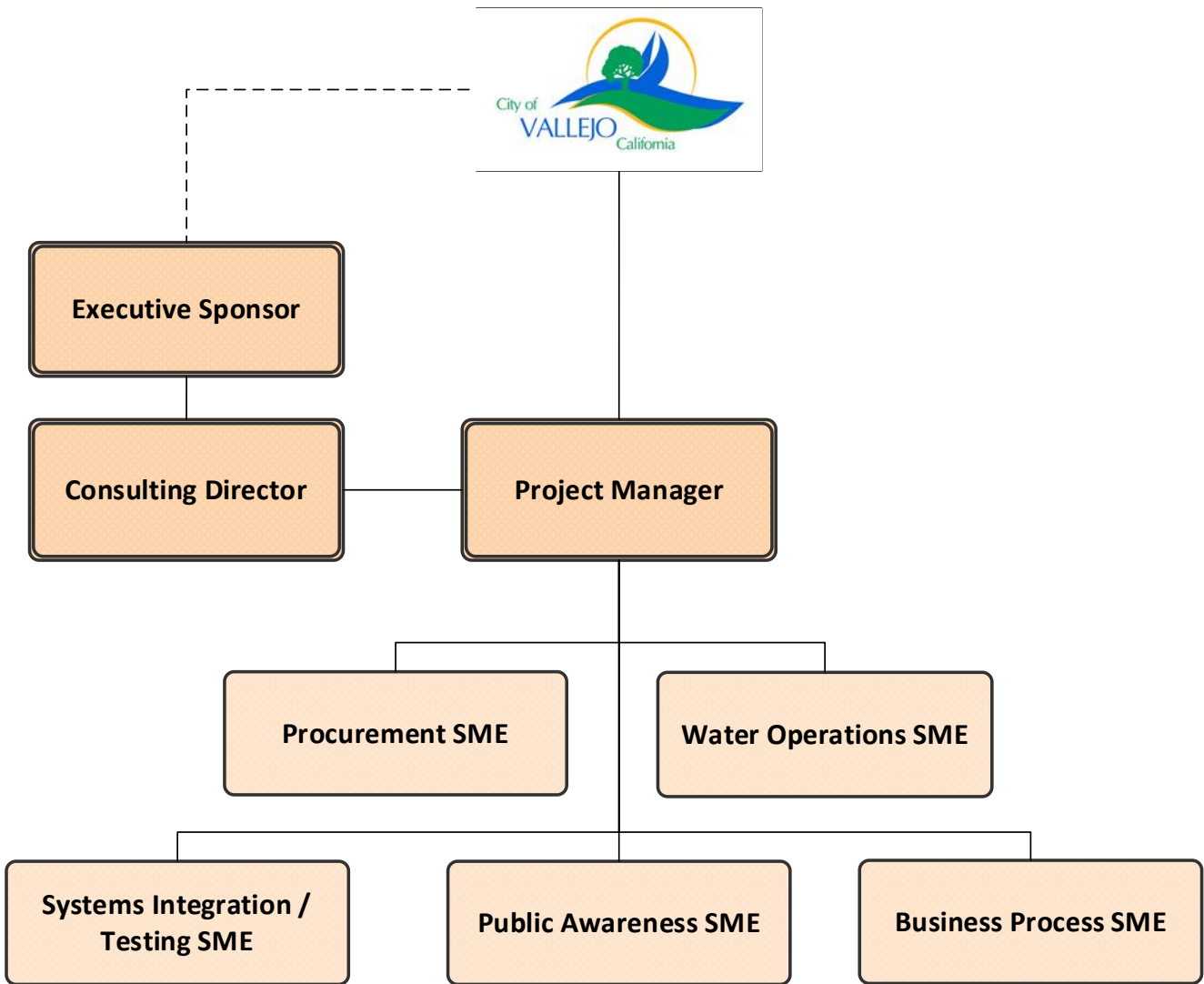
UtiliWorks will track this task order to ensure all work stays within scope and will initiate change requests for approval by Vallejo if required. Project timeliness, quality, and costs are measures of success and satisfaction. As such, the UtiliWorks delivery methodology employs a quality monitoring process whereby senior management within the firm will monitor all timeliness, quality, and project costs adherence to ensure success in all areas.

UtiliWorks will work with the Vallejo PM to develop and ratify the Project Charter that will provide project governance and communicate the goals and expected activities. UtiliWorks will set up and use a Vallejo-specific Microsoft SharePoint website for collaboration including calendaring, contacts, document repositories, etc. Additionally, UtiliWorks will make use of web-based meeting applications for remote meetings, as necessary.

Deliverables:

- *Project Charter (*.doc)*
- *Microsoft SharePoint Set-up and Website Administration*

Section 4 - Project Org Chart



Section 5 - References

Buena Park, California, 20,000 water meters			
			
Name of Business	Street Address	City & State	Contract Dates
City of Buena Park	6550 Beach Blvd	Buena Park, CA 90621	June 2014 - October 2018
Contact	Title	Telephone	Email Address
Mike McGee	Water Superintendent	(714) 562-3701	mmcgee@buenapark.com
Description of Work Performed: UtiliWorks was contracted to provide consulting services in the evaluation and application study of the current smart metering technologies and present an AMI/AMR business case to the City of Buena Park. UtiliWorks further assisted with and AMI/MDM procurement, including a CIS readiness assessment. UtiliWorks led development of the City's DOI WaterSMART grant application for FY2017 and was engaged as Program Manager for the AMI deployment for approximately 20,000 water meters. Project Manager: Bret Vonder Reith, Kara Truschel Key Lead Technical Roles: Kody Salem, Joe Kelly, Dylan Kelly, Nicole Naassan			

Long Beach, California, 100,000 water meters			
			
Name of Business	Street Address	City & State	Contract Dates
Long Beach Water Department	1800 E. Wardlow Road	Long Beach, CA 90807	Nov 2015 - Present
Contact	Title	Telephone	Email Address
Chris Garner	General Manager	(562) 570-2001	chris.garner@longbeach.gov
Description of Work Performed: UtiliWorks was engaged by the Long Beach Water Department (LBWD) to provide professional services to deliver an AMI/MDMS Assessment and Strategic Roadmap. Activities included: update to the AMI/MDMS business case; develop related as-is current state operations, communications infrastructure, and IT systems; review, analyze and provide recommendations related to LBWD's water conservation programs; and, develop desired data analytics by each utility department. UtiliWorks was awarded the contract to provide AMI/MDMS procurement services and overall Program Management services starting in August 2017. This includes development and implementation of an Awareness and Education Campaign, Business Process Re-Engineering, and oversight of systems integration and testing. The project is expected to conclude in February 2021. Project Manager: Nicole Naassan Key Lead Technical Roles: Chrystal Bennett, Dylan Kelly, Don Rankin, Jon Mitchell, Dale Pennington, Kara Truschel, Kierra Thomas			

Roseville, California, 67,000 electric / 45,000 water meters



Name of Business	Street Address	City & State	Contract Dates
City of Roseville	2090 Hilltop Circle	Roseville, CA 95747	November 2015 - Present
Contact	Title	Telephone	Email Address
Todd White	Assistant Electric Utility Director	(916) 746-1668	TWhite@roseville.ca.us

Description of Work Performed: UtiliWorks was selected to provide consulting services in the evaluation of current smart metering technologies and develop an AMI business case. The assessment outlined technologies suited for Roseville's unique environment and identified the associated business process and operational changes that must occur in order to be successful with moving to AMI. Following the assessment, UtiliWorks assisted Roseville in analyzing and evaluating responses to the Advanced Metering Infrastructure (AMI) RFP, supporting vendor evaluation, and assisting with vendor contract/scope of work negotiations.

UtiliWorks was then awarded the next phase of the project to provide overall Program Management support throughout the deployment of the AMI system/software, meters and communications infrastructure including business process re-engineering, communications campaign strategy, integration support services, business intelligence and reporting, and full deployment QA/QC.

Project Manager: Tara Turch

Key Lead Technical Roles: Tom Grim, Parvathi Murali, Bob Russ, Nicole Naassan, Chase Berenson, Kierra Thomas, Chrystal Bennett

Santa Rosa, California, 53,000 water meters



Name of Business	Street Address	City & State	Contract Dates
City of Santa Rosa	69 Stony Circle	Santa Rosa, CA 95401	May 2014 - March 2019
Contact	Title	Telephone	Email Address
Kimberly Zunino	Santa Rosa Water Deputy Director	(707) 543-3960	kzunino@srcity.org

Description of Work Performed: UtiliWorks supported Santa Rosa Water through its efforts to deploy AMI technology, including oversight of the City's AMI project as the lead Program Manager. UtiliWorks assisted the City with the procurement process by defining the technical and business requirements and providing oversight on the development of the RFP. UtiliWorks provided contract support services and assisted the city in negotiations with the selected vendors. UtiliWorks was subsequently engaged to oversee proof of concept development and full system deployment. In the Program Manager role, UtiliWorks oversaw the full system deployment and managed interactions between and among the city and multiple vendors, including the AMI vendor, MDMS vendor, and the installation contractor.

Project Manager: Nicole Naassan / Bret Vonder Reith

Key Lead Technical Roles: Kody Salem, Joe Kelly, Dylan Kelly, Nicole Pennington

Section 6 - Fees

UtiliWorks will perform these services on a time and materials basis and invoice the City monthly. Other Direct Costs (ODCs) are expected to be comprised primarily of travel that will also be invoiced monthly, at cost. The tables below provide the estimate of labor hours by task and the labor fee by task along and UtiliWorks hourly rates.

Task	Est. Labor Hours	Fee	ODCs	Total Fee
Task 1 - Procurement and Vendor Contract Negotiations				
Task 1.1 - Technology Review/Education	36	\$ 7,200	\$ -	\$ 7,200
Task 1.2 - Project Goals and Objectives	32	\$ 6,560	\$ -	\$ 6,560
Task 1.3 - Use Case Prioritization	48	\$ 9,600	\$ 3,000	\$ 12,600
Task 1.4 - Use Case Development	176	\$ 33,920	\$ 3,000	\$ 36,920
Task 1.5 - Requirements	92	\$ 17,840	\$ 3,000	\$ 20,840
Task 1.6 - RFP Draft	96	\$ 18,240	\$ -	\$ 18,240
Task 1.7 - RFP Administration	80	\$ 15,200	\$ -	\$ 15,200
Task 1.8 - Response Evaluation Support	208	\$ 40,960	\$ 3,000	\$ 43,960
Task 1.9 - Vendor Contract Negotiations	192	\$ 40,440	\$ 3,000	\$ 43,440
Task 1.10 - Project Management and Services	48	\$ 9,600	\$ -	\$ 9,600
Total		\$ 199,560	\$ 15,000	\$ 214,560

EXHIBIT A, ATTACHMENT 2 – TIME FOR PERFORMANCE

ID	Task Name	Start	Finish	Duration	Q4 20		Q1 21			Q2 21			Q3 21				
					Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	
1	Notice to Proceed	1/4/2021	1/4/2021	0d													
2	Technology Review/Education	1/18/2021	1/22/2021	5d													
3	Project Goals and Objectives	1/18/2021	1/22/2021	5d													
4	Use Case Prioritization	1/25/2021	1/29/2021	5d													
5	Use Case Development	2/1/2021	2/26/2021	20d													
6	Requirements	2/22/2021	3/5/2021	10d													
7	RFP Draft	2/22/2021	4/16/2021	40d													
8	Issue RFP	4/19/2021	4/19/2021	0d													
9	RFP Administration	4/19/2021	5/28/2021	30d													
10	Response Evaluation Support	5/31/2021	7/30/2021	45d													
11	Vendor Contract Negotiations	8/2/2021	10/22/2021	60d													
12	Project Management and Services	1/4/2021	10/22/2021	210d													

EXHIBIT B
COMPENSATION

1. Consultant's Compensation.

A. Services: City agrees to pay Consultant, at the rate(s) specified below, for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, for a total not to exceed amount of Two Hundred Fourteen Thousand, Five Hundred and Sixty Dollars and Zero Cents (\$214,560.00).

Consultant shall notify City in writing no later than thirty (30) days prior to the estimated date when Consultant will have billed City the maximum payment amount permitted under this Agreement, and Consultant shall provide City with an estimate of the additional compensation required to complete the project.

City agrees to pay Consultant for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, in a lump sum upon satisfactory completion of the services and delivery of the work product.

B. Additional Services:

1. Additional Services are those services related to the scope of Services of Consultant as set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Consultants to perform said Additional Services.

2. Consultant's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as established below. City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual Agreement between City and Consultant, compensation to Consultant shall not exceed the fixed fee amount.

2. Appropriate Billable Hourly Rates for Services and Additional Services. Consultant's billable hourly rates shall be:

Title	Rate
President	\$ 295.00
VP/Principal	\$ 260.00
Director	\$ 220.00
Senior Manager	\$ 220.00
Manager	\$ 220.00
Senior Associate	\$ 220.00
Consultant	\$ 220.00
Associate	\$ 190.00
Senior Analyst	\$ 160.00
Analyst	\$ 160.00
Junior Analyst	\$ 115.00
Administrative	\$ 115.00

3. Consultant's Reimbursable Expenses. Reimbursable Expenses shall be limited to actual reasonable expenditures of Consultant for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

4. Payments to Consultant.

A. Payments to Consultant shall be made within a reasonable time after receipt of Consultant's invoice, said payments to be made in proportion to services performed. Consultant may request payment on a monthly basis. Consultant shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Consultant shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses")
7. Total Billed to Date

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to

Consultant for correction. City shall not be responsible for delays in payment to Consultant resulting from Consultant's failure to comply with the invoice format described above.

D. Request for payment shall be sent to:

Mark Quady
Engineering Manager
Water Department
555 Santa Clara Street
Vallejo CA 94590

5. Accounting Records of Consultant. Consultant shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Consultant's direct salary costs for all Services and Additional Services performed under this Agreement and records of Consultant's Reimbursable Expenses, in accordance with generally accepted accounting practices. Consultant shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours' notice.

The obligations of Consultant under this section shall survive this Agreement.

6. Taxes. Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

7. Taxpayer Identification Number. Consultant shall provide City with Consultant'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.

EXHIBIT C

INSURANCE REQUIREMENTS

Consultant shall procure and maintain for the duration of this Agreement, including any extensions thereto, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by the Consultant, their agents, representatives, or employees or subcontractors.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

A. Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

B. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 any auto and endorsement CA 0025.

C. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

D. Professional Liability insurance appropriate to the Consultant's profession (Errors and Omission).

2. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

A. General Liability: \$2,000,000 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.

B. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

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

D. Professional Liability (Errors and Omission): \$1,000,000 combined single limit per occurrence, and annual aggregate.

3. 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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. 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:

A. 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 Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased hired or borrowed by the Consultant. 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.

B. For any claims related to this project, the Consultant'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 Consultant's insurance and shall not contribute with it.

C. 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.

D. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. 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.

F. The workers' compensation and employer's liability policy required hereunder shall be endorsed to state that the workers' compensation carrier

waives its right of subrogation against City, its officers, officials, employees, agents and volunteers, which might arise by reason of payment under such policy in connection with Consultant's performance under this Agreement.

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

6. Verification of Coverage. Consultant shall furnish the City with certificates of insurance and original endorsements effecting general and automobile liability insurance coverage required by this clause. The certificates and 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.

7. Subcontractors. Consultant 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.

8. Payment Withhold. City will withhold payments to Consultant if the certificates of insurance and endorsements required in Paragraph F, above, are canceled or Consultant otherwise ceases to be insured as required herein.

Approved as to form:

By:  for
Veronica Nebb, City Attorney

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

This Consultant and Professional Services Agreement ("Agreement") is made at Vallejo, California, dated for reference this ____ day of _____, 20__, by and between the City of Vallejo, a municipal corporation ("City"), and E Source Companies, LLC (formerly Utiliworks Consulting), a Delaware corporation, hereinafter referred to as "Consultant", who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
- 2. Payment.** City shall pay Consultant for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement.
- 3. Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
- 4. Indemnification.** Consultant shall indemnify, hold harmless, and defend City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, consultant's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Consultant's operations, or any subcontractor's operations, to be performed under this agreement for Consultant's or subcontractor's tort negligence including active or passive, or strict negligence, including but not limited to personal injury including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Consultant, or any subcontractor, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by the law, regardless to any limitation by insurance, with the exception of the sole negligence or willful misconduct of the City.

The provisions of this section shall survive the expiration or termination of this Agreement.

5. Insurance Requirements. Consultant agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for Consultant." Failure to maintain required insurance at all times shall constitute a default and material breach.

6. Accident Reports. Consultant shall immediately report (as soon as feasible, but not more than 24 hours) to the City Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses, and telephone numbers of any known witnesses, (c) the date, time, and description of the accident or other occurrence.

7. Conflict of Interest. Consultant warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Consultant's family, business, real property or financial interests and the services to be provided under this Agreement. Consultant shall comply with the City of Vallejo Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Consultant's family, business, real property, or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Consultant shall disclose such conflict in writing to City. Every individual who performs services on behalf of Consultant pursuant to this Agreement must file a full Statement of Economic Interests (also known as Form 700) with the City Clerk if the work of the individual involves making a governmental decision whether to issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement; authorizes the City to enter into, modify, or renew a contract; grants City approval of specifications for a contract; adopts or approves for the City any policy, standard or guideline; lobbies on behalf of the City, or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

8. Independent Contractor. Consultant is an independent contractor. Neither Consultant nor any of Consultant's officers, employees, agents, or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplishes services pursuant to this Agreement.

9. Licences, Permits, Etc. Consultant represents and warrants to City that all consultant services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this

Agreement and that Consultant has all the permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession.

10. Business License. Consultant, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Consultant until such business license(s) has been obtained.

11. Standard of Performance. Consultant shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Consultant's profession currently practicing in California.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Consultant's responsibilities under this section shall not be delegated. Consultant shall be responsible to City for acts, errors, or omissions of Consultant's subcontractors.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Consultant is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant.

12. Force Majeure. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by causes or circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Consultant is unable to meet the completion date or schedule of services, Consultant shall immediately inform the City Representative of this in writing. If additional time is required to perform the work, the City Representative may adjust the schedule.

13. Time is of the Essence. Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

14. Personnel. Consultant agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant and Consultant's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Consultant nor Consultant's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Consultant. The City shall not be required to pay any workers' compensation insurance on behalf of Consultant.

Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

15. Consultant Not Agent. Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Consultant shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

16. Term. The term of this Agreement shall commence on January 1, 2021 and shall continue in full force and effect until October 31, 2021.

City shall, at its discretion, have the right to extend the term of this Agreement, in intervals of one year, by written notice to Consultant. The total duration of this

Agreement, including the exercise of any options under this section, shall not exceed five years.

If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the City Council of the City of Vallejo. If funds to effect such continued payment are not appropriated, Consultant agrees to terminate any services supplied to City of Vallejo under this Agreement, and relieve City of any further obligation therefore.

17. Termination or Abandonment by City. The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving notice to Consultant. Upon receipt of a notice of termination, Consultant shall perform no further work except as specified in the notice. Before the date of termination, Consultant shall deliver to City all City records and documents, all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Consultant for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Consultant for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Consultant for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

18. Products of Consulting Services. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Consultant resulting from services rendered pursuant to this Agreement, shall become the property of City. Consultant agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office Suite (2002) format as appropriate for the particular work product or, if directed by the City Representative

in Adobe Acrobat PDF format.

19. Cooperation by City. City shall, to the extent reasonable and practicable, assist and cooperate with Consultant in the performance of Consultant's services hereunder.

20. Assignment and Subcontracting. Consultant shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Consultant shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Consultant. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Consultant to use subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Consultant's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

Any subcontractor or assignee consented to by City shall be bound by all terms and conditions of this agreement and the same shall be incorporated into and made a part of any assignment or subcontractor agreement.

21. Successors and Assigns. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

22. Non-Discrimination/Fair Employment Practices.

(a) Consultant shall not, because of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation of any person, refuse to hire or employ, or to bar or discharge from employment, or to discriminate in compensation, or in terms, conditions or privileges any person, and every employee will receive equal opportunity for employment and shall be granted equal treatment with respect to compensation, terms, conditions or other privileges of employment, without regard to his race, religious creed, color, sex, national origin, ancestry, or disability, medical condition, age, marital status or sexual orientation.

Consultant warrants and represents it is an equal opportunity employer and agrees it shall not discriminate on the basis of race, religious creed, color, sex, national

origin, ancestry, disability, medical condition, age, marital status or sexual orientation in the selection and retention of employees, subcontractors or procurement of materials or equipment.

In all solicitations either by competitive bidding or negotiations made by Consultant for work to be performed under any subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligation under this Agreement relative to nondiscrimination and fair employment practices.

Consultant shall include the above provisions of this section in every subcontract, including procurement of materials or equipment.

(b) Consultant agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations and City ordinances and regulations hereinafter enacted.

23. 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:

Mark Quady
Engineering Manager
Water Department
555 Santa Clara Street
Vallejo CA 94590

If to Consultant:

Dale Pennington
President
1745 38th Street
Boulder, Colorado 80301

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.

24. Integration Clause. This Agreement, including all Exhibits, 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.

25. 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.

26. Law Governing. This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern District of California, Sacramento, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

27. 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.

28. 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.

29. Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

30. 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.

31. Compliance with Laws. Consultant will comply with all statutes, regulations and ordinances in the performance of all services under this Agreement.

32. Confidentiality of City Information. During the performance of services under this Agreement, Consultant may gain access to and use City information regarding, but not limited to, procedures, policies, training, operational practices, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. Consultant agrees that it will not use any information obtained as a consequence of the performance of services under this Agreement for any purpose other than fulfillment of Consultant's scope of work , to protect all City Information and treat it as strictly

confidential and proprietary to City, and that it will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party, other than its own employees, agents or subcontractors who have a need for the City Information for the performance of services under this Agreement, without the prior written consent of City, or as required by law.

Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this Agreement as confidential.

A violation by Consultant of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Consultant's obligations under this section shall survive the completion of services, expiration or termination of this Agreement.

33. News and Information Release. Consultant agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

34. City Representative. The City Representative specified in Exhibit A, or the representative's designee, shall administer this Agreement for the City.

35. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

36. 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.

37. Authority. The person signing this Agreement for Consultant hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Consultant.

38. 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

Exhibit C, entitled "Insurance Requirements," including attachments

[SIGNATURES ON FOLLOWING PAGE]

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

a Delaware corporation

CITY OF VALLEJO,
a municipal corporation

By: _____

Consultant

By: _____
Greg Nyhoff
City Manager

DATE: _____

DATE: _____

ATTEST:

(City Seal)

By: _____
Dawn Abrahamson
City Clerk

APPROVED AS TO FORM:

Veronica Nebb
City Attorney

APPROVED AS TO INSURANCE:

Armond Sarkis
Risk Manager

EXHIBIT A

SCOPE OF WORK

1. **Representatives.** The City Representative for this Agreement is:

Mark Quady
Engineering Manager
Water Department
555 Santa Clara Street
Vallejo CA 94590
(707) 648-4309
(707) 648-4060

The Consultant's Representative for this Agreement is:

Nicole Naassan
Vice President
E Source Companies, LLC
2351 Energy Drive, Suite 1010
Baton Rouge, LA 70808
(703) 216-5752
(225) 612-6404

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission, or electronic mail as agreed between the Consultant Representative and City's Representative.

2. **Services to be Provided.** The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference.

3. **Time for Performance.** Consultant will perform the services according to the schedule contained in Attachment 2 of Exhibit A. If the schedule calls for the services to be performed in phases or discrete increments, Consultant shall not proceed from one phase or increment to the next without written authorization from the City's Representative. Consultant will complete all services by October 31, 2021.

4. **Key Personnel.** All of the individuals identified below are necessary for the successful prosecution of the services due to their unique expertise and depth and breadth of experience. There shall be no change in the personnel listed below, without written approval of the City Representative. Consultant recognizes that the

composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

Key personnel are as follows:

Name	Title
Nicole Naassan	Director
Steve Burge	Senior Associate
Don Rankin	Manager
Jon Mitchell	Senior Analyst
Alyssa Pourciau	Analyst

EXHIBIT B
COMPENSATION

1. Consultant's Compensation.

A. Services: City agrees to pay Consultant, at the rate(s) specified below, for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, for a total not to exceed amount of Two Hundred Fourteen Thousand, Five Hundred and Sixty Dollars and Zero Cents (\$214,560.00).

Consultant shall notify City in writing no later than thirty (30) days prior to the estimated date when Consultant will have billed City the maximum payment amount permitted under this Agreement, and Consultant shall provide City with an estimate of the additional compensation required to complete the project.

City agrees to pay Consultant for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, in a lump sum upon satisfactory completion of the services and delivery of the work product.

B. Additional Services:

1. Additional Services are those services related to the scope of Services of Consultant as set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Consultants to perform said Additional Services.

2. Consultant's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as established below. City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual Agreement between City and Consultant, compensation to Consultant shall not exceed the fixed fee amount.

2. Appropriate Billable Hourly Rates for Services and Additional Services. Consultant's billable hourly rates shall be:

Title	Rate
President	\$ 295.00
VP/Principal	\$ 260.00
Director	\$ 220.00
Senior Manager	\$ 220.00
Manager	\$ 220.00
Senior Associate	\$ 220.00
Consultant	\$ 220.00
Associate	\$ 190.00
Senior Analyst	\$ 160.00
Analyst	\$ 160.00
Junior Analyst	\$ 115.00
Administrative	\$ 115.00

3. Consultant's Reimbursable Expenses. Reimbursable Expenses shall be limited to actual reasonable expenditures of Consultant for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

4. Payments to Consultant.

A. Payments to Consultant shall be made within a reasonable time after receipt of Consultant's invoice, said payments to be made in proportion to services performed. Consultant may request payment on a monthly basis. Consultant shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Consultant shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses")
7. Total Billed to Date

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to

Consultant for correction. City shall not be responsible for delays in payment to Consultant resulting from Consultant's failure to comply with the invoice format described above.

D. Request for payment shall be sent to:

Mark Quady
Engineering Manager
Water Department
555 Santa Clara Street
Vallejo CA 94590

5. Accounting Records of Consultant. Consultant shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Consultant's direct salary costs for all Services and Additional Services performed under this Agreement and records of Consultant's Reimbursable Expenses, in accordance with generally accepted accounting practices. Consultant shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours' notice.

The obligations of Consultant under this section shall survive this Agreement.

6. Taxes. Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

7. Taxpayer Identification Number. Consultant shall provide City with Consultant'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.

EXHIBIT C

INSURANCE REQUIREMENTS

Consultant shall procure and maintain for the duration of this Agreement, including any extensions thereto, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by the Consultant, their agents, representatives, or employees or subcontractors.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

A. Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

B. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 any auto and endorsement CA 0025.

C. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

D. Professional Liability insurance appropriate to the Consultant's profession (Errors and Omission).

2. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

A. General Liability: \$2,000,000 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.

B. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

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

D. Professional Liability (Errors and Omission): \$1,000,000 combined single limit per occurrence, and annual aggregate.

3. 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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. 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:

A. 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 Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased hired or borrowed by the Consultant. 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.

B. For any claims related to this project, the Consultant'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 Consultant's insurance and shall not contribute with it.

C. 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.

D. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. 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.

F. The workers' compensation and employer's liability policy required hereunder shall be endorsed to state that the workers' compensation carrier

waives its right of subrogation against City, its officers, officials, employees, agents and volunteers, which might arise by reason of payment under such policy in connection with Consultant's performance under this Agreement.

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

6. Verification of Coverage. Consultant shall furnish the City with certificates of insurance and original endorsements effecting general and automobile liability insurance coverage required by this clause. The certificates and 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.

7. Subcontractors. Consultant 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.

8. Payment Withhold. City will withhold payments to Consultant if the certificates of insurance and endorsements required in Paragraph F, above, are canceled or Consultant otherwise ceases to be insured as required herein.



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Rekha Nayar, Finance Director
SUBJECT: **RECEIVE & FILE COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR THE FISCAL YEAR ENDED JUNE 30, 2020**

RECOMMENDATION

Receive and file the City's Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2020.

REASONS FOR RECOMMENDATION

The City is required by Charter Section 721 to have an independent audit of its financial records performed each fiscal year. The audited financial statements for the fiscal year that ended June 30, 2020, have been completed.

BACKGROUND AND DISCUSSION

Each year, the City is required by Charter Section 721 to have an independent audit of its financial records. For Fiscal Year 2019-20 the City engaged Lance, Soll & Lunghard, LLP (LSL), an independent certified public accounting firm to perform the annual audit of the City of Vallejo and its component units. The audit has been completed.

The Comprehensive Annual Financial Report (CAFR) is a comprehensive document reflecting the financial position of the City and its related component units. The 2019-20 CAFR has been prepared in conformance with Generally Accepted Accounting Principles (GAAP) and with additional requirements of presentation as set by the Government Accounting Standards Board (GASB). The CAFR Transmittal letter and the Management's Discussion and Analysis section provide an overview and analysis of the financial activities of the year ended June 30, 2020.

Upon receipt and file by the City Council, the City will submit the CAFR to the Government Finance Officer's Association for consideration for the Certificate of Achievement of Excellence in Financial Reporting (CAFR Program) and post the CAFR on our City website.

Link to the CAFR is provided below.

<https://www.cityofvallejo.net/common/pages/DisplayFile.aspx?itemId=17262879>

The City has received an "unmodified" opinion from our auditors, LSL. This means that in their opinion the

**Subject: RECEIVE & FILE COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR THE FISCAL
YEAR ENDED JUNE 30, 2020**

basic financial statements present, in all material respects the financial position of the governmental activities, the business-type activities each major fund and the aggregate remaining fund information, for the City as of June 30, 2020, in accordance with GAAP.

NEXT STEPS

In January 2021, staff will present the audited FY 2019-20 financial performance and the auditors will report the audit results to the City Council.

FISCAL IMPACT

The cost of preparing the CAFR and the independent audit was budgeted as part of the FY 2020-21 budget. There is no fiscal impact of this action.

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

None

CONTACT

Rekha Nayar, Finance Director (707-648-4592)

Rekha.Nayar@cityofvallejo.net



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Greg Nyhoff, City Manager
Dawn G. Abrahamson, City Clerk
SUBJECT: REAFFIRM PROCESS FOR INSTALLATION OF NEWLY ELECTED MAYOR & COUNCILMEMBERS

RECOMMENDATION

Reaffirm the process to conduct the Oath of Office and Installation of the newly elected Mayor and Councilmembers to Districts 1, 3 and 6 as discussed at the December 8 regular City Council meeting.

Staff is presenting Plan A (Current COVID-19 Widespread Purple Tier) and Plan B (Regional Shelter at Home Order).

REASONS FOR RECOMMENDATION

On November 16, 2020 Solano County, along with 40 other Counties in California, reverted back to the widespread (purple) tier due to a rapid rise in COVID-19 cases over the last several weeks. On December 3, the Governor announced a new more restrictive Regional Shelter at Home Order (SHO) which will be implemented under certain circumstances. The Governor is using ICU capacity as the trigger for the SHO. This will be done regionally, and all Counties in a region will be subject to the SHO if the region reaches the capacity trigger, which is 15% or less of ICU beds available.

Given the uncertainty of the current restrictions and the likelihood that Solano County may advance to the more restrictive SHO tier by January 5, 2021, plans for the upcoming installation of the newly elected Mayor and Councilmembers in District 1, 3 and 6 were discussed by the Council at its December 8 meeting. Based on input from the current Council and Councilmember Elects Arriola and Diaz, staff was directed to return to Council at its December 15 meeting with a written Plan A (Current COVID-19 Widespread Purple Tier as of the writing of this staff report) and Plan B (SHO).

BACKGROUND AND DISCUSSION

Charter Section 302 – Term of Office, provides that each elective officer shall hold office for a term of 4 years commencing at 7:00 p.m. on the first Tuesday following January 1 after the general municipal election at which he/she was elected and until his/her successor is elected and assumes office.

The official Oath of Office must be given by an officer authorized by the state to administer oaths. In the case of the City, that is the City Clerk. Although the official Oath of Office must be administered by the City Clerk (or other official authorized by state law), a “ceremonial” Oath of Office, may be administered by any person, such as a family member or friend chosen by the individual taking the oath.

Traditionally, the Oath of Office and installation of the newly elected members is held in the Council Chambers in an open meeting forum. This meeting typically follows a special meeting of the current seated City Council as the elections official, the City Clerk, must present the election facts to the to the City Council to officially take action to adopt a resolution reciting the fact of the General Municipal Election, declaring the results and other such matters as provided by law. Per Government Code section 10263, the current City Council must take action to certify the results of the General Municipal Election before the newly elected members may be installed into office.

Considering the current state of the pandemic and the recent rollback to the restrictive purple tier in Solano County specifically, and the possibility of moving into the more restrictive SHO Regional tier, the installation of the newly elected Mayor and Councilmembers to Districts 1, 3 and 6 presents a challenging dilemma.

At its December 8 meeting, the City Council received and discussed staff's recommendation. Following discussion and after receiving input from Councilmembers Elect Arriola and Diaz, staff was directed to present a written plan consisting of Plan A (Current COVID-19 Widespread Purple Tier) report) and Plan B (SHO) to the Council at its December 15 meeting for confirmation.

Plan A (Current COVID-19 Widespread Purple Tier)

Plan A consists of an official swearing in via zoom for each of the newly elected members, and an optional limited-attendance oath opportunity to be scheduled with the City Clerk. The optional limited-attendance in-person oath opportunity will take place in the Council Chambers prior to the regular City Council meeting. This optional swearing ceremony would be conducted one member elect at a time, beginning at 2 p.m. on Tuesday, January 5 and will conclude prior to the 6 p.m. Virtual (Zoom) Special Council Meeting with the following protocols in place.

Due to COVID-19, the following safety precautions will be implemented:

- Mayor-Elect and Councilmembers Elect will contact the City Clerk and schedule an appointment.
- Appointments will be in 15 minute increments in the Council Chambers. Thirty minutes in between each appointment is needed for sanitizing the room and eliminating any crossover between parties involved.
- No more than two households, up to a maximum of 10 people may attend in addition to the City Clerk and the Mayor/Councilmember elect (12 total persons maximum).
- Masks must be worn at all times, including during photos and any videoing of the event.
- Maintain 6-feet distance at all times. The City Clerk will maintain a greater than 6-foot distance between the City Clerk and all other persons.
- No seating will be permitted, except as needed for ADA accommodation. This is to reduce the time necessary for sanitation between individual ceremonies.
- Other restrictions may be necessary based on changing state and county guidance. We will implement all appropriate protocols based on the restrictions in place at the time.

Following this optional limited-attendance oath opportunity, the sequence of City Council meetings will be as

follows:

6:00 p.m. Virtual (Zoom) Special City Council Meeting with the Current Seated Council:

Receive and formally accept the November 3, 2020 General Municipal Election Certified Results.

Adopt minutes from December 2020 meetings.

Presentations to and remarks from outgoing Mayor Sampayan and Councilmember Sunga.

7:00 p.m. Virtual (Zoom) Regular City Council Meeting:

Installation of Newly Elected Mayor and District 1, 3 and 6 Councilmembers to include Oath of Office by the City Clerk.

Remarks by newly Elected Mayor and Councilmembers.

Selection of Vice Mayor.

Council Appointments to Various Commissions, Boards and Committees for 2021.

As mentioned above, in the event that Solano County moves to SHO, prior to the January 5, 2021 meeting, the in-person swearing in ceremony will not be possible. In such an event, Plan B, below will be implemented by staff.

Plan B (Regional Shelter at Home Order)

Official Oath by the City Clerk will be virtually during the 7 p.m. regular City Council meeting. There will be no limited opportunity for an optional limited-attendance oath in the City Council Chambers.

The sequence of virtual City Council meetings would otherwise be the same as outlined in Plan A, as follows:

6:00 p.m. Virtual (Zoom) Special City Council Meeting with the Current Seated Council:

Receive and formally accept the November 3, 2020 General Municipal Election Certified Results.

Adopt minutes from December 2020 meetings.

Presentations to and remarks from outgoing Mayor Sampayan and Councilmember Sunga.

7:00 p.m. Virtual (Zoom) Regular City Council Meeting:

Installation of Newly Elected Mayor and District 1, 3 and 6 Councilmembers and Oath of Office by the City Clerk.

Remarks by newly Elected Mayor and Councilmembers.

Selection of Vice Mayor.

Council Appointments to Various Commissions, Boards and Committees for 2021.

When restrictions are lifted, a ceremonial celebration to consist of family members, friends and the community could be considered with staff's assistance.

FISCAL IMPACT

There is no fiscal impact related to the cost of the installation of newly elected members to the City Council if

we host this meeting remotely, including the optional limited-attendance individual oaths in the City Council Chambers.

ENVIRONMENTAL REVIEW

ATTACHMENTS

None

CONTACT

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

Dawn.Abrahamson@cityofvallejo.net



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Dawn G. Abrahamson, City Clerk
SUBJECT: **APPOINTMENTS TO PLANNING, CULTURE & THE ARTS AND ECONOMIC VITALITY COMMISSIONS AND THE VALLEJO HOUSING AUTHORITY FOR TENANT COMMISSIONERS**

RECOMMENDATION

Adopt a Resolution making the following appointments:

1. 1 appointment to the Planning Commission for a term to expire 6/30/23.
2. 2 appointments to the Culture & the Arts Commission for terms to expire 12/31/24
3. 1 appointment to the Economic Vitality Commission for a term to expire 6/30/22 and 1 appointment for a term to expire 6/30/23
4. 2 Vallejo Housing Authority Board Tenant Commissioner appointments for terms to expire 12/31/22

REASONS FOR RECOMMENDATION

Due to a number of vacancies and or term expirations, vacancies on a number of boards and commissions exist. Interviews were conducted at Special City Council meetings held on November 30 and December 1. The majority of the applicants attended and participated in the interview process held on these dates.

According to the City Council's procedure for selecting commissioners, appointments shall be made at the next regular meeting following the conclusion of the special meeting. Due to the number of items scheduled for the December 8 council meeting, appointments were delayed until the December 15 meeting.

BACKGROUND AND DISCUSSION

In early October, the City Clerk issued a press release for vacancies to a number of boards and commissions. The notice was also posted in various locations including the City's website and linked to the City's Facebook page, Twitter feed, and on Nextdoor.

At the time of the application filing deadline, applications for the Code Enforcement Appeals Board and the McCune Collection Commission had not been received. Staff will continue to accept applications and will return to the Council to schedule applicant interviews when a sufficient number of applications have been received.

**Subject: APPOINTMENTS TO PLANNING, CULTURE & THE ARTS AND ECONOMIC VITALITY
COMMISSIONS AND THE VALLEJO HOUSING AUTHORITY FOR TENANT
COMMISSIONERS**
Page 2

Applicant interviews were conducted by Council for the Planning Commission at a special meeting held on November 30 and on December 1 for the Culture & the Arts and the Economic Vitality Commissions and the Vallejo Housing Authority Board-Tenant Commissioners. The majority of the applicants for these commissions attended and participated in the interviews. No appointments were made at these meetings.

Applicants must attend and be interviewed in order to be considered for appointment. Those applicants who participated in the interview process are presented to the City Council for consideration.

Copies of applications received for these commissions have been provided to the Mayor and City Council, and copies are available for review in the Office of the City Clerk.

Culture & the Arts Commission

Chapter 2.32 of the Vallejo Municipal Code provides for a Commission on Culture & the Arts to consist of seven members who shall be residents of the City and represent a cross section of community interests and organizations.

There are presently 2 vacancies due to terms expiring December 31, 2020. Four applications were received and all applicants attended and participated in the interviews held on December 1. Four applicants are presented to City Council for its consideration. If the City Council chooses to make appointments, two appointments should be made for terms commencing on January 1, 2021 and expiring on December 31, 2024.

Economic Vitality Commission

Chapter 2.36 of the Vallejo Municipal Code provides for an EVC to consist of seven members. Members shall either be a resident of the city or an employee or owner of a business with a Vallejo business license.

Presently there are two vacancies due to resignations. Seven applications were received and five attended and participated in the interviews held on December 1. Five applicants are presented to the City Council for its consideration. If the City Council chooses to make appointments, one appointment should be made for a term commencing from date of appointment and expiring on June 30, 2022 and one appointment commencing from date of appointment and expiring on June 30, 2023.

Planning Commission

Chapter 2.44 of the Vallejo Municipal Code provides for a Planning Commission to consist of seven members who shall be residents of the City.

There is presently one vacancy due to a resignation. Eight applications were received and six applicants attended and participated in the interviews held on November 30 with the City Council. Six applicants are presented to City Council for its consideration. If the City Council chooses to make an appointment to fill the vacancy, the appointment should be made for a term commencing from date of appointment and expiring on June 30, 2023.

**Subject: APPOINTMENTS TO PLANNING, CULTURE & THE ARTS AND ECONOMIC VITALITY
COMMISSIONS AND THE VALLEJO HOUSING AUTHORITY FOR TENANT
COMMISSIONERS**

Vallejo Housing Authority Board - Tenant Commissioners

Pursuant to Health & Safety Code Section 34290, the City Council has declared its members to be commissioners of the Vallejo Housing Authority. In addition, the Council is required to appoint two tenant commissioners who must be residents of the City of Vallejo and participants in the Voucher Program at the time of application. One of the appointees must also be over 62 years of age. These requirements are incorporated into Article II of the Vallejo Housing Authority Bylaws.

A tenant member vacancy has existed for some time and another vacancy will exist as of January 1, 2021 due to the other term expiring at the end of this year. Two applications have been submitted for Council's consideration. Both applicants meet the mandatory requirements for this position and both participated in the interviews held on December 1. The two applicants are presented to the City Council for its consideration. If Council chooses to make appointments to fill the two tenant member vacancies, the appointments should be made for a term to commence on January 1, 2021 and expire on December 31, 2022. Health and Safety Code section 34272(a) requires that tenant commissioners shall be appointed for a term of two years.

Pursuant to the City Council's procedure for selecting commissioners, only interviews were conducted at the special meetings. Appointments to these advisory bodies are typically made at the next regular meeting following the conclusion of the special meeting; however due to the number of items scheduled for the December 8 meeting, appointments were delayed until tonight's meeting.

FISCAL IMPACT

There is no fiscal impact associated with filling vacancies to standing commissions.

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.	List of Applicants_121520
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CONTACT

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

Dawn.Abrahamson@cityofvallejo.net

LIST OF APPLICANTS AND TERMS

Culture + Arts Commission – 2 vacancies due to term expirations 12/31/20 (new terms to expire 12.31.24)

Melody Kozma-Kennedy

*Dalia Vidor

Kathy Cook

Cornisha Williams-Bailey

Economic Vitality Commission – 2 vacancies (1 term to expire 6/30/22 and 1 term to expire 6/30/23)

Robin Manning

Thomas Barbeiro

Calvin Harrell

L. Alexander Matias

HelenMarie “Cookie” Gordon

Planning Commission – 1 vacancy (term to expire 6/30/23)

Matt Kennedy

Tracy Kaae

Mark Kliem

Melissa Bowman

Ashley Elliott

HelenMarie “Cookie” Gordon

Vallejo Housing Authority Board – Tenant Commissioners (2 year terms. Will expire 12/31/22)

*Margie Verdan

HelenMarie “Cookie” Gordon

*Incumbent



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Michael Malone, Water Director
SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALLEJO AMENDING SECTION 2.10.126 AND ADDING SECTIONS 2.10.130, 2.10.131, AND 2.10.132 TO CHAPTER 2.10 (ADMINISTRATIVE ORGANIZATION) OF THE VALLEJO MUNICIPAL CODE RELATING TO THE WATER DEPARTMENT**

RECOMMENDATION

1. Introduce an ordinance amending section 2.10.126 and adding sections 2.10.130, 2.10.131, and 2.10.132 to Chapter 2.10 (Administrative Organization) of the Vallejo Municipal Code relating to the Water Department.
2. Allow reading of the ordinance by title only, waive reading of the entire ordinance pursuant to Government Code section 25131, and set the second hearing for adoption of the ordinance for December 15, 2020.

REASONS FOR RECOMMENDATION

This ordinance amendment will align the Vallejo Municipal Code with the City's current operations. Specifically, this ordinance amendment will amend the Vallejo Municipal Code to reflect the transition of the City's water services/operations in April 2017 from among several divisions of the Public Works Department to a standalone Water Department. Additionally, this ordinance amendment reflects the reorganization and consolidation of separate water-related functions from the Public Works Department into a standalone Water Department.

BACKGROUND AND DISCUSSION

In April 2017, the City's drinking water-related functions were consolidated from various sections of the Public Works Department and transitioned to form a standalone Water Department with a Director reporting directly to the City Manager. This was prompted by the goal to coordinate all drinking water-related operations and allow greater visibility and strategic direction for the benefit of rate-payers. The proposed Municipal Code update is the last step in the transition, as it aligns the Vallejo Municipal Code with the current organizational structure for the effective management and operation of drinking water-related services and functions and definitively reflects the City Manager's desire to recognize the Water Department as an entity independent from Public Works.

Municipal Code Chapter 2.10.120 addresses the administrative organization of the Public Works Department. This amendment will bring the Municipal Code into alignment with the actual configuration of the Water Department. Changes in this amendment include removal of water system related functions from the list of Public Works Department functions, creation of a separate Water Department under the control of the Water

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Page 2

Director, a listing of the primary duties of the Water Director, and a recitation of the basic functions of the department. The movement of functions out of Public Works and into the Water Department include those associated with Water Distribution Maintenance.

Section 600 of the Charter permits the Council by ordinance to prescribe the form of organization through which the City's functions will be administered. Section 601 of the Charter allows the Council to establish new departments and combine or eliminate units if desirable in Council's judgment.

FISCAL IMPACT

The creation of the Water Department itself has no immediate, direct fiscal impact, as all Water Enterprise funded positions, whether located in the Public Works Department Water Division or Maintenance Division, or Finance Department are directly charged to the Water Enterprise Fund (City Water Operating Fund 401). However, since 2017, the General Fund has absorbed the loss of Water Enterprise funding for the Public Works administrative and managerial function as well the loss of Public Works' cost distribution to Water for services no longer provided to the Water system.

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.	Changes Tracked Ordinance CAO Stamped
2.	Clean Ordinance CAO Stamped

CONTACT

Michael Malone, Water Director, (707) 648-4307
mike.malone@cityofvallejo.net

Approved as to form:

By:  for
Randy J. Risner
Interim City Attorney

ORDINANCE NO. _____ N.C.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALLEJO AMENDING SECTION 2.10.126 AND ADDING SECTIONS 2.10.130, 2.10.131, AND 2.10.132 TO CHAPTER 2.10 (ADMINISTRATIVE ORGANIZATION) OF THE VALLEJO MUNICIPAL CODE CREATING THE WATER DEPARTMENT

THE COUNCIL OF THE CITY OF VALLEJO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2.10.126 of the Vallejo Municipal Code is hereby revised, and shall read as follows:

“2.10.126 – Public Works department – Functions.

Functions shall be accomplished by organization of the public works department in a manner that is most operationally efficient as determined by the public works director, subject to City Council-approved ordinance. Establishment of functional divisions and appropriate managerial positions shall be determined by the operational needs of the department. The functions of the public works department are:

- A. To perform all engineering required to accomplish the functions and activities of the City's departments;
- B. To check and verify the accuracy and completeness of plans, specifications, plats, maps, property descriptions and engineering calculations submitted to the City for any consideration or action whatsoever;
- C. To file maps, data, surveys and measurements made, and to keep them safely and in an organized manner;
- D. By field inspections, to ensure compliance with ordinances, plans, specifications and policies pertaining to public works construction, reconstruction, repair and maintenance;
- E. To prepare or supervise the preparation of plans and documentation for public works construction, reconstruction, repair and maintenance, assessment district proceedings and special improvements;
- F. To perform work necessary or proper to ensure the City's compliance with the California Environmental Quality Act of 1970, as amended, and the state and local guidelines adopted thereunder as they relate to public works projects;
- G. To perform required traffic engineering;
- H. To administer landscape maintenance districts;
- I. To perform work necessary or proper to ensure the City's compliance with the California Subdivision Map Act, as amended, and the state and local guidelines adopted thereunder as they relate to private development projects; and

J. To provide maintenance services for:

1. Communications system maintenance and installation;
2. Equipment maintenance and replacement;
3. City building maintenance and repair;
4. City properties, including grounds and tree maintenance;
5. Streets, curbs, gutters and sidewalks repair and maintenance; and
6. Traffic signal and street lighting systems maintenance and repair.

K. To provide operation and maintenance services for the municipal marina;

~~L. To provide for the supply, treatment and distribution of water to all users of city water;~~

~~M. To provide for system expansion, including planning and design of the water systems;~~

~~N. To provide for the repair, system revision and maintenance of the water system;~~

~~O. To coordinate water system operation and maintenance with all other agencies and organizations including, but not limited to, the state department of public health and the state water resources control board, which affect or are affected by water production, quality, distribution, usage, expansion or change;~~

L. P. To perform such other functions as the director of public works may prescribe.”

SECTION 2. Section 2.10.130 of the Vallejo Municipal Code is hereby added, and shall read as follows:

“2.10.130 – Water department – Created

The water department is created. It shall be under direct control of the water director. The department shall consist of the employments provided in the annual budget.”

SECTION 3. Section 2.10.131 of the Vallejo Municipal Code is hereby added, and shall read as follows:

“2.10.131 - Water department – Water Director

The water director shall:

A. Lead, manage, plan, organize, implement, and oversee water production, treatment, delivery, maintenance, water quality, engineering, and management of water systems, infrastructure, plans, and policies as prescribed by the city manager and in accordance with the annual budget and capital programs and in compliance with all State and Federal requirements;

B. Formulate plans and programs and the assurance of their implementation;

C. Assist the city manager in meeting his/her policy-making, performance evaluation and community leadership roles;

D. Promote interdepartmental, interdivisional and public cooperation in support of water system programs;

E. Coordinate and administer all functions of the water department;

F. Reassign employees of the department between divisions, branches and sections thereof as may be required to meet operational needs or emergencies;

G. Name a water department manager to act in the capacity of the water director in the absence of the director;

H. Perform such other duties as the city manager may prescribe .”

SECTION 4. Section 2.10.132 of the Vallejo Municipal Code is hereby added, and shall read as follows:

“2.10.132 - Water department – Functions

The functions of the water department are:

A. To provide for the supply, treatment and distribution of water to all users of city water in accordance with all applicable laws and regulations;

B. To provide for system expansion, including planning and design of water systems and associated infrastructure and facilities;

C. To provide for the repair, system revision, and maintenance of the water system;

D. To coordinate water system operation and maintenance with all other agencies and organizations including, but not limited to, the state water resources control board, which affect or are affected by water production, treatment, quality, distribution, usage, expansion or change;

E. To perform such other functions as the water director may prescribe.”

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact one or more provisions may be declared invalid.

SECTION 6. EFFECTIVE DATE

This ordinance shall take effect and be in full force and effect thirty (30) days from and after its final passage.

SECTION 7. PUBLICATION

The City Clerk is hereby directed to cause a summary of this ordinance to be published in the manner prescribed by Government Code section 36933(c).

Approved as to form:

By:  for
Randy J. Risner
Interim City Attorney

ORDINANCE NO. _____ N.C.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALLEJO AMENDING SECTION 2.10.126 AND ADDING SECTIONS 2.10.130, 2.10.131, AND 2.10.132 TO CHAPTER 2.10 (ADMINISTRATIVE ORGANIZATION) OF THE VALLEJO MUNICIPAL CODE CREATING THE WATER DEPARTMENT

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“2.10.126 – Public Works department – Functions.

Functions shall be accomplished by organization of the public works department in a manner that is most operationally efficient as determined by the public works director, subject to City Council-approved ordinance. Establishment of functional divisions and appropriate managerial positions shall be determined by the operational needs of the department. The functions of the public works department are:

- A. To perform all engineering required to accomplish the functions and activities of the City's departments;
- B. To check and verify the accuracy and completeness of plans, specifications, plats, maps, property descriptions and engineering calculations submitted to the City for any consideration or action whatsoever;
- C. To file maps, data, surveys and measurements made, and to keep them safely and in an organized manner;
- D. By field inspections, to ensure compliance with ordinances, plans, specifications and policies pertaining to public works construction, reconstruction, repair and maintenance;
- E. To prepare or supervise the preparation of plans and documentation for public works construction, reconstruction, repair and maintenance, assessment district proceedings and special improvements;
- F. To perform work necessary or proper to ensure the City's compliance with the California Environmental Quality Act of 1970, as amended, and the state and local guidelines adopted thereunder as they relate to public works projects;

- G. To perform required traffic engineering;
- H. To administer landscape maintenance districts;
- I. To perform work necessary or proper to ensure the City's compliance with the California Subdivision Map Act, as amended, and the state and local guidelines adopted thereunder as they relate to private development projects; and
- J. To provide maintenance services for:
 - 1. Communications system maintenance and installation;
 - 2. Equipment maintenance and replacement;
 - 3. City building maintenance and repair;
 - 4. City properties, including grounds and tree maintenance;
 - 5. Streets, curbs, gutters and sidewalks repair and maintenance; and
 - 6. Traffic signal and street lighting systems maintenance and repair.
- K. To provide operation and maintenance services for the municipal marina;
- L. To perform such other functions as the director of public works may prescribe."

SECTION 2. Section 2.10.130 of the Vallejo Municipal Code is hereby added, and shall read as follows:

"2.10.130 – Water department – Created

The water department is created. It shall be under direct control of the water director. The department shall consist of the employments provided in the annual budget."

SECTION 3. Section 2.10.131 of the Vallejo Municipal Code is hereby added, and shall read as follows:

"2.10.131 - Water department – Water Director

The water director shall:

- A. Lead, manage, plan, organize, implement, and oversee water production, treatment, delivery, maintenance, water quality, engineering, and management of water systems, infrastructure, plans, and policies as prescribed by the city manager and in accordance with the annual budget and capital programs and in compliance with all State and Federal requirements;
- B. Formulate plans and programs and the assurance of their implementation;
- C. Assist the city manager in meeting his/her policy-making, performance evaluation and community leadership roles;
- D. Promote interdepartmental, interdivisional and public cooperation in support of water system programs;

- E. Coordinate and administer all functions of the water department;
- F. Reassign employees of the department between divisions, branches and sections thereof as may be required to meet operational needs or emergencies;
- G. Name a water department manager to act in the capacity of the water director in the absence of the director;
- H. Perform such other duties as the city manager may prescribe .”

SECTION 4. Section 2.10.132 of the Vallejo Municipal Code is hereby added, and shall read as follows:

“2.10.132 - Water department – Functions

The functions of the water department are:

- A. To provide for the supply, treatment and distribution of water to all users of city water in accordance with all applicable laws and regulations;
- B. To provide for system expansion, including planning and design of water systems and associated infrastructure and facilities;
- C. To provide for the repair, system revision, and maintenance of the water system;
- D. To coordinate water system operation and maintenance with all other agencies and organizations including, but not limited to, the state water resources control board, which affect or are affected by water production, treatment, quality, distribution, usage, expansion or change;
- E. To perform such other functions as the water director may prescribe.”

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact one or more provisions may be declared invalid.

SECTION 6. EFFECTIVE DATE

This ordinance shall take effect and be in full force and effect thirty (30) days from and after its final passage.

SECTION 7. PUBLICATION

The City Clerk is hereby directed to cause a summary of this ordinance to be published in the manner prescribed by Government Code section 36933(c).



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Gillian Hayes, Interim Deputy City Manager and Paul Kelley, Economic Development Director
SUBJECT: **NORTH MARE ISLAND TERM SHEET UPDATE AND ENA 5th AMENDMENT**

RECOMMENDATION

Approve the new Term Sheet for the North Mare Island Disposition and Development Agreement or Purchase Sale Agreement with The Nimitz Group, LLC, and authorize the City Manager to execute the Fifth Amended and Restated Exclusive Negotiation Agreement (ENA) with the Nimitz Group, LLC for North Mare Island.

REASONS FOR RECOMMENDATION

Approval of the new Term Sheet (Attachment 1) will provide The Nimitz Group (Nimitz), Southern Land Company and the City the necessary framework to further negotiate, draft and present to City Council for consideration a Disposition and Development Agreement or Purchase Sale Agreement (DDA/PSA) for City's sale of North Mare Island (NMI) to Nimitz for development. The new Term Sheet outlines a realistic plan that Southern Land Company, as Nimitz's developer, can implement, it shifts to Nimitz at closing the ongoing costs of ownership, operation and maintenance, and creates a viable opportunity for the development of NMI under a new more robust Specific Plan.

Since the approval of the initial Term Sheet in October 2019, Nimitz has hired Southern Land Company (SLC), a well-known and successful developer, to oversee the development of Mare Island. As part of SLC's initial review of NMI, they identified that, based on the unit costs provided in a 2018 geotechnical report ENGEO prepared for the City, the proposed importing of soils necessary for the development of NMI would cost approximately \$20M. These soil costs are in addition to the \$30 Million of site development costs and \$3.3 Million of demolition costs identified in the 2018 draft appraisal prepared for the City which concluded the "As Is" market value of NMI as of that date was equal to negative (-\$20.9M).

Given the fact that extremely challenging soil conditions are greater than what was originally anticipated, the parties' original economic assumptions during the prior Term Sheet negotiations are no longer viable and Nimitz with Southern Land as their developer is unable to implement the terms of the prior 2019 Term Sheet.

The new Term Sheet contemplates the City's sale to Nimitz of the approximately 125 acres of NMI presently owned by City within approximately 120 days following DDA/PSA execution. Nimitz would pay the City a purchase price of \$3 Million at closing notwithstanding the City's determination that the NMI land in its present condition has a negative value. Payment of the \$3M purchase price will enable the City to pay off the HUD loan in full. Concurrently with the closing for conveyance of the City-owned land, Nimitz would also sublease the Navy-owned portion of NMI from the City and assume all operational and security responsibilities. Nimitz would be obligated to accept conveyance of fee title to those Navy-owned NMI lands from the City immediately following Navy's conveyance of such land to the City.

The New Term Sheet also requires Nimitz to commence and complete demolition of the ten remaining non-utilized structures on NMI promptly following the initial closing, and to prepare and submit to City for consideration of approval a new Mare Island Specific Plan. This new Plan would replace the existing Specific Plan, the original version of which was prepared more than 21 years ago. Nimitz would be responsible for paying all costs of preparing an appropriate CEQA document to guide City's consideration of the new Specific Plan as well as an accompanying Backbone Infrastructure Plan necessary for the new Specific Plan implementation. Assuming a new Specific Plan is ultimately approved by the City, that plan would enable Nimitz / SLC to move forward with a bigger vision of a higher and better use and development of NMI as well as South Mare Island. That development will ultimately benefit City and other taxing entities through generations of additional tax dollars, including property, sales and use taxes, as well as business license fees and potentially transient occupancy taxes. The City will also benefit since upon closing City will be relieved of the burden of paying ongoing NMI carrying costs including the CFD, HUD Loan, security and maintenance costs. Nimitz has already agreed to assume the costs to secure the NMI site per the Security License Agreement approved November 2020.

The prior Term Sheet approved by Council in October 2019 required Nimitz to meet certain vertical development milestones regardless of whether the market conditions supported the need for such development. In recognition of the uncertainty as to when market conditions will support vertical development and given the length of time it will take to import fill to raise the elevation of NMI and complete surcharging, the new Term Sheet omits specific horizontal or vertical development milestones. In lieu of those milestones, and as an incentive for Nimitz to move forward with development sooner rather than later (and to make it less attractive to land bank property for an extended period of time), the new Term Sheet obligates Nimitz to pay to the City and the Vallejo Unified School District beginning in year 5 and continuing each year thereafter a "payment in lieu of property taxes" (PILOT) equal to what City and the School District would have received if Nimitz had moved forward with at least \$26 Million (in 2020/21 dollars) of private development on the portions of Mare Island owned by Nimitz. The payment in lieu of taxes would cease at such time as Nimitz has completed development with an assessed value of at least \$26 Million (in 2020/21 dollars).

Approval of this new Term Sheet will enable City and Nimitz's negotiating teams to move forward with negotiation and drafting of a comprehensive DDA/PSA consistent with the Term Sheet. Staff anticipates a proposed comprehensive DDA/PSA can be completed and presented to City Council for consideration of approval within 4-6 months of the approved term sheet. Assuming City Council approves a DDA/PSA, Nimitz would immediately begin undertaking master planning and pre-development work which will enable Nimitz and its vertical developer partners to invest in the property and move forward with site preparation and the future development of buildings and related improvements.

BACKGROUND AND DISCUSSION

History and Timeline

In early 2018, the City of Vallejo issued a Request for Qualifications (RFQ) for the development of the City's 157-acres on North Mare Island (NMI). This RFQ included ENGEO's geotech report that was prepared for the City. (Attachment 2). This report provided an overview of geologic hazards and geotechnical engineering land development considerations for NMI. ENGEO had concluded that the main geologic hazards concerns

for future land development were compressible soils, undocumented fills, slope stability, flooding and sea level rise and seismic hazards. To address these hazards for future land development, it was determined that soil importation would be needed to raise the NMI site grades. Typical construction costs for acquiring and transporting suitable import fill material vary significantly depending on borrow location, source and availability. ENGEO estimated a unit rate of \$10 per cubic yard, based on local sources of suitable import fill material, such as available on Mare Island, or from other nearby borrow sources.

On May 15, 2018, Council directed staff to negotiate an Exclusive Negotiating Agreement (ENA) with The Nimitz Group (Nimitz) with respect to the 157 acre North Mare Island property. On July 24, 2018, Council authorized the City Manager to execute the ENA with Nimitz under which the parties would negotiate a proposed Disposition and Development Agreement providing for City's conveyance of the NMI land to Nimitz for development.

In addition to the NMI negotiations, Nimitz was working with Lennar Mare Island, LLC (LMI) on a proposed Purchase and Sale Agreement for LMI's holdings on Mare Island, referred to as "South Island."

On July 31, 2019, Council approved a Consent Agreement to the Transfer of LMI's holdings to Nimitz. Concurrently, the Council approved a Fourth Amended and Restated ENA for NMI which identified the negotiation and execution of an initial ground lease and a Purchase Option Agreement as the goal of the City/Nimitz negotiations.

On October 22, 2019, Council approved an initial Term Sheet for NMI and directed staff and Nimitz to continue to work diligently toward finalizing comprehensive legal agreements consistent with the initial term sheet.

On November 2019, Nimitz closed escrow for the acquisition of South Island from LMI and assumed the role of Mare Island Master Developer.

In Early 2020, Nimitz brought aboard Southern Land Company (SLC) as its lead development partner/manager for Mare Island.

New Considerations

Updated Soil and site Preparation Costs

With a focus on NMI, SLC performed a detailed review of the suitability of NMI soil conditions and potential risks associated with rising sea levels and other environmental events, including future flooding, inundation, and liquefaction. Based on the soils analysis in the 2018 ENGEO report prepared for City, SLC engaged ENGEO to estimate the cost to prepare the soils for a potential expanded range of land uses. In May 2020, ENGEO provided SLC a Technical Memo updating the soil import costs and detailing the surcharging costs to address sea level rise. As portions of the site are below the 100-year flood zone and below the sea level rise estimates for year 2100, the grades on NMI need to be raised for development to Elevation +16 feet throughout the site to mitigate risks associated with sea level rise. In order to accomplish this, and stabilize compressible soils, ENGEO reported that SLC would need to bring approximately 2 Million cubic yards of soil to NMI. This soil importation, based on the \$10 per cubic yard in ENGEO's original report, is estimated to cost approximately \$20 Million. These soil import costs are in addition to the \$30 Million of site development costs

and \$3.3 Million of demolition costs identified in the 2018 draft appraisal prepared for the City which concluded the “As Is” market value of NMI was equal to a negative (\$20.9 Million).

Nimitz and SLC also engaged Carlson, Barbee & Gibson, Inc. (“CBG”), a civil engineering firm, to prepare a report pertaining to the proposed development of NMI. CBG’s report, which incorporated the \$20 million in soil import costs identified by ENGEO, estimated the combined costs of completing the soil import, surcharging, compaction, footings, and foundation work to prepare the Property for development at between \$19-48 million. (Attachment 3) The range in these cost estimates is due to the unknown cost of obtaining clean fill.

Overall, these additional development costs were significant enough to warrant additional reductions in the value of the Property below the already negative (\$20.9) Million As-Is market value indicated by the City’s 2018 appraisal report.

Expanded Use of NMI

Nimitz has commenced planning and visioning efforts that could potentially expand the range of permitted uses currently contemplated for NMI under the existing Specific Plan. As part of the updated Term Sheet, Nimitz has committed to submit a new proposed Mare Island Specific Plan for both South and North Island within 24 months of the Disposition and Development Agreement or Purchase Sale Agreement (DDA/PSA) execution. The new proposed uses are anticipated to require even greater investments in terms of soil preparation and backbone infrastructure than the current estimates. For example, soil remediation for residential uses are far greater than requirements for light industrial storage buildings.

COVID-19

The COVID-19 global pandemic has disrupted the financing markets and created greater uncertainty about near and medium term market demand for mixed-use development which have negatively affected the shared economic assumptions underlying the parties’ negotiations in 2019.

The substantial increase in estimated soil importation and preparation costs, combined with Nimitz’s anticipated expanded development of NMI and the investment challenges presented by the COVID-19 pandemic have caused Nimitz to call into question the parties’ economic assumptions during the prior Term Sheet negotiations. Based on these concerns, Nimitz is unable to implement the terms of the prior 2019 Term Sheet. In light of the new information gleaned from the additional due diligence and planning and visioning work, and in recognition of the economic challenges presented by the COVID-19 pandemic, the City and Nimitz’s negotiating teams have mutually concluded an updated Term Sheet is warranted whereby the substantial private investment in planning and development activities will occur following City’s transfer of fee title to Nimitz.

New Term Sheet Economic Benefits

As with the prior deal structure, the new terms outlined in the 2020 Term Sheet include substantial economic benefits to City including the following: As with the prior deal structure, the new terms outlined in the 2020 Term Sheet include substantial economic benefits to City including the following:

-
- Accelerating master land planning and backbone infrastructure planning.
 - Relieving City of ongoing obligation to address nuisance and property maintenance issues on NMI.
 - Shifting to Nimitz, and relieving City from, the obligation to make CFD payments.
 - Providing a purchase price payment to City that will enable City to fully payoff the approximately \$3M HUD loan, relieving the City general fund of all future HUD payments.
 - Enhancing attractiveness of key entry point for Mare Island.
 - Requiring demolition of non-utilized existing buildings onsite funded by Nimitz, not the City.
 - Committing Nimitz to import clean fill to the site when such fill is reasonably available at economically viable rates.

Because the new Term Sheet commits Nimitz to prepare updated land and infrastructure plans on an expedited basis and includes disincentives for long term land banking, City staff believe quality development is more likely to happen sooner rather than later. Such development, when it does occur, will provide substantial benefits to City including the following:

- **Additional Tax Benefits** - The current Specific Plan allows for development of 1.2 million square feet of building space on NMI, which, if developed by Nimitz, would produce significant tax revenue for the City. The growth in property tax revenue would be even greater if Nimitz's new Specific Plan proposes additional permitted land uses and development capacity, provided such plan is approved by City, and Nimitz builds out such uses.
- Development activity by Nimitz will generate construction jobs in the near term and also increase permanent employment opportunities which would be expected to be even greater under a new Specific Plan.

Nimitz, SLC Progress to Date

Nimitz has already implemented some of the key terms of the original Term Sheet. The City and Nimitz are currently executing the following agreements.

- Security License Agreement. This agreement, approved by Council on November 10, 2020, will allow Nimitz to provide security and install security improvements over the 157 acres of NMI, thereby immediately relieving City of ~\$50K of annual security costs, and substantially reducing the City's ongoing police and maintenance costs.
- Laydown Lease Agreement. This Lease, approved by Council on November 10, 2020, covers one of the NMI parcels totaling approximately 27 acres. The potential revenue from Nimitz's subleasing of this area to private third party sublessees will generate revenue to offset costs Nimitz will incur implementing the Security License Agreement. This lease also allows Nimitz to support the expansion of a key employer on the Island.
- Right of Entry Agreement. This license agreement will enable Nimitz to perform weed abatement in the storm water ditch located behind the residential sites. Although the weed abatement work is not currently contractually required, Nimitz has agreed to take on those obligations at its expense.

Nimitz/ SLC has also implemented the following:

- Hiring of key SLC staff including VP Marketing, VP Construction & Development, Environmental Manager

-
- Improved security at Mare Island Dry Dock, allowing for increase in government contracts and local hiring
 - Factory OS 100,000 square foot building expansion

Term Sheet Summary

Since Southern Land Company (SLC) started on the Mare Island project in early 2020, City staff and SLC, representing Nimitz, have diligently worked on reviewing and negotiating the key terms for the future Disposition and Development Agreement or Purchase Sale Agreement. Attached is a summary comparing the key terms in the 2019 Term Sheet with the updated 2020 Term Sheet. (Attachment 2), and below is a summary of the items shared by both term sheets and the new terms added to the 2020 Term Sheet.

The following terms were carried over into the new Term Sheet:

- Beautification and Security Plan
- Backbone Infrastructure planning
- Security and Maintenance
- HUD Loan payoff
- Assumption of CFD obligations
- Sublease of Navy Property until Navy transfer
- Local Sales/Use Tax Permit for constructed related contracts in excess of \$5 Million
- Local Economic Benefits

The new Term Sheet includes the following new terms:

- Purchase price of \$3M – which is greater than current \$2.5M HUD loan balance
- Nimitz to demolish remaining non-utilized buildings (estimated at \$2M+) rather than City. Updated demo costs based on demolition of the remaining 10 buildings.
- Nimitz to test, and, subject to confirmation of clean condition, relocate existing soil stockpiles to Mare Island development sites within 48 months following confirmation.
- Soil preparation following importation of clean fill.
- Submission of a new Specific Plan within 24 months of DDA/PSA approval.
- Minimum Assessed Value/ Property Tax Covenant
- City repurchase rights
- Expanded list of prohibited uses that are not currently prohibited by the existing specific plan.

Change from Milestones to Payment in Lieu of Property Taxes

The prior Term Sheet approved by Council in October 2019 required Nimitz to meet certain vertical development milestones equal to 100,000 square feet every 3 years, regardless of whether the market conditions supported the need for such development. In recognition of the uncertainty as to when market conditions will support vertical development and given the length of time it will take to import fill to raise the elevation of NMI and complete surcharging, the new Term Sheet omits specific horizontal or vertical development milestones.

In lieu of those milestones and as an incentive for Nimitz to move forward with development sooner rather

than later, the new Term Sheet obligates Nimitz to pay to the City and the Vallejo Unified School District beginning in year 5 and continuing each year thereafter a “payment in lieu of property taxes” (PILOT) equal to what City and the School District would have received if Nimitz had moved forward with at least \$26 Million (in 2020/21 dollars) of private development on the portions of Mare Island owned by Nimitz (including both South and North Island). The payment in lieu of taxes would cease at such time as Nimitz has completed development with an assessed value of at least \$26 Million island-wide (in 2020/21 dollars).

By increasing property holding costs the PILOT provision will provide Nimitz an incentive to move forward with development and make it unappealing from a financial perspective for Nimitz to land bank property for an extended period of time.

Change in City Obligation

Unlike the 2019 Term Sheet, the new Term Sheet transfers the obligation to demolish the remaining non-utilized buildings on NMI from the City to Nimitz. To date, the City has completed the demolition of twelve buildings on Mare Island at a total cost of approximately \$3M. Prior to the 2018 appraisal, the City had demolished 6 buildings. The appraisal estimated demolition of the remaining buildings at \$3.3M. Since then, the City demolished another 6 buildings. The remaining ten (10) non-utilized buildings to be demolished by Nimitz per the new Term Sheet include 499, 503, 517, 589, 593, 601, 653, 663, 673 & 993. The City estimated the cost to demolish these remaining facilities at approximately \$2M+ not including staff time and costs.

Future Items for Negotiation

Before any DDA/PSA is brought before City Council for consideration, the City and Nimitz will continue to negotiate the following items:

- Potential infrastructure reimbursements and/or impact fee credits and/or deferrals
- Details of Local Hire and Local Business Preferences
- Details of Additional Payments for Added Development beyond Specific Plan densities

Fifth Amended and Restated Exclusive Negotiation Agreement (ENA)

As part of the new Term Sheet, the City and Nimitz need to amend and restate the ENA to conform to the new Term Sheet. The proposed 5th Amended and Restated ENA (Attachment 5) includes the following key updates:

1. Parties to continue negotiations with goal of reaching agreement on a mutually acceptable Development and Disposition Agreement or Purchase Sale Agreement rather than a ground lease with a purchase option.
2. Exhibit B (list of terms) is no longer needed. This exhibit was included in the ENA 4th Amendment as it was executed prior to the development of a term sheet. The new Term Sheet now includes a more detailed list of terms to be incorporated into a comprehensive proposed DDA/PSA that will be presented to Council for consideration in 2021.

Next Steps

Upon Council approval, City staff will execute the Fifth Amended and Restated Exclusive Negotiation Agreement and continue negotiating with the Nimitz Group/ SLC a comprehensive DDA/PSA consistent with the new key terms. Staff anticipates bringing a complete DDA/PSA to City Council for its consideration within 4-6 months after the signed DDA/PSA.

The initial transfer of the City-owned 125 acres is anticipated to occur approximately 120 days following the execution of the DDA, allowing Nimitz and Southern Land to move forward quickly on the next phase of land and infrastructure planning and soil preparation.

FISCAL IMPACT

The costs the City incurred for outside legal counsel to assist in the negotiation and drafting of this Term Sheet have been borne entirely by Nimitz through a Developer Deposit Agreement and their deposit of funds. Nimitz will continue to cover additional outside legal costs required to negotiate and draft the proposed Disposition and Development Agreement, with no impact to the General Fund.

Should the Term Sheet (Attachment 1) key terms be incorporated into a Disposition and Development Agreement or Purchase Sale Agreement (DDA/PSA) approved by Council, the City 's General Fund will be relieved of the approximately \$336,000 annual costs for CFD taxes and \$2.5 million in HUD 108 debt servicing effective upon the first closing which would occur within 120 days following the DDA/PSA effective date.

ENVIRONMENTAL REVIEW

This action is exempt from the California Environmental Quality Act (CEQA) because the non-binding term sheet 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.	Nimitz DDA Term Sheet 09-2020
2.	2018 ENGEO NMI Geologic Overview
3.	2020 CBG Report
4.	Term Sheet Comparison final
5.	Fifth Amended Restated Exclusive Negotiating Agreement stamped

CONTACT

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Erin Hanford, Mare Island Project Manager, Erin.Hanford@cityofvallejo.net

Veronica Nebb, City Attorney, Veronica.nebb@cityofvallejo.net

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City of Vallejo
Proposed Key Business Terms
The Nimitz Group – Purchase of North Mare Island
NMI Term Sheet December 2020

1. Parties.

City of Vallejo (“**City**”) and The Nimitz Group, LLC, a California limited liability company operating as a Qualified Opportunity Zone Business in Vallejo, CA (“**Nimitz**”).

2. Property.

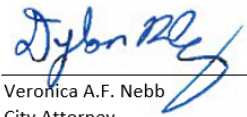
Approximately 157 acres in the area known as North Mare Island Industrial Park, and Re-use Area 1a, consisting of approximately 191 acres, of which 34 acres are to be reserved in City ownership as a conservation area. The net developable area of 157 acres as depicted in the diagram attached as Exhibit A consists of 125.3 acres previously conveyed by the United States Navy to the City (“**City-Owned Property**”), and approximately 31.8 acres owned by the Navy (“**Navy-Owned Property**” and together with the City-Owned Property, the “**Property**”) to be conveyed to City following the issuance of a Finding of Suitability for Transfer (FOST) and a determination by the State of California Department of Toxic Substances Control that no further remediation related action is required.

3. History and Context.

In early 2018, the City issued an RFQ seeking a master developer for the Property. City received a number of proposals and selected Nimitz as its preferred master developer. In July 2018, City and Nimitz entered into an exclusive negotiating agreement (as previously amended from time to time, the “**ENA**”) setting forth the terms under which Nimitz and City would negotiate a potential Disposition and Development Agreement (“**DDA**”) under which City would convey the Property to Nimitz for development. Since entering into the ENA, Nimitz and City have negotiated in good faith various potential structures for conveyance and development of the Property. While those negotiations were taking place, Nimitz, in 2019, completed acquisition of approximately 500 acres of South Mare Island property from Lennar Mare Island, which had been the owner and master developer of that property since approximately 2002.

By the end of 2019, City and Nimitz had completed a preliminary proposed term sheet that contemplated Nimitz undertaking substantial planning and infrastructure work under a lease/option to purchase agreement. Since that time, Nimitz and City have undertaken further review of the suitability of North Mare Island soils conditions and of potential risks associated with rising sea levels and other environmental events, including future flooding, inundation, and liquefaction. Nimitz has also commenced planning and visioning efforts that could potentially expand the range of potential uses contemplated for North Mare Island. The ongoing COVID-19 global pandemic has also disrupted financing markets and called into question the parties’ economic assumptions during the prior term sheet negotiations.

Approved as to form:

By:  for
Veronica A.F. Nebb
City Attorney

Since 2019, Nimitz has explored various options to facilitate development of the Property, including use of enhanced structural foundations and site elevation and soil compaction options. Nimitz has also brought on an experienced development company, Southern Land Company (“SLC”), to act as master developer for Mare Island, and together they have been looking at ways to accomplish the North Mare Island project.

For example, based on the soils report ENGEO prepared for the City as part of the original RFQ, Nimitz and SLC engaged ENGEO to estimate the cost to prepare the soils for the potential expanded uses. The report identified a need to elevate, compact and improve the Property to facilitate economically viable development and mitigate risks associated with sea level rise. The ENGEO report estimated that the costs of importing clean fill to elevate the developable portions of the Property (approximately two million cubic yards of soil) will cost more than \$20 million and take more than two years to complete.

Nimitz and SLC also engaged Carlson, Barbee & Gibson, Inc. (“CBG”), a civil engineering firm, to prepare a report pertaining to the proposed development of North Mare Island. CBG’s report indicated that, in addition to the \$20 million in soil importing costs identified by ENGEO, it will cost approximately \$19-48 million to complete surcharging, compaction, footings, and foundation work to get the Property “shovel ready” for vertical development. In sum, the added development costs associated with these options are significant enough to warrant additional reductions in the value of the Property below the already negative value indicated by the City’s draft appraisal report.

Because Nimitz and SLC are looking at the whole of Mare Island, the transaction outlined in the 2019 term sheet could create a situation making it challenging to invest and then compete against existing properties currently owned by Nimitz and available for lease. In light of the new information gleaned from the additional due diligence and planning and visioning work and in recognition of the economic challenges presented by the COVID-19 pandemic, the City and Nimitz’s negotiating teams have mutually concluded an updated term sheet is warranted whereby the substantial private investment in the Property will occur following City’s transfer of fee title to Nimitz.

4. Economic Benefits.

As with the prior deal structure, the new terms outlined in this term sheet include substantial economic benefits to City including the following:

- o Increased property, possessory interest, sales and use taxes, CFD special tax payments, construction and equipment taxes.
- o Business opportunity zone and other community benefits.
- o Accelerating master land planning and backbone infrastructure planning.
- o Relieving City of ongoing obligation to address nuisance and property maintenance issues on North Mare Island.
- o Relieving City of obligation of repaying an approximately \$3,000,000.00 HUD loan.
- o Enhancing attractiveness of key entry point for Mare Island.
- o Demolition of non-utilized, existing buildings onsite.

- o The existing Specific Plan allows for development of 1.2 million square feet of building space, which, if developed by Nimitz, would produce significant tax revenue for the City. The growth in property tax revenue would be even greater if Nimitz were to propose a new Specific Plan with additional permitted land uses and development capacity, such plan is approved by City, and Nimitz builds out such uses.
- o Development activity by Nimitz will generate construction jobs in the near term and also increase permanent employment opportunities. Employment opportunities would be expected to be even greater under a new Specific Plan.

5. **Disposition and Development.**

The parties will enter into a DDA whereby the City will transfer its interest in the Property to Nimitz for purposes of undertaking master planning, site preparation and pre-development work, the precise scope of which will be set forth in the DDA, which will enable Nimitz and its vertical developer partners to quickly move forward with development of buildings and related improvements and facilities at such time as market conditions allow. The closings will occur in phases, with the first closing for sale of the City-Owned Property (“**First Closing**”) to occur within 30 days following satisfaction of conditions precedent to closing, but in any event by no later than 90 days after effective date of DDA approval, or such later date as the parties may agree each in its sole discretion (“**Outside Date**”). If the First Closing has not occurred by the Outside Date, then the DDA shall terminate. Concurrently with the First Closing of the City-Owned Property, City and Nimitz will enter into a Sub-Lease in Furtherance of Conveyance (“**Sub-LIFOC**”) pursuant to which City will sublease to Nimitz on a NNN basis all of the Navy-Owned Property. A form of Sub-LIFOC will be included as an exhibit to the DDA. Following the First Closing, Nimitz will have a “must-take obligation” to accept from City a conveyance of fee title to the Navy-Owned Property immediately following City’s acceptance of such property from Navy. The closing(s) for City’s conveyance of the Navy-Owned Property to Nimitz shall occur immediately following City’s acceptance of the Navy-Owned Property from Navy through one or more back-to-back escrows.

6. **Deposit; Purchase Price.**

Pursuant to sections 7.2 and 7.3 of the Exclusive Negotiating Agreement between City and Nimitz, City is currently holding Nimitz’s negotiation deposit in the amount of \$50,000 (“**Negotiating Deposit**”). As contemplated by the ENA, the Negotiating Deposit will be transferred into the escrow to be established for the DDA transaction and will be applied towards the purchase price payable by Nimitz at the First Closing. The purchase price for the Property will be \$3 Million, which exceeds the amount needed to fully payoff the outstanding principal and interest balance of the City’s HUD 108 loan including any HUD-related closing costs. Concurrent with the conveyance of the City-Owned Property, the City will pay off the HUD 108 loan in full.

7. **Due Diligence; Work Product.**

Nimitz will be responsible for the design, construction and financing of all development on the Property, including required on- and off-site public improvements and Backbone Infrastructure (defined below). Accordingly, Nimitz will be responsible to determine if the

condition of the Property is adequate for its intended development. Within 90 days following the effective date of the DDA (“**Inspection Period**”), Nimitz will complete its investigation of the Property, including the investigation of hazardous materials in the soil or groundwater and condition of title, and notify City that either (i) Nimitz has determined that the entirety of the Property, including Navy-Owned Property, is inadequate for its planned development and use, and therefore Nimitz terminates the DDA, or (ii) Nimitz has determined that the entirety of the Property is adequate for its intended development and therefore accepts the Property in its As-Is Condition. To facilitate timely completion of its due diligence investigations, Nimitz will commence preliminary investigation work, including ordering of a Phase I environmental site assessment, promptly following the parties’ approval of this term sheet.

If by the Outside Date Nimitz has not acquired from City fee title to the entirety of the City-Owned Property then Nimitz shall provide City with full and complete copies of all investigation reports and studies applicable to the Property within Nimitz’ possession or direct control, including boring logs, sample or laboratory test results, or other technical data and backup, including in digital formats that can be accessed across similar platforms used by Nimitz, produced by Nimitz or its contractors or subcontractors in connection with Nimitz’ due diligence and pre-development activities (collectively, “**Work Product**”) within sixty (60) days following the expiration or termination of the DDA and concurrently with City delivery to Nimitz of any remaining City entitlement processing security deposit funds. The DDA shall include appropriate carve-outs addressing such excluded items as attorney/client communications and work product; confidential or proprietary information; internal memoranda, reports and assessments regarding valuation or interpretation of any agreements, contracts or third party reports; and architectural design concepts and plans including the work of HOK or other architects. Once delivered, each of Nimitz and City shall own equal right, title and interest in and to such Work Product. All such Work Product shall be provided solely on an “AS IS” basis for use by City or any of its assigns or contractors at their own respective risk.

8. Pre-Closing Obligations; Mare Island Beautification.

Nimitz will prepare a “**Beautification Plan**” addressing Nimitz’s plans for installing landscaping and adding fencing, lighting and improving security on Mare Island with particular emphasis on the Mare Island Causeway Bridge and Highway 37 entry points and the historic core area of Mare Island. Nimitz shall complete implementation of phase 1 of the Beautification Plan, consisting of installation of security fencing and lighting around the Property in accordance with the Non-Exclusive License Agreement, by no later than March 31, 2021. The DDA shall include milestones for Nimitz to complete preparation and obtain City approval of a comprehensive Beautification Plan consistent with the preliminary conceptual plan, and following City approval thereof, for Nimitz’s ongoing implementation of such plan.

9. Property Transfer Conditions.

Nimitz shall satisfy the following conditions precedent before escrow closes on the sale and transfer of the City-Owned Property:

- a. Nimitz shall have completed and/or demonstrated the following with regard to

Buildings 499, 503, 517, 589, 593, 601, 653, 663, 673 & 993 (“**Non-Utilized Structures**”):

- i. Nimitz has submitted applications for, and subject to payment of applicable fees, City is prepared to issue demolition permits with respect to all of the Non-Utilized Structures;
 - ii. Nimitz has pre-negotiated a form of demolition agreement with a contractor of its choosing for demolition of the Non-Utilized Structures and provided a copy of such agreement to City;
 - iii. Nimitz has obtained, or is ready to obtain currently with the First Closing, performance or completion bonds in forms reasonably acceptable to City to guaranty completion of the demolition work within the times provided below.
- b. Nimitz shall have submitted applications for, and subject to payment of applicable fees, City is prepared to issue grading permits with respect to the Property.
 - c. The Non-Exclusive License Agreement between City and Nimitz dated November __, 2020, pertaining to North Mare Island interim beautification and security, remains in full force and effect. Nimitz is not in default under such agreement and Nimitz has timely completed installation of the security fencing and lighting around the Property as contemplated by such agreement.
 - d. Nimitz shall have executed and acknowledged and delivered into escrow original counterparts of all closing documents including quitclaim deed(s) for conveyance of fee title to the applicable portion of the City-Owned Property, and, in the case of the first conveyance, a Sub-LIFO for the entirety of the Navy-Owned Property.

Nimitz shall satisfy the following conditions precedent before escrow closes on the sale and transfer of the Navy-Owned Property:

- i. With respect to the Navy-Owned Property or applicable portion thereof, Nimitz shall have submitted initial petitions and taken other preliminary actions necessary to cause annexation of the Navy-Owned Property, or applicable portion thereof, into the Mare Island CFD. The annexation shall be completed promptly following the closing and the costs of such CFD annexation shall be paid by Nimitz. The DDA shall include requirements for alternative property owner funding arrangements in the event the annexation is not completed promptly following the closing for conveyance of such property.
- ii. Nimitz shall have executed and acknowledged and delivered into escrow original counterparts of all closing documents including quitclaim deed(s) for conveyance of fee title to the applicable portion of the Navy-Owned Property.

10. Post-Closing Covenants.

- a. Nimitz will complete demolition of Non-Utilized Structures and request building demolition permit final inspection within 24 months following the First Closing.
- b. Within 12 months following the First Closing, Nimitz will cause a consultant selected by Nimitz to sample and test soil previously stockpiled by Lennar Mare Island so that a determination can be made as to whether such soil is suitable for importation as clean fill for Nimitz's intended development on Mare Island. If such soil is determined to be suitable for use as clean fill, then within 48 months following such determination, and subject to receipt of any required governmental approvals, Nimitz will re-locate such soil to the Property or other development sites on Mare Island as Nimitz may select in its sole discretion.
- c. As soon as practicable following the First Closing, Nimitz will use commercially reasonable and diligent efforts to commence and complete importation of clean fill in quantities sufficient to raise the elevation of the Property to a level necessary to support Nimitz's intended development and in accordance with all applicable governmental approvals, which is estimated to be approximately two million cubic yards. The parties recognize that the timing of completion of the fill importation work will depend upon the pace of development in the Bay Area, in particular the extent to which other development projects are required to find locations for disposing of excavated soil, and the resulting market demand for and pricing for importation of clean fill. Nimitz shall report to City on an annual basis regarding Nimitz's progress in obtaining such clean fill and the current pricing for clean fill in the local market.
- d. Within 24 months following the First Closing, Nimitz will submit to City for review and consideration of approval a comprehensive new Specific Plan for all portions of Mare Island owned or controlled by Nimitz or its affiliates, including the Property and the South Mare Island properties which Nimitz or its affiliates have acquired or are under contract to acquire from Lennar Mare Island, which Specific Plan shall include a plan for phased installation and construction of new backbone infrastructure ("**Backbone Infrastructure**") to serve all new development and redevelopment contemplated by the Specific Plan. The Specific Plan will address, among other items, the following: a range of permitted land uses which are potential to include commercial, retail, residential, office, hotel, industrial, community/civic and recreational uses, and the timing for construction and installation of Backbone Infrastructure.

11. Conveyance of Property; Closing Costs.

Title will be conveyed by quitclaim deed in a form to be attached to the DDA, in recognition that the Navy conveyed title to the City-Owned Property by quitclaim. All closing costs, recording fees, transfer taxes etc. will be paid by Nimitz. City agrees to reasonably cooperate with Nimitz, including execution of reasonable instruments requested by Nimitz's chosen title company, so that Nimitz is able to obtain a commercially reasonable owners' policy of

title insurance for the City-Owned Property and a commercially reasonable leasehold policy of title insurance for the Navy-Owned Property.

12. Property Condition.

Property to be conveyed to Nimitz AS-IS, WITH ALL FAULTS, subject to any covenants set forth in Navy quitclaim deeds to City (“**Navy Covenants**”). City will cooperate with Nimitz in Nimitz’s efforts to cause the Navy to comply with such Navy Covenants. In addition, to the extent there are remaining monies in the “Settlement Funded Conditions” subaccount established under the 4th Amendment to Environmental Services Cooperative Agreement dated October 16, 2017, between City and Navy, City, if and to the extent Navy authorizes the expenditure of those funds for such purpose, agrees to make those funds available to pay the costs of such “Navy Retained Condition” remediation efforts in accordance with the terms of the Environmental Services Cooperative Agreement, as amended (“**ESCA**”), and requirements of applicable laws. Nimitz acknowledges and agrees that City has made no representations or warranties as to whether any Settlement Funded Conditions sub-account monies will be available for such purpose. Nimitz shall be fully responsible for remediation of any and all hazardous materials contamination, including remediation of Navy Retained Conditions, if and to the extent not satisfied by the Navy.

13. Items for Further Negotiation.

City and Nimitz will continue to negotiate potential infrastructure reimbursements and/or impact fee credits and/or deferrals. The parties will also continue to negotiate the potential for Nimitz and its successors and assigns to make additional deferred purchase price payments to City if, following City approval of a new Specific Plan, Nimitz or its successors or assigns seeks to obtain entitlements under SB 35, State Density Bonus Law or any other provision of State law allowing for development of residential or other uses at greater heights, densities or intensities than those permitted under a city-approved specific plan or applicable zoning. To the extent the parties reach mutual agreement on one or more of such items, those term will be set forth in the DDA.

14. Local Hire and Local Business Preferences. The DDA shall include goals for hiring Vallejo (and secondarily Solano County) resident construction workers for buildout of the Backbone Infrastructure and development of the Property. The DDA shall also require Nimitz and its successors to give preference, whenever possible, to local Vallejo and Solano County based businesses in the purchasing of materials and supplies needed for build out of the Backbone Infrastructure and development of the Property, including women and minority owned local businesses

15. Other Post-Closing Covenants. Nimitz shall have the following obligations post-closing:

- a. Minimum Assessed Value/Property Tax Covenant. The parties acknowledge and agree that the assessed value (“**AV**”) of Nimitz’s South Mare Island Property as of the 2020/2021 tax year is \$_____ [*parties to insert applicable amount as of DDA date*]. The parties further acknowledge that based on the purchase price, the AV of the Property for the tax year in which the closing occurs will be approximately equal to the \$3,000,000. The Property, together with Nimitz’s South Mare Island

Property, is collectively referred to herein as the “Nimitz Property”. Nimitz will agree by contract that the AV of the Nimitz Property on the Minimum Tax Revenue Date (defined below) will equal or exceed the Minimum Nimitz Property AV (defined below) and if not, then Nimitz or its successor will pay City and the Vallejo Unified School District (“**VUSD**”) beginning on July 1st of the year following the Minimum Tax Revenue Date and each year thereafter, per a recorded payment in lieu of taxes (PILOT) agreement (“**PILOT**”), an amount equal to the difference between the property taxes actually received by City and VUSD based on the AV of the Property for the tax year in question and the property taxes that City and VUSD would have received (i.e. 19% and 24% of the total property taxes, respectively) if the total AV of the Nimitz Property was equal to the Minimum Nimitz Property AV. The “**Minimum Nimitz Property AV**” on July 1 of the first year following the Minimum Tax Revenue Date shall be the amount of \$_____ [Note: This amount, to be calculated as of the DDA date, will equal the sum of the South Mare Island 2020/21 AV + the Property AV of \$3M + \$26,000,000 as increased by the Proposition 13 2% annual escalator for the period between the DDA date and the Minimum Tax Revenue Date]. The Minimum Nimitz Property AV amount shall be increased annually by 2% per year each year following the Minimum Tax Revenue Date. The “**Minimum Tax Revenue Date**” shall be the date that is 5 years after the effective date of the DDA; provided however the Minimum Tax Revenue Date shall be extended by the period of any Recession occurring during such 5 year period. A “**Recession**” means any period of two or more quarters of negative GDP growth as determined by the United States Department of Labor, Bureau of Labor Statistics. .

- b. Local Use Tax Permit. Consistent with State Board of Equalization rules, Nimitz will commit to require contractors and subcontractors with contracts valued at \$5 million or more to designate the Property as the place of use of material used in project construction in order to have the local portion of the sales and use tax distributed directly to City instead of through the County-wide pool.
- c. Restrictions on Transfer. With the exception of certain specified permitted transfers (i.e., transfers to affiliates, transfers of security interests to Nimitz lenders, admission of third-party equity and/or mezzanine participants, grants of easements, licenses and right of ways) to be set forth in the DDA, Nimitz will be prohibited from assigning the DDA or any interest in the Property, or any portion thereof, until such time as Nimitz has submitted to City and obtained City Council approval of a new Specific Plan, including Backbone Infrastructure plan. Following City’s approval of a new Specific Plan, Nimitz will have the right to transfer individual parcels to one or more vertical developers for development purposes; provided however any proposed transfer that, together with any prior or concurrent transfers, would result in conveyance of more than 20% of the Property to a single transferee (or affiliates of a single transferee) shall be subject to City Council approval not to be unreasonably withheld, conditioned or delayed and which approval shall be granted provided the proposed transferee meets certain criteria, including net worth and development experience requirements to be specified in the DDA.

- d. Prohibited Uses. Until such time as Nimitz obtains approval of a new Specific Plan, Nimitz on behalf of itself and its successors may pursue development of uses allowed under the existing Specific Plan, provided however Nimitz will agree not to pursue development of certain specified prohibited uses, including: LNG facilities, cement batch plants, dumps and heavy recycling facilities, refineries, and heavy industrial uses. Additionally, Nimitz on behalf of itself and its successors will agree not to develop more than 370,000 square feet of warehouse use which is the maximum amount allowed under the existing Specific Plan.
- 16. Remedies.** Subject to written notice of breach and opportunity to cure and any applicable extension(s) for force majeure delay(s), City would have the right, at its option, to repurchase, reenter and take possession of the entire Property if after conveyance of title to the Property, Nimitz fails to commence and complete each of the post-closing obligations set forth in Section 10 above within the times set forth above. To exercise its right to repurchase, reenter and take possession with respect to the Property, City or its designee would pay to Nimitz or its permitted successor in interest in cash an amount equal to (i) the purchase price paid by Nimitz for the Property, plus (ii) verified out-of-pocket hard costs paid by Nimitz to unaffiliated third parties in connection with demolition of the Non-Utilized Structures, importation of clean fill, surcharging, grading and construction of permitted improvements, if any, on the Property; not to exceed a maximum of \$10,000,000.00.
- 17. Limitations of Term Sheet.**
This term sheet is not intended to be legally binding, and neither the City nor Nimitz will be legally bound unless and until a DDA is approved by the parties and signed in the future.

Project No.
11971.001.000

February 22, 2018

Mr. Jose McNeill
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

Subject: North Mare Island - Specific Plan Development Area (157 Acres)
Vallejo, Mare Island, California

OVERVIEW OF GEOLOGIC HAZARDS AND GEOTECHNICAL ENGINEERING LAND DEVELOPMENT CONSIDERATIONS

Dear Mr. McNeill:

This report presents an overview of geologic hazards and geotechnical engineering land development considerations for the specific plan development area (157 acres) at North Mare Island in Vallejo, California. The site location is shown on the Vicinity Map, Exhibit A.

We understand that the commercial development of 157 acres on North Mare Island has an approved Specific Plan allowing up to 1.2 million square feet of commercial, office, retail, or industrial space. Redevelopment is anticipated to include modifications of site grades with cuts and fills to meet land development requirements and provide proper drainage. The grading concepts have not been developed at this time; however, preliminary grading concepts indicate that design modifications may involve cuts and fills on the order of 5 feet.

1.0 BACKGROUND INFORMATION

Mare Island was originally developed starting in 1853 as the first Navy base on the Pacific Coast. As part of the development, roads, rail systems, and numerous buildings were constructed and many low-lying marshy areas around the island were filled to create additional buildable land and dock facilities. This is particularly the case for the project site on the northern part of Mare Island, where the historic fills were used to raise the land and increase the usable surface area in the marshy regions along both sides of the narrow spit that connected the Strait. The original extent of the northern half of Mare Island, as mapped in 1851, was considerably narrower than the current island footprint, about 700 to 1,000 feet in 1851 compared to about 6,500 feet in the present day. With the Naval base closure in the 1990s, the majority of specific plan development area has remained dormant and largely inactive until present.

A major portion of site lies in an area that was originally submerged mud flats along the Napa/Mare Island Strait and San Pablo Bay. As San Pablo Bay and the Mare Island Strait lie within the zone of tidal influence in San Francisco Bay and the Sacramento River, mid-Holocene to modern deposits along the margins of San Pablo Bay and on the west side of Mare Island Strait are generally fine-grained, representing the deposition from slack water in the intertidal zone. In contrast, deposition of coarser grained (sandier) materials likely occurred along the banks of a through-going river present when sea level was lower during the latest Pleistocene.

The current topography of the site is relatively flat lying, with surface Elevations ranging from about +10 to +15 feet (NAVD 88 Datum) across most of the site, with local higher areas up to Elevation +20 feet. The easternmost portion of the site, within about 500 feet of the current shoreline along the Mare Island Strait, grades from Elevation +10 feet down to mean sea level elevation. At the northwest corner of the site, near Q Street, the site Elevations range from about +5 to +8 feet. In addition, there are some “man-made” berms and roadways, which are elevated several feet from the surrounding ground.

2.0 REGIONAL GEOLOGY, GEOLOGIC HAZARDS, GEOTECHNICAL INFORMATION

2.1 PREVIOUS EXPLORATION DATA AND SUBSURFACE CONDITIONS

The previous geotechnical studies have included drilled borings and cone penetrometer tests (CPTs). Exhibit B presents the Site Plan including the location of explorations performed by ENGEO and others at the project site. This section provides an abbreviated summary of subsurface conditions encountered in previous geotechnical studies compiled at North Mare Island. The studies were generally preliminary in nature and covered large areas of property.

- Previous borings encountered a surface layer of existing “man-made” fill associated with historic land reclamation activities by the US Navy. The existing fills are undocumented and generally extend to depths ranging from approximately 3½ to 11 feet below the ground surface. Previous exploratory borings and CPTs indicate the existing fill deposits are variable and include soft to very stiff, cohesive fine-grained soils intermixed with loose to medium dense coarse-grained granular soils. Portions of the existing fill are intermixed with varying amounts of debris, such as construction rubble, bricks, concrete, metal, etc. The existing fill include areas of buried structures, utilities, asphalt and concrete pavement, and foundation remnants (including timber piles) from previous site development. Previous studies included laboratory test results, which indicate that the near-surface soils are moderate to highly expansive. Preliminary soil corrosivity testing showed resistivity measurements of 920 to 1,720 ohm-cm, classified as extremely corrosive. Exhibit D depicts thickness of undocumented fill based on interpolation of previous exploration data.
- Directly beneath the near-surface existing fill deposits, previous exploratory borings and CPTs encountered natural tidal marshland deposits comprised of highly compressible “organic rich” clayey soils; these tidal marshland soils are locally known as Young Bay Mud (YBM). These compressible clayey soils vary in thickness ranging from approximately 20 to 50 feet. Exhibit E depicts thickness contours of YBM based on interpolation of previous exploration data.
- Underlying the natural tidal marshland YBM strata, previous borings and CPTs encountered approximately 45 feet of high plasticity, clay deposits with varying site and sand, locally known as Old Bay Clays (OBC). The OBC strata is comprised of medium stiff to very stiff, clay with varying amounts of silt and sand.
- Beneath the OBC layer, the exploratory borings and CPTs encountered sedimentary bedrock units, Sandstone and Claystone, at approximately 96 to 108 feet below ground surface across the project site. The Sandstone and Claystone bedrocks encountered was intensely weathered and fractured, and friable.

- Relatively shallow groundwater has been encountered in the previous exploratory borings and CPTs ranging from depths of approximately 4 and 10 feet below the existing ground surface. It should be noted that near waterfront margins, where tidal influences are present, water levels may vary significantly, on the order of 10 feet, and these conditions can influence and affect water levels of existing utility corridors, etc. Additionally, fluctuations in the groundwater conditions may be expected to occur with variations in seasonal rainfall, irrigation on the site and adjacent parcels, and variations in subsurface stratification.

2.2 REGIONAL GEOLOGY

The site is located on the eastern side of the San Francisco Bay in Coast Range Province of northern California. The Coast Ranges are comprised of several mountain ranges and structural valleys formed by tectonic processes commonly found around the Circum-Pacific belt. The basement rocks that have been sheared, uplifted and metamorphosed are separated by thick blankets of Cretaceous and Cenozoic sediments that fill the structural valleys and line continental margins. The San Francisco Bay Area has several ranges that trend north-west-southeast, parallel to strike-slip faults such as San Andreas, Hayward, Calaveras, and Rogers Creek faults that form them. Exhibit C provides regional geology map.

2.3 GEOLOGIC AND SEISMIC HAZARDS

The main geologic hazards and development concerns at the project site for future land development are compressible soils, undocumented fills, slope stability, flooding and sea level rise, and seismic hazards.

2.3.1 Compressible Soils

Settlement occurs from consolidation of fine-grained compressible soils when subject to increased loads. This property is underlain by relatively thick natural clayey soils/marsh deposits, locally known as Young Bay Mud (YBM). Consolidation and settlement of normally consolidated YBM occurs when these soils are subject to load increase; load increase may result from applying new structural loads, or the placement of additional fill to raise grades. To reduce consolidation of YBM, unloading areas with cuts, minimizing added fills, and use of compensation loading (depressed structures) may be considered in design. It should be pointed out that even minor grading (plus or minus a few inches) may induce settlement of YBM. The degree and rate of consolidation settlement depends on several factors, including actual loads applied, and the thickness and specific characteristics of the YBM immediately under the applied new loads. Because of the variable nature of the YBM, there is a potential for differential settlement over relatively short distances.

Many of the existing structures at North Mare Island are supported on driven timber piles, and/or driven precast concrete piles. The ground surface grades surrounding the older buildings and pile-supported infrastructure show evidence of on-going settlement, which displacements total approximately several feet over many years. Based on previous geotechnical explorations, we have compiled and interpolated thickness contours of YBM on Exhibit E. One mitigation measure that has been used successfully at Mare Island and in other areas surrounding the San Francisco Bay margins is “pre-consolidation” induced by a combination of temporary surcharge fills over areas combined with closely spaced vertical drains (i.e. wick drain). Foundation support even over pre-consolidated YBM may require the use of deep foundations

to support moderate to heavily loaded structures. Such determination needs to be evaluated on a case-by-case basis and with a design-level geotechnical study.

2.3.2 Undocumented Fills

Previous borings encountered a surface layer of existing “man-made” fill associated with historic land reclamation activities by the US Navy. The existing fills are undocumented and generally extend to depths ranging from approximately 2½ to 11 feet below the ground surface, as presented on Exhibit D. Previous exploratory borings and CPTs indicate the existing fill deposits are variable and include soft to very stiff, cohesive fine-grained soils intermixed with loose to medium dense coarse-grained granular soils. Portions of the existing fill are intermixed with varying amounts of debris, such as construction rubble, bricks, concrete, metal, etc. The existing fill includes areas of buried structures, utilities, asphalt and concrete pavement, and foundation remnants (including timber piles) from previous site development. Undocumented fills and unsuitable debris may result in excessive total and differential settlement. Excessive total and differential settlement may occur from undocumented fills. To mitigate the risk of settlement, undocumented fills may be completely or partially overexcavated and cleared of unsuitable materials, and design grades restored using properly compacted engineered fill material. If cleared of unsuitable materials and debris, the overexcavated undocumented fills could be re-used as engineered fill.

2.3.3 Slope Stability

The ground surface at North Mare Island is relatively level across the majority of the site, and slopes downward slightly along the east side and northwestern portion of the property. The future development at North Mare Island is anticipated to be set back 200 feet from the San Francisco Bay Conservation and Development Commission (SF-BCDC) tidal marsh boundary. As such, slope stability and related potential deformation along the channel margin is not expected to extend close to the area of planned developments. However, the relatively low strength of Young Bay Mud in the top 40 to 50 feet of the site may lead to some instability immediately along the channel in areas not improved previously by Navy, especially during seismic events. If permanent or heavy temporary facilities are planned within 200 feet of the channel, these facilities should be evaluated for stability under both static and seismic loading.

2.3.4 Flooding and Sea-Level Rise

Flood risks are based on local hydrology, topology, precipitation, flood protection measures such as levees, and other scientific data. Concentrated flow of water from flooding may cause acute erosion of stream banks, slopes, and swales, possibly resulting in landsliding. Acute erosion around shallow building foundations may undermine the foundation and damage buildings or other structures. The project site is located on relatively level ground, and there are no lakes, reservoirs, water storage tanks, or water retention facilities upslope and near to the site that could fail and result in flooding at the site.

According to the Federal Emergency Management Agency published Flood Insurance Map (FIRM), a portion of the project site is situated within a special flood hazard area subject to inundation by the 1% annual chance flood. Specifically, the north area of the site, north of J Street, is located in “Zone AE”, shows base elevation of +10 feet (NAVD 88) as shown on Exhibit F.

Recent publications and maps showing sea-level rise projections in the San Francisco Bay estimate sea level rise by the year 2100 (Heberger et al. 2012) may range from 39 to 55 inches. While there is significant uncertainty in the expected sea-level rise over the next 100 years, the estimated rise is based on scenarios in which the rate of global warming is reduced from the present rate. If the rate of global warming is not reduced, the sea-level rise could be much higher. Where portions of the site front the San Francisco Bay, appropriate measures and adaptive measures may be warranted to mitigate potential sea-level rise.

Although it is possible to mitigate flood hazard for future proposed buildings by raising the base elevation of the structures, access to and operations of the buildings could be significantly affected by inundation of the surrounding portions of the island. In the future development and civil plans, measures should be considered to address the sea rise.

2.3.5 Seismic Hazards

No active faults cross the subject project site, and the site is not located within a Alquist Priolo Special Study Zone; therefore, it is our opinion that ground rupture is unlikely at the project property. Numerous earthquakes occur every year in the region, and large ($>M_w7$) earthquakes can be expected to occur in the future. As with all projects in the region, the development should take into account the potential for moderate to strong earthquake ground shaking. Major active faults near the project site include Concord-Green Valley, Calaveras, and Hayward-Rodgers Creek faults as shown on Exhibit H.

According to the Association of Bay Area Governments (ABAG) maps, the site is located within an area that may have low to very high susceptibility to liquefaction. Liquefaction is a phenomenon in which saturated, loose or medium dense, cohesionless soils are subject to a temporary, but essentially total loss of shear strength because of pore pressure build-up under the reversing cyclic shear stresses associated with earthquakes. Soils most susceptible to liquefaction are clean, loose, saturated, uniformly graded fine sands below the groundwater table. According to a previous study by Amec Foster Wheeler (2017), using the methodology of Idriss and Boulanger (2014) and using the data obtained from Cone Penetration Tests (CPTs), for the majority of the site, the soils are not susceptible to liquefaction. As presented on Exhibit I, there are a few limited zones of liquefiable soils, specifically at some locations in the Fill at depth between about 5 and 12 feet, and in a deeper layer, which approximately follows the old shoreline at a depth of about 25 to 35 feet. Based on the CPT data and because of the relatively flat topography, we judge that lateral spreading is unlikely to occur at the Mare Island site.

Tsunami inundation maps have been prepared for San Francisco Bay, San Pablo Bay, and the Mare Island Strait by the California Emergency Management Agency, California Geologic Survey, and University of Southern California (2009). The mapping by these groups shows that expected maximum inundation areas do not extend into the project area (Exhibit G). However, this inundation area does not account for potential sea-level rise as described in the previous section. Based on this information, we judge that the potential for tsunami inundation at the project site is low. Moreover, there are no dams that could fail and result in flooding at the site; therefore, the potential for inundation or acute erosion from seismically induced failure of water-retention facilities is judged negligible.

3.0 GEOTECHNICAL ENGINEERING LAND DEVELOPMENT CONSIDERATIONS

Based on previous studies, from a geotechnical standpoint, future land development within the Specific Plan Development Area (157 Acres) is feasible provided that appropriate geotechnical recommendations are followed and mitigation is performed, and that these measures are incorporated into the project planning and implemented construction.

In general, design-level geotechnical studies should be undertaken at future times once development details have been determined to provide specific design criteria for grading, structures and related site improvements. Exhibit J depicts development constraints presenting areas with lesser constraints, where existing grades are relatively higher and the YBM is relatively thinner (preferable development areas) and areas with greater constraints in terms of existing elevation and YBM thickness. Table I summarizes the identified geologic hazards and various geotechnical engineering corrective measure that may be considered in planning and design concepts. Table II provides typical construction unit rate costs for various geotechnical engineering corrective measures.

We are pleased to be of service to you on this project and will continue to consult with you and your design team as project planning progresses. If you have any questions or comments regarding this letter, please call and we will be glad to discuss them with you.

Sincerely,

ENGEO Incorporated



Bahareh Heidarzadeh, PhD
bh/tpb/jf



Theodore P. Bayham, GE, CEG



Attachments:

List of References

Table I – Geological and Geotechnical Hazard Summary and Potential Corrective Measures

Table II – Typical Construction Unit Rate Cost

Exhibits A through J

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- Amec Foster Wheeler; Geotechnical Investigation Report, Project Zeus, May 1, 2017, Project No. 6166150082.
- California Emergency Management Agency, California Geologic Survey, and University of Southern California, 2009, Tsunami Inundation Maps for Emergency Planning, State of California, San Francisco Bay Area, County of Solano, Mare Island and Cuttings Warf Quadrangles, Scale 1:24,000, July 15.
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- Krove Engineering; Plans for Mare Island North Roadway Improvement Project, Railroad Avenue & G Street: 65% Progress set; October 21, 2001.
- Krove Engineering; G Street X-Sections Between Railroad and Causeway, Mare Island North Roadway Improvement Project; September 28, 2001.
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- LRF; Reimer, Utility Plans, Mare Island North Roadway Improvement Project, Railroad Avenue & G Street: 65% Progress Set; July 23, 2001.
- Ninyo & Moore; Caltrans Initial Site Assessment Checklist, Highway 37/Walnut Avenue Interchange, Vallejo, California, January 30, 2001.
- Ninyo & Moore; Preliminary Subsurface Conditions and Geotechnical Design Issues Report, Mare Island North Roadway Improvement Project, Vallejo, California, October 8, 2001.
- Ninyo & Moore; Geotechnical and Environmental Sciences Consultants; Final Geotechnical Design report, Mare Island North Roadway Improvement project, Vallejo, California, February 12, 2002; project No. 400430002.
- Woodward Clyde Consultants; geotechnical Study, Boiler Plant Cal Conversion project, Mare Island Shipyard, Vallejo, California, May 26, 1981.

TABLE I – Geological and Geotechnical Hazard Summary and Potential Corrective Measures

	GENERAL LOCATION	HAZARD SUMMARY	CORRECTIVE MEASURE
Undocumented Fill (Exhibit E)	Historic areas of grading and previous development. The thickness of the undocumented fill varies from about 3½ to 11 feet across the site.	Undocumented fill at the site is variable in composition, and contains many abandoned utilities, abandoned foundations, some cobble-sized material, and organics. The fill may be susceptible to excessive settlement and liquefaction in some areas.	Design-level geotechnical exploration should be undertaken to characterize depth, areal limits of undocumented fill. Corrective measures may include: complete or partial removal, replacement with engineered fill, and/or other ground improvement. Portions not affecting future development are anticipated to be left in place.
Highly Compressible Soils Young Bay Mud (YBM) (Exhibits F-1 and F-2)	YBM varies in thickness from less than one foot to 53 feet with the shallower section generally to the west and south and deepening to the north and east.	Compressible YBM may be considered susceptible to excessive total and differential settlement when subject to increased loads.	Corrective measures may include preconsolidation using temporary surcharge fills combined with closely spaced vertical drains (wick drains). Foundation loads and appropriate foundation system selected depending on structural loads.
Liquefiable Zones (Exhibit J)	Overall risk for liquefaction and seismic induced settlement at North Mare Island is generally considered to be low. There are local zones of potentially liquefiable layers along historic buried shoreline.	In local areas, potential risk of liquefaction induced settlement in event of strong ground shaking.	Design-level geotechnical exploration should be undertaken to define limits and depths if present. Corrective measures if warranted may include foundation recommendations and/or ground improvement.
Flooding, Sea Level Rise, and Tsunami (Exhibits G and H)	The northern portions of North Mare Island defined by FEMA 2010.	Site elevations range from +8 to +15 feet ((NAVD 88 Datum). Base flood elevation is approximate +10 feet (FEMA, 2010). Sea level rise by 39 to 55 inches by the year 2100 (Heberger, 2012). Based on the current FEMA flood inundation mapping, and the potential sea level rise, there is risk of flooding and sea level rise.	Corrective measures include raising the grades and/or raising the base elevation of the structures. Area fronting the San Francisco Bay may require protective measures and adaptive measures in Civil design.
Shrink Swell Potential	Previous areas of grading and development where undocumented fill exists.	Based on the Atterberg Limits test results, the fill material may be prone to moderate volume change due to shrinkage and swelling.	Corrective measure may include supporting floor slabs on non-expansive fill to reduce the likelihood of slab damage from heave or shrinkage, or for lighter buildings (e.g. townhomes, post-tensioned mat foundation)

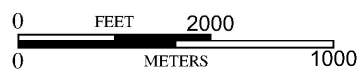
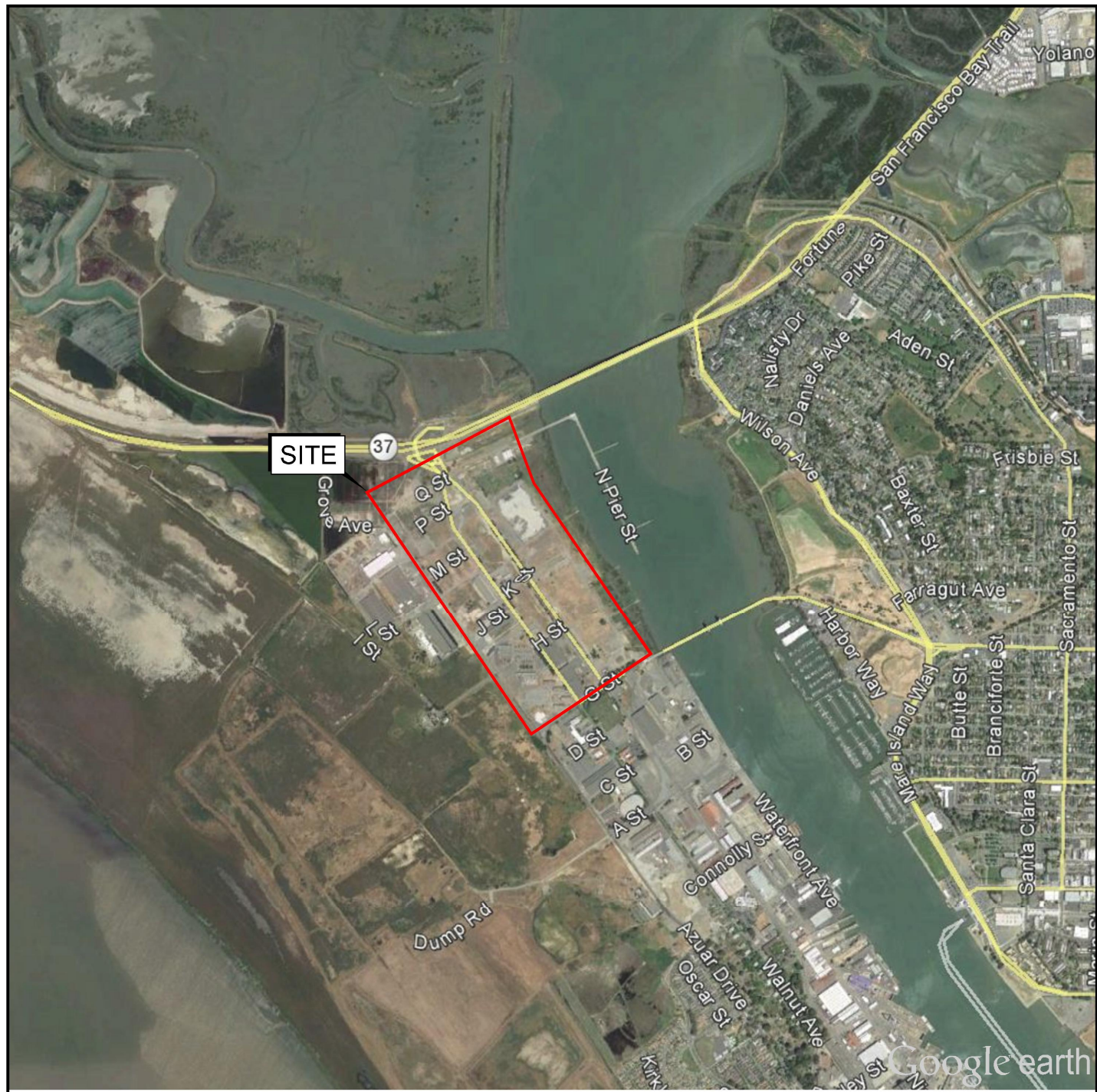
TABLE II – Typical Construction Unit Rate Cost

	CORRECTIVE MEASURE	TYPICAL CONSTRUCTION COST	NOTES
Undocumented and Liquefiable Fills (Exhibit E)	Complete or partial removal, replacement with engineered fill	\$32,000 per acre	Reworking 5 feet of undocumented fill
	Lightweight fill placement	\$50 cubic yard	
	Other ground improvement (Vibro-compaction-deep dynamic compaction)	\$100,000 for an acre of improvement	To the depth of 25 feet
Compressible Young Bay Mud (YBM) Deposits (Exhibit F)	Preloading without installing wick drains	\$200,000 per acre	6 feet of surcharge Duration: 18 months
	Preloading with Surcharge plus wick drains at 5 foot spacing	\$400,000 per acre	6 feet of surcharge Duration: 6 months
	Deep foundation	\$75 square foot	Pile foundation supported in stiff deposits below YBM
	Mat foundation	\$35 square foot	Assumes 12-foot-thick mat foundation
	Conventional slab and footings	\$15 square foot	
Flooding, Sea Level Rise, and Tsunami (Exhibits G and H)	Raising grades and importing fill	\$10 per cubic yard for imported	Assumes private arrangement with available source of suitable fill

EXHIBITS

Exhibit A:	Vicinity Map
Exhibit B:	Site Plan
Exhibit C:	Regional Geology Map
Exhibit D:	Undocumented Fill Areas - Thickness
Exhibit E:	Compressible Young Bay Deposit Areas - Thickness
Exhibit F:	Flood Insurance Rate Map
Exhibit G:	Tsunami Inundation Map
Exhibit H:	Regional Faulting and Seismicity
Exhibit I:	Local Fills with Liquefaction Potential
Exhibit J:	Development Constraints

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BASE MAP SOURCE: GOOGLE EARTH MAPPING SERVICE



VICINITY MAP
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000
SCALE: AS SHOWN
DRAWN BY: SRP CHECKED BY: TPB

EXHIBIT
A

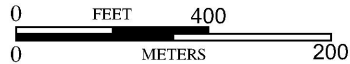
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EXPLANATION

ALL LOCATIONS ARE APPROXIMATE

B-5	BORING (AMEC, 2015)
E11-B-01	BORING (ENGEO, 2006)
E1-B1	BORING (ENGEO, 2002)
P-03-R1	BORING (PARIKH, 2002)
B-4	BORING (ENGEO, 2003)
NM-7	NINYO & MOORE (ENGEO, 2002)
L01-C-06	BORING (LEVINE FRICKIE, 2001)
B-4	BORING (LEVINE FRICKIE, 2001)
CAL-C9	BORING (CALTRANS, 1996)
H84-B-04	BORING (HARDING LAWSON, 1996)
H82-B-04	BORING (HARDING LAWSON, 1984)
H78-B-07	BORING (HARDING LAWSON, 1982)
CPT-8	BORING (HARDING LAWSON, 1978)
CPT-25	CONE PENETRATION TEST (AMEC ,2015)
CPT1	CONE PENETRATION TEST (ENGEO, 2011)
CPT2	CONE PENETRATION TEST (ENGEO, 2008)
TP-1	CONE PENETRATION TEST (ENGEO, 2008)



BASE MAP SOURCE: GOOGLE EARTH MAPPING SERVICE



SITE PLAN
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000

SCALE: AS SHOWN

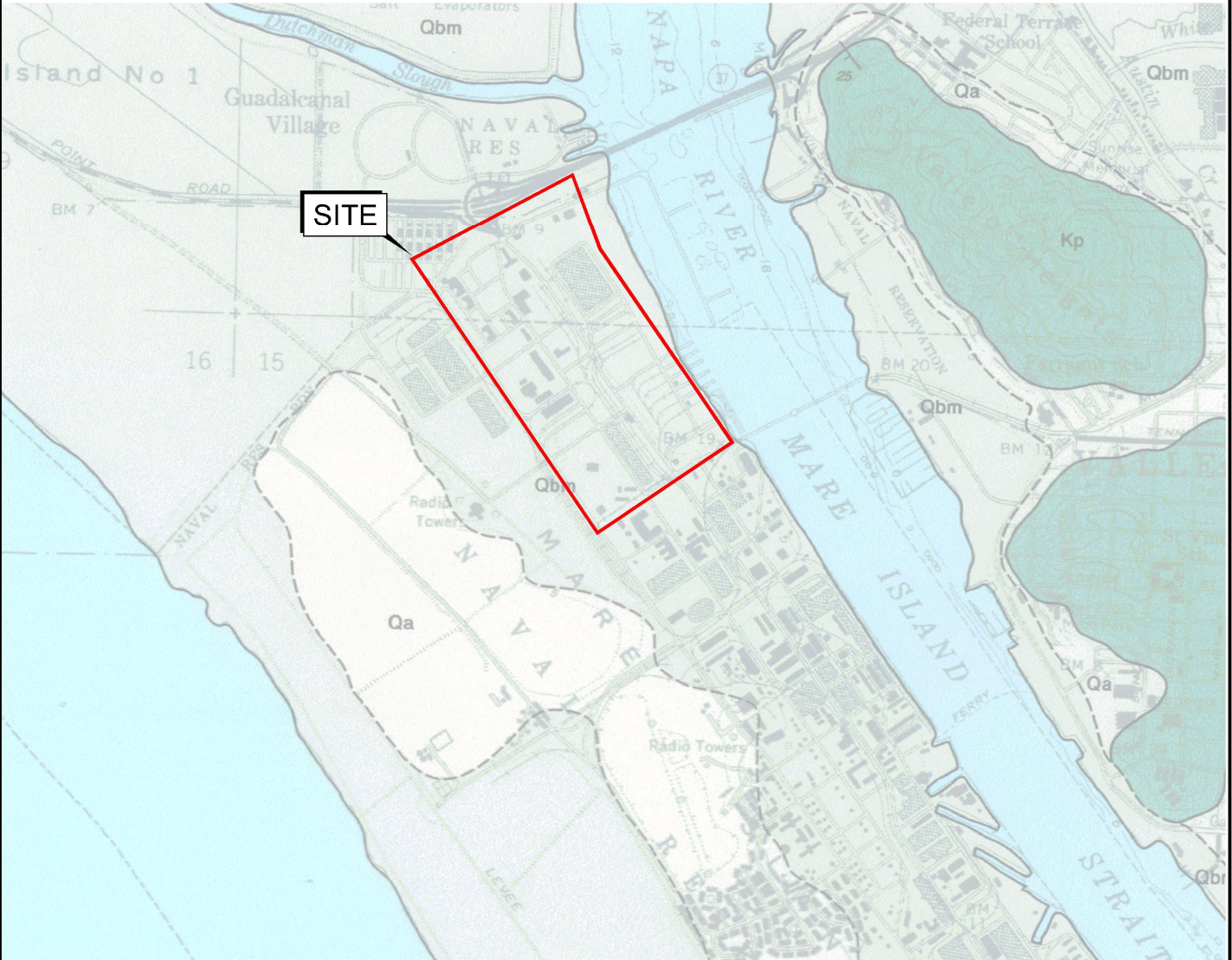
DRAWN BY: SRP

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EXHIBIT

B

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EXPLANATION

----- GEOLOGIC CONTACT-DASHED WHERE GRADATIONAL OR APPROXIMATELY LOCATED

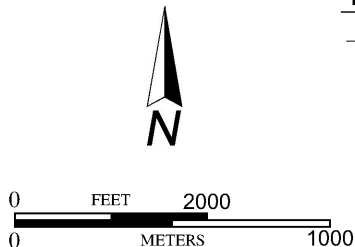
STRIKE AND DIP OF STRATA

↘ INCLINED

Qa ALLUVIUM

Qbm BAY MUD

Kp PANOCHÉ FORMATION



BASE MAP SOURCE: DIBBLEE, 2005



REGIONAL GEOLOGY MAP
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000

SCALE: AS SHOWN

DRAWN BY: SRP

CHECKED BY: TPB

EXHIBIT

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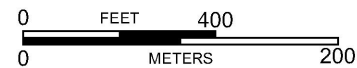
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EXPLANATION

ALL LOCATIONS ARE APPROXIMATE

15' UNDOCUMENTED FILL THICKNESS



BASE MAP SOURCE: GOOGLE EARTH MAPPING SERVICE



UNDOCUMENTED FILL AREAS - THICKNESS
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000	
SCALE: AS SHOWN	
DRAWN BY: SRP	CHECKED BY: TPB

EXHIBIT
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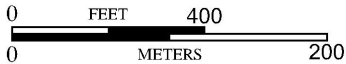
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EXPLANATION

ALL LOCATIONS ARE APPROXIMATE

—55— —?— — APPROXIMATE THICKNESS OF RECENT
BAY SEDIMENT (SHOWN IN FEET)
DASHED WHERE THICKNESS IS
UNKNOWN



BASE MAP SOURCE: GOOGLE EARTH MAPPING SERVICE

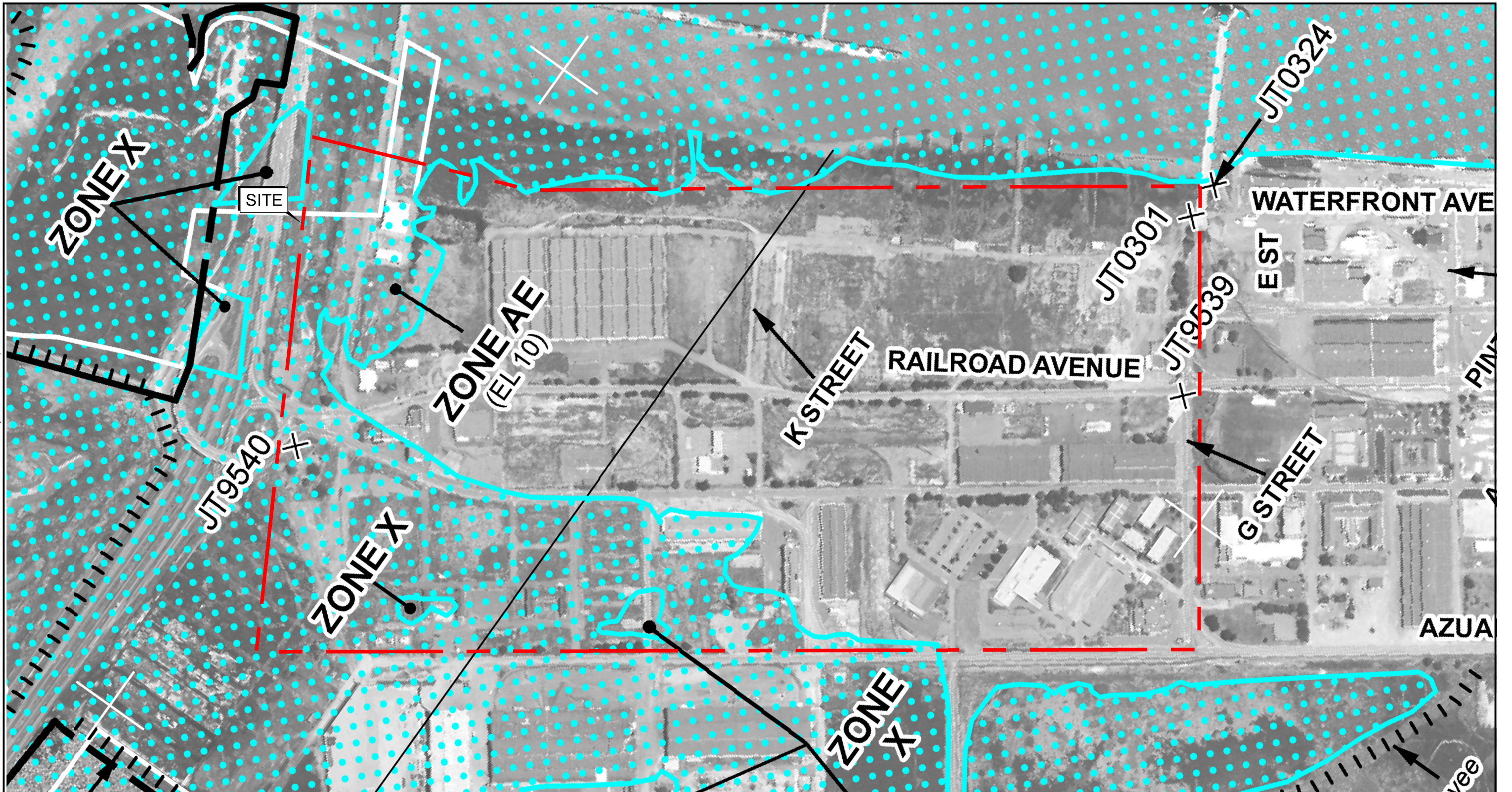


COMPRESSIBLE YOUNG BAY DEPOSIT AREAS - THICKNESS
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000
SCALE: AS SHOWN
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EXHIBIT
E

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EXPLANATION

ALL LOCATIONS ARE APPROXIMATE



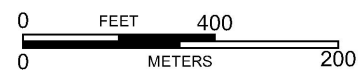
SPECIAL FLCOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

ZONE AE

BASE FLOOD ELEVATION DETERMINED

ZONE X

OTHER AREAS, OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN



BASE MAP SOURCE: FLOOD INSURANCE RATE MAP, 2009



FLOOD INSURANCE RATE MAP
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000

SCALE: AS SHOWN

DRAWN BY: SRP

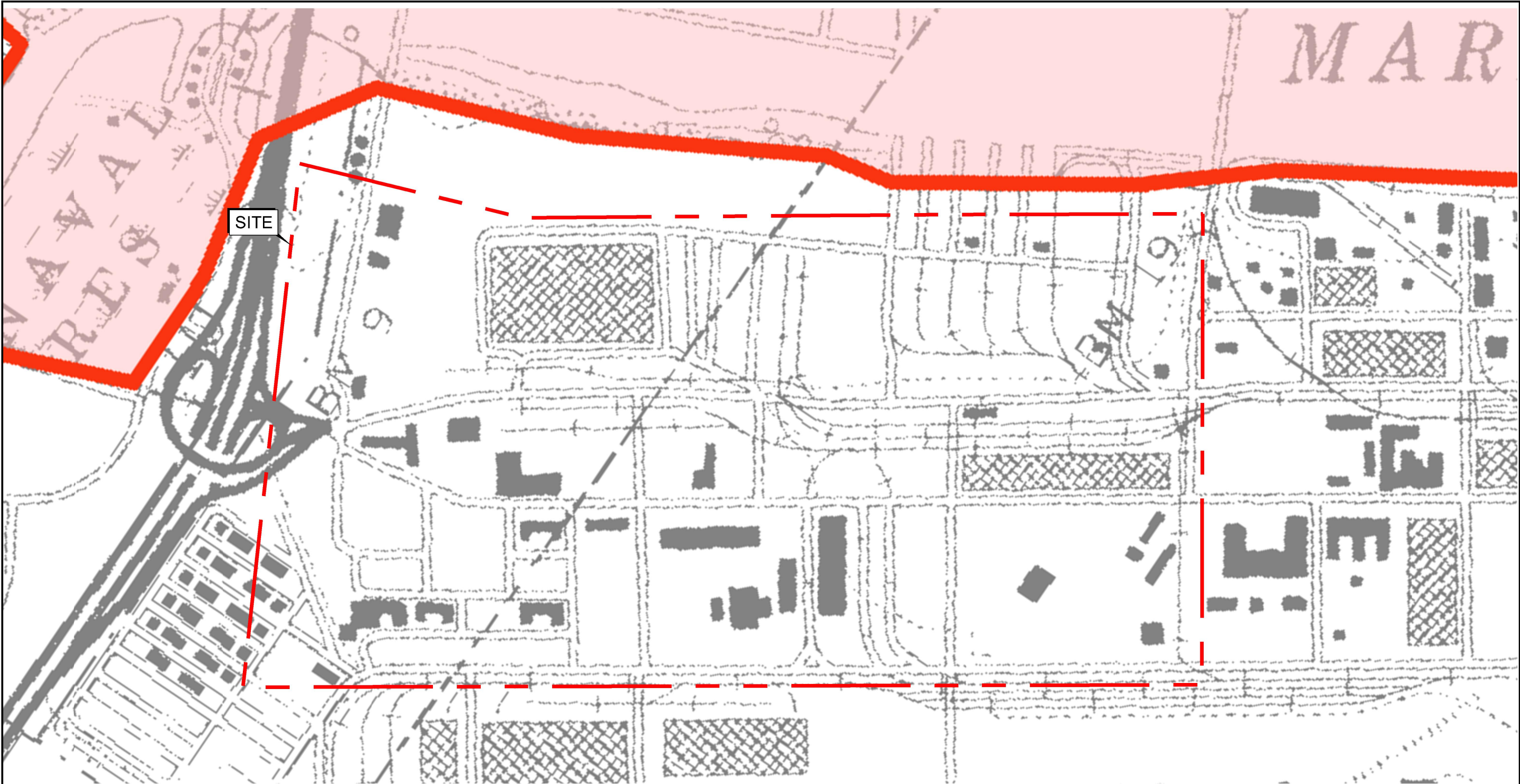
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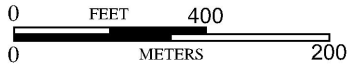
ORIGINAL FIGURE PRINTED IN COLOR

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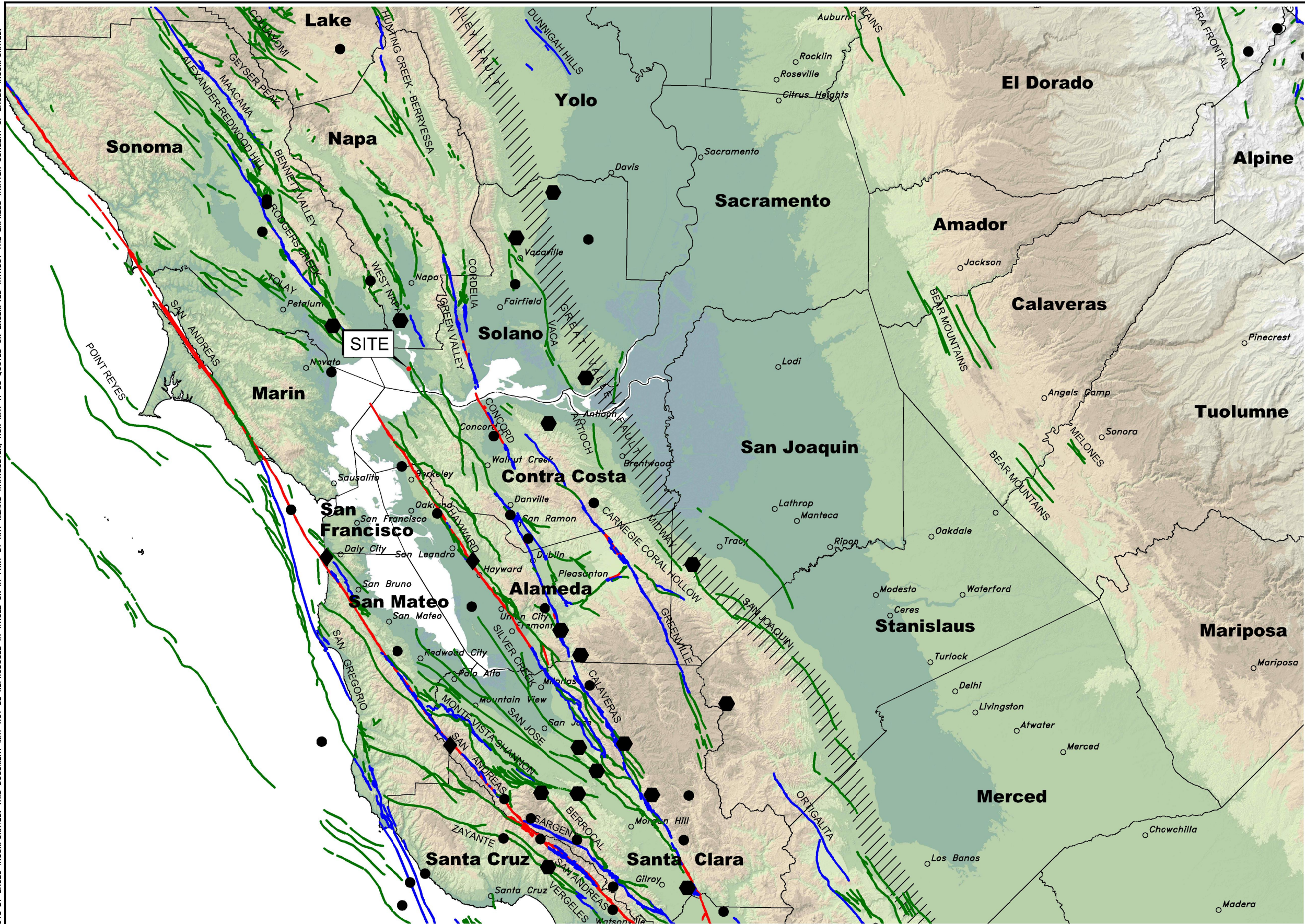
-  TSUNAMI INUNDATION LINE
-  TSUNAMI INUNDATION AREA



BASE MAP SOURCE: STATE OF CALIFORNIA, SOLANO COUNTY, 2009

	TSUNAMI INUNDATION MAP		PROJECT NO.: 11971.001.000	EXHIBIT G
	NORTH MARE ISLAND LAND DEVELOPMENT		SCALE: AS SHOWN	
	NORTH MARE ISLAND LAND DEVELOPMENT		DRAWN BY: SRP CHECKED BY: TPB	

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EXPLANATION

- MAGNITUDE 7+
- MAGNITUDE 3-7
- MAGNITUDE 5-6
- HISTORIC FAULT
- HOLOCENE FAULT
- QUATERNARY FAULT
- HISTORIC BLIND THRUST FAULT ZONE

BASE MAP SOURCE:
COLOR HILLSHADE IMAGE BASED ON THE NATIONAL ELEVATION DATASET (NED) AT 30 METER RESOLUTION
U.S.G.S. QUATERNARY FAULT DATABASE, NOVEMBER, 2010
U.S.G.S. HISTORIC EARTHQUAKE DATABASE (1800-2000)



REGIONAL FAULTING AND SEISMICITY
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000		EXHIBIT H
SCALE: AS SHOWN		
DRAWN BY: SRP	CHECKED BY: TPB	

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EXPLANATION

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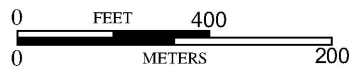
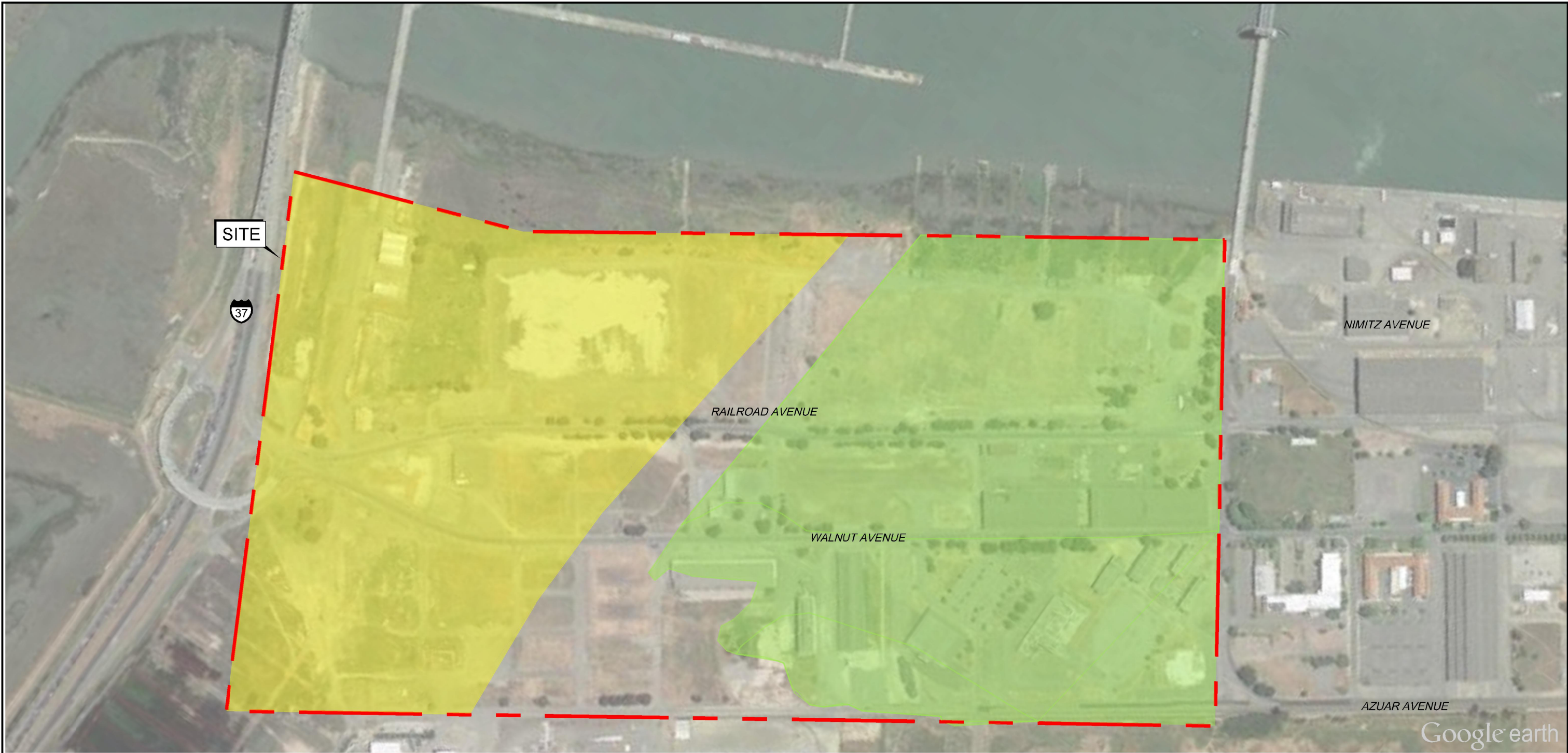
-  **CPT-30** CONE PENETRATION TEST SHOWING LIQUEFACTION ANALYSIS RESULTS IN INCHES (AMEC, 2015)
-  LOCAL FILLS WITH LIQUEFACTION POTENTIAL



BASE MAP SOURCE: GOOGLE EARTH MAPPING SERVICE

	LOCAL FILLS WITH LIQUEFACTION POTENTIAL		PROJECT NO.: 11971.001.000		EXHIBIT I
	NORTH MARE ISLAND LAND DEVELOPMENT		SCALE: AS SHOWN		
	VALLEJO, CALIFORNIA		DRAWN BY: SRP	CHECKED BY: TPB	

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EXPLANATION

ALL LOCATIONS ARE APPROXIMATE

- GREATER CONSTRAINTS
- LESSER CONSTRAINTS

PERIMETER PROTECTION FROM THE SEA LEVEL RISE

BASE MAP SOURCE: GOOGLE EARTH MAPPING SERVICE



DEVELOPMENT CONSTRAINTS
NORTH MARE ISLAND LAND DEVELOPMENT
VALLEJO, CALIFORNIA

PROJECT NO.: 11971.001.000	
SCALE: AS SHOWN	
DRAWN BY: SRP	CHECKED BY: TPB

EXHIBIT
J

ORIGINAL FIGURE PRINTED IN COLOR



VERY ROUGH COST ANALYSIS
NORTH MARE ISLAND SURCHARGE (154+/- Acres)
NIMITZ PROPERTY
VALLEJO, CALIFORNIA

June 5, 2020
Job No.: 1546-050

Item	Description	Low Estimate	High Estimate
1	INITIAL DESIGN AND AMENDED SWPPP (See Note 1) <i>Consultants: West Environmental, ENGEO & CBG</i>	\$ 250,000	\$ 1,000,000
2	DEMOLITION AND FOUNDATION REMOVAL (See Note 2) Secondary Roadway Removal Move-In (See Note 3)	\$ 1,500,000 \$ 250,000	\$ 3,000,000 \$ 250,000
3	SURCHARGE AND SEA RISE (See Note 4) <i>See Analysis By ENGEO</i>	\$ 38,000,000	\$ 66,500,000
4	TEMP UTILITY DESIGN (Serving Existing Structures) <i>Storm Drain (See Note 5)</i> <i>Storm Pump Station (See Note 5)</i> <i>Sanitary Sewer (See Note 6)</i> <i>Sewer Pump Station (See Note 6)</i> <i>Water (See Note 7)</i> <i>Gas (See Note 8)</i> <i>Electric (See Note 9)</i>	\$ 1,250,000	\$ 2,500,000
5	TEMPORARY ROADWAY (See Note 11) 4 Lane Railroad Avenue 2 Lane Shoofly to Azuar Drive	\$ 1,250,000	\$ 5,000,000
6	SWPPP / EROSION CONTROL / TEMP BASINS (See Note 12)	\$ 1,500,000	\$ 3,000,000
7	ENVIRONMENTAL CLEANUP / BIOLOGY (See Note 13) <i>See Analysis West Environmental</i>	\$ 500,000	\$ 5,000,000
SUBTOTAL		\$ 44,500,000	\$ 86,250,000
20% CONTINGENCY		\$ 8,900,000	\$ 17,250,000
TOTAL (to nearest \$1,000)		\$ 53,400,000	\$ 103,500,000
POTENTIAL MAX CREDIT FOR FREE DIRT (See Note 14)		\$ (19,000,000)	\$ (48,000,000)

Assumptions

1. SEE PAGE TWO

Assumptions:

1. Initial design budget includes the required consultant fees for the design and plan document preparation for the demolition of existing infrastructure, grading plans and amended SWPPP for Phase 1 of the surcharge programs (assumes 4-6 months of work). The high estimate assumes the design and plan document preparation for the temporary infrastructure required for the existing structures in advance of the next phase of surcharge for optimized grading operations.
2. Demolition and removal of existing building foundations are estimated at approximately \$10,000/acre for the low estimate and \$20,000/acre for the high estimate.
3. Approximate cost of \$2/SF to remove the existing roadways
4. Quantities and costs for rolling surcharge and sea rise protection strategies are from the technical memorandum prepared by ENGEO "Summary of Surcharge Options and Preliminary Cost Estimates" dated May 27, 2020.
 - a. The low estimate assumes that 100% of the import dirt required is from the golf course.
 - b. The high estimate assumes that 100% of the import dirt is purchased from an off-site source.
5. Temporary Storm Drain Assumptions
 - a. The low estimate assumes the installation of a temporary storm drain pipe and associated structures from L Street to Independence Street.
 - b. The high estimate assumes the installation of a temporary storm drain pipe and associated structures from L Street to the existing storm drain pump structure, the replacement of the existing storm pump structure (SDPS-15) and the replacement of existing force main and pipe from the existing pump structure to the Mare Island Straight
 - i. The outfall portion within jurisdictional areas is sufficient and will required no replacement or permitting.
6. Temporary Sewer Assumptions
 - a. The low and high estimate assumes the installation of a temporary sewer lift station, a temporary sewer force main and associated structures from G Street to L Street, and a temporary sewer lateral from the U.S. Geological Survey Building intersection to the lift station
 - b. The high estimate adds the potential upsizing of the existing sewer downstream of the connection point in G Street
7. Temporary Water Assumptions
 - a. The low estimate assumes that the existing water in Azuar Drive can remain and is sufficient to continue serving the existing buildings.
 - b. The high estimate assumes that the existing water in Azuar Drive is not sufficient and requires replacement from G Street to the existing buildings.
8. Temporary Gas Assumptions
 - a. The low and high estimate assumes the installation of a temporary gas main from G Street to L Street.
9. Temporary Electric Assumptions
 - a. The low estimate assumes the installation of a temporary electrical service from the existing substation to the existing buildings west of Azuar Drive
 - b. The high estimate assumes the installation of a temporary electrical service from G Street to L Street.
10. No additional utility relocation required based on verified locations with respect to final surcharge and development limits
11. Temporary Roadway Assumptions
 - a. The low estimate assumes costs for a City approved 2-lane shoofly from Highway 37 to Azuar Drive
 - b. The high estimate assumes costs for a City required arterial along existing Railroad Avenue from Highway 37 to G Street.
12. SWPPP, Erosion Control and required temporary basins were estimated based on timeline required. The low estimate assumes \$10,000/acre (one year). The high estimate assumes \$20,000/acre to account for multiple seasons required for the rolling of surcharge dirt.
13. **Costs shown for environmental cleanup and biology are placeholders. Actual costs must be provided by others.**
14. The total amount of potential free dirt credit depends on the timing and duration of surcharge to maximize the ability to get free dirt.

TECHNICAL MEMORANDUM

To: Mr. Brian Nagy
Southern Land Company

Date: May 27, 2020
Revised May 29, 2020

From: Ms. Siobhan O'Reilly-Shah, PE
Mr. Theodore P. Bayham, CEG, GE

Project No.: 11971.002.000

Project Name: North Mare Island Land Development
Vallejo, California

Subject: **SUMMARY OF SURCHARGE OPTIONS AND PRELIMINARY COST ESTIMATES**

Estimate Assumptions:

1. CBG 1.4 million cubic yards (cyd) import over 154 acres – Assume average surcharge driven consolidation settlement is approximately 2 feet over 154 acres. Therefore, the total estimate of total import fill volume needed to raise North Mare Island to future Elevation +16 feet (post surcharging) is 1.9 million cyd.
2. Import Fill Source Locations, Loading and Transport (Rough All Inclusive Unit Rate Costs)
 - a. Mare Island Golf Course Area (100%) - \$10/cyd
 - b. Mare Island Golf Course Area (50%) and Off-Site Trucked in Source (50%) - \$17.50/cyd
 - c. Off-Site Trucked in Source (100%) - \$25/cyd
3. North Mare Island On-Site Mass Grading and Surcharge Rolling Construction - \$3/cyd
4. Wick Drain Options
 - a. Wick Drains - \$0.75/lineal feet (6-foot spacing = 1,1210 wicks/acre)
Wicks pushed to 55-foot depth = 66,550 lineal feet/acre
 - b. Horizontal Strip Drains \$1.50/lineal feet (10-foot spacing = 4,356 lineal feet/acre)

Concept of Import and Rolling Surcharge – Various Phase Sizes and Earthwork Quantities:

Surcharge without Wicks (18-foot-high surcharge above Elevation +16 ft) – 5 Phases

- Phase 1 – 54 acres 2 M cyd (18 month duration once surcharge levels achieved)
- Phase 2 – 44 acres 1.7M cyd (18 month duration once surcharge levels achieved)
- Phase 3 – 35 acres 1.4 M cyd (18 month duration once surcharge levels achieved)
- Phase 4 – 21 acres 800,000 cyd (18 month duration once surcharge levels achieved).
- Phase 5 – 600,000 cyd placed in previously surcharged Phase 1 area (return surplus fill to Phase 1 as borrowed for Phase 4)

Surcharge with Wicks (7-foot-high surcharge above Elevation +16 ft) – 4 Phases

- Phase 1 – 75 acres 1.5 M cyd (6 month duration once surcharge levels achieved)
- Phase 2 – 44 acres 900,000 cyd (6 month duration once surcharge levels achieved)
- Phase 3 – 35 acres 700,000 cyd (6 month duration once surcharge levels achieved)
- Phase 4 – 250,000 cyd placed in previously surcharged Phase 1 area (return surplus fill to Phase 1 as borrowed for Phase 3)

TABLE 1: Rough Unit Rate Cost Estimates

DESCRIPTION		SURCHARGE (NO WICKS) 18-FOOT-HIGH SURCHARGE	SURCHARGE (WITH 6' WICKS) 7-FOOT-HIGH SURCHARGE
A.	Site Prep and Rework Upper 5 feet (8,000 cyd/acre)	\$24,000 / acre	\$24,000 / acre
B.	Import		
	Golf Course (100%)	\$125,000 / acre	\$125,000 / acre
	Golf Course (50%) Offsite (50%)	\$215,000 / acre	\$215,000 / acre
	Off-Site Source (100%)	\$310,000 / acre	\$310,000 / acre
C.	Surcharge Phases with 1.9M cyd Import	5 Phases	4 Phases
	Total Volume Moved	8,490,000 cyd (6,590,000 cyd rolled volume)	5,280,000 cyd (3,380,000 cyd rolled volume)
	Wick Drains	--	\$50,000 / acre
D.	Strip Drains		\$7,000 / acre
Total Cost Per Acre	Golf Course (100%)	\$252,000 / acre	\$246,000 / acre
	Golf Course (50%) Offsite (50%)	\$344,000 / acre	\$338,000 / acre
	Off-Site Source (100%)	\$437,000 / acre	\$431,000 / acre

Key Agreement Terms			
Term	2019 Initial Term Sheet	2020 Updated Term Sheet	
Public Meetings	Nimitz to hold 4 public meetings per year	NA, however Nimitz has agreed to develop and maintain active website detailing activities on the Island.	
Development	Phased development: 100,000 SF substantially completed in year 5, 8 & 11.	NA – See Minimum Assessed Value/Property tax covenant in New Obligation	
Possessory Interest Taxes	Lease Agreement would create a taxable leasehold possessory interest and Nimitz would pay those taxes.	Nimitz to own and therefore all taxes apply and will be paid by Nimitz from and after closing.	
Beautification Plan	Implementation of interim Beautification & Security Plan within 18 months.	Nimitz to implement Phase 1 of the Beautification Plan (installation of security fencing and lighting) by 3/31/2021. Purchase agreement will have milestones to complete a comprehensive Beautification Plan.	Carry-over
Backbone Infrastructure	Nimitz to submit plan before expiration of 1 st extension. Terms and requirements to complete the Backbone Infrastructure TBD.	Nimitz's new Specific Plan to be submitted within 24 months of Disposition Development Agreement or Purchase Sale Agreement (DDA/PSA) to include Backbone Infrastructure Plan.	Carry-over
Security & Maintenance	Nimitz to assume maintenance and security upon execution.	Nimitz to assume security per new Security License Agreement. Nimitz to assume all maintenance costs at transfer.	Carry-over
HUD Loan	Nimitz to pay loan principal and interest, equal to ~\$240K/year. Nimitz to pay off loan at transfer.	Approximately \$2.5M of the \$3M Purchase Price will be used by City to pay for outstanding loan balance.	Carry-over
Navy Property	Nimitz to sublease until transfer.	Nimitz to sublease until transfer. Nimitz also agreed to reimburse cost to annex Navy lands into CFD upon transfer.	Carry-over
Local Use Tax Permit	Nimitz to require contractors with contracts valued at \$5M + to designate the NMI as the place of use. This ensures the City will receive the local portion of sales and use tax rather than County-wide pool.	No change	Carry-over
Local Economic Benefits	TBD	DDA/PSA to include goals for local and minority hiring and purchasing of construction materials and supplies for development of the Property.	Carry-over
Purchase Price	Fair Market Value less public improvement costs, but no less than cost to pay off HUD loan	\$3M. Will cover City's initial carrying costs plus the payoff of the remaining HUD Loan. Current loan balance is ~\$2.5M.	Change
Property Acquisition	Ground Lease with Option to Purchase	Disposition and Development Agreement or Purchase Sale Agreement	Change
Term	3 year ground lease with extensions: 3, 3 and 10 years, totaling 19 years.	Initial closing of City-owned 125 acres anticipated to occur within 120 days after DDA/PSA approval	Change
Site Transfer Conditions	Requires demonstration to start demo of existing improvements, construction of Backbone infrastructure and HUD loan payoff.	Requires implementation initial Beautification Plan (Security improvements), grading and demolition permits, and finalizing of demolition agreements. HUD loan payoff part of purchase price.	Change
Transfers	Requires master Tentative Map and	Following approval of new Specific Plan, Nimitz	Change

	Backbone infrastructure for parcel to be completed or bonded	can transfer parcels, however any transfers of more than 20% to a single transferee will be subject to the Council's approval not be unreasonably withheld.	
Phased Closings	Closing for sale could occur in multiple phases	Anticipates initial sale of City-owned 125 acres in single closing, followed by sale of Navy land in one or more closings as property is received by City .	Change
CFD	Nimitz to reimburse City for CFD for all 157 acres	Nimitz to reimburse City for CFD for ~28 acres per new Laydown Lease. Nimitz to assume all CFD payments at transfer. Nimitz to also commit to annex Navy property into CFD at time such property is acquired from Navy.	Change - timing
Building inventory	Nimitz to submit historic building inventory prior to first extension.	Completed	NA
Demos	City to demolish remaining non-utilized buildings	Post Closing Requirements - Nimitz to demolish remaining non-utilized buildings within 24 months following 1 st Closing (estimated at ~\$2M+)	New obligation
Soil testing & Relocation	NA	Post Closing Requirements - Nimitz to test LMI stock piles within 12 months and relocate within 48 months to development site	New obligation
Soil Prep	NA	Post Closing Requirements - Nimitz to import clean fill to raise elevation of Property to support development.	New obligation
New Specific Plan	NA (no submission requirements for new Specific Plan)	Post Closing Requirements - Nimitz to submit new Specific Plan within 24 months of DDA/PSA approval.	New obligation
Minimum Assessed Value/ Property Tax Covenant	NA	5 years after DDA/PSA, Nimitz to pay City and School District the difference between property taxes received and the taxes that the City and VUSD would have received if buildings and improvements with an assessed valuation of \$26M (2020/21 dollars) had been developed on Nimitz-owned property.	New obligation
Repurchase Rights	City Right to Reentry TBD	Subject to notice to cure, City has the right to repurchase Property if Nimitz fails to complete post-closing obligations. City would pay the purchase price plus out-of-pocket hard costs not to exceed \$10M.	New obligation
Prohibited Uses	Development to be consistent with current Specific Plan that does not prohibit any particular uses provided they meet entitled property types.	Nimitz will not develop certain uses including cement batch plants, dumps, heavy recycling facilities or heavy industrial uses.	New obligation
Density Payments	NA	Nimitz and City will negotiate in the DDA/PSA about the potential for fees paid to City after closing, for parcels that seek greater density than permitted under a city approved Specific Plan	Item to be Negotiated
Reimbursement , Credits and Deferrals	N/A	City and Nimitz will continue to negotiate potential infrastructure reimbursements and/or impact fee credits and/or deferrals in	Item to be Negotiated

		the DDA/PSA	
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**FIFTH AMENDED AND RESTATED
EXCLUSIVE NEGOTIATION AGREEMENT BY AND BETWEEN
THE CITY OF VALLEJO
AND
THE NIMITZ GROUP, LLC**

This FIFTH AMENDED AND RESTATED EXCLUSIVE NEGOTIATION AGREEMENT (“**Agreement**” or “**ENA**”) entered into by and between the City of Vallejo, a charter city and municipal corporation (“**City**”) and The Nimitz Group, LLC, a California limited liability company (“**Developer**”), as of December [REDACTED], 2020 (“**Effective Date**”), supersedes and replaces, in its entirety, the Initial Agreement (defined below). City and Developer sometimes are referred to collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. City is the owner of certain real property located within the City of Vallejo, State of California, commonly referred to as North Mare Island Industrial Park, and Re-use Area 1a. The Property consists of approximately 191 acres, of which 34 acres are to be reserved in City ownership as a conservation area. The net developable area of 157 acres as depicted in the diagram attached as Exhibit A (“**Property**”) consists of 125.3 acres previously conveyed by the United States Navy to the City, and approximately 31.8 acres owned by the Navy to be conveyed to City following the issuance of a Finding of Suitability for Transfer (FOST) and a determination by the State of California Department of Toxic Substances Control (“**DTSC**”) that no further remediation related action is required.

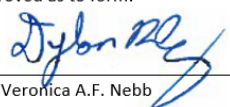
B. In December 2017, the City issued a Request for Qualifications (RFQ), and received nine responses, including from the Developer.

C. After consideration of the responses, on May 15, 2018, the City Council authorized the City Manager to negotiate an Exclusive Negotiating Rights Agreement with the Developer outlining a process for City and Developer negotiate mutually acceptable terms and conditions for the transfer and development of the Property to be set forth in a Disposition and Development Agreement or a Purchase Sale Agreement (“**DDA/PSA**”).

D. City and Developer subsequently entered into an Exclusive Negotiating Agreement dated July 31, 2018, as amended by the First, Second, Third and Fourth amendments thereto (as amended, the “**Initial Agreement**”), that outlined a process to further explore, research, refine, revise and define the proposed development of the Property, and ultimately lead toward a negotiated agreement for sale and development of the Property.

E. In November 2018, Developer and Lennar Mare Island, LLC (“**LMI**”) jointly notified the City that they had entered into a diligence period and that the Developer sought to acquire properties and development rights on South Mare Island currently held by LMI, which would require the consent of the City to assign the Acquisition Agreement (the “**AA**”) and Development Agreement (the “**DA**”) governing development on those properties, from LMI to Developer.

Approved as to form:

By:  for
Veronica A.F. Nebb
City Attorney

F. Developer seeks to coordinate its overall development approach to Mare Island by jointly planning the development of the Property on North Mare Island and the South Mare Island properties that were transferred to Developer by LMI. The combined approach and economy of scale will enable a higher and better use of the Property, as well as the South Mare Island properties.

G. In recognition of Developer's expanded vision for acquisition and development of a larger area of Mare Island, City and Developer now desire to enter into this Agreement to memorialize the Parties' desire to continue to exclusively negotiate a proposed DDA/PSA and to make certain other changes to the Initial Agreement. The DDA/PSA, if approved by the Parties, would set forth the terms under which City will sell the Property to Developer for purposes of developing the Property in a manner consistent with the Mare Island Specific Plan, including any amendments thereto, or a new Mare Island Specific Plan, that City may approve in the future. City and Developer have agreed on a non-binding "Term Sheet", set forth in B, attached hereto and incorporated herein by reference, which identifies some but not all of the key terms to be included in the proposed DDA/PSA and which has been approved by the Parties concurrently herewith.

NOW, THEREFORE, in consideration of the foregoing and the promises, covenants, and provisions set forth below, the receipt and adequacy of which is acknowledged, Developer and City agree as follows:

AGREEMENT

1. **Negotiation Period:** The term of the Initial Agreement commenced on July 31, 2018, and, unless sooner terminated as provided herein, the term of this Agreement shall expire on December 31, 2021 (the "**Negotiation Period**"). Any further extension of the Negotiation Period shall require the approval of City Council, which may be granted or denied in its sole and absolute discretion.
2. **Deposits:** Pursuant to the Initial Agreement Developer has previously paid to City certain deposits as consideration for the right to exclusively negotiate with City and to fund certain out-of-pocket costs incurred and to be incurred in the future by City in connection with the negotiations as well as planning and other services as required to accomplish City's responsibilities under the Initial Agreement and this Agreement. Developer acknowledges and affirms, for the benefit of City, that all such City Costs paid through the Effective Date by City from the Developer deposits have been properly incurred, documented and billed by City, as applicable and that Developer has no claims and, except as otherwise expressly provided in Section 14.4 below, will have no claims against City or any other person or entity in the future for reimbursement of all or any portion of the City Costs incurred prior to the Effective Date of this Agreement regardless of whether or not City and Developer reach agreement on the terms of a DDA/PSA with respect to the Property. Developer reaffirms its obligation to pay all City Costs incurred until the earlier of expiration of the Negotiating Period (as it may be extended) or termination of this Agreement.
3. **Negotiation of the DDA/PSA:** During the Negotiation Period the Parties shall use diligent, good faith efforts to negotiate, draft and present to the City Council for consideration of approval a DDA/PSA (and, if the proposed DDA/PSA is not approved by

the City Council, to modify such proposed DDA/PSA so that the same can be reconsidered for approval by the City Council on or before the expiration of the Negotiation Period). The Parties have agreed to the non-binding Term Sheet attached as Exhibit B (the "**Term Sheet**"), which sets forth some, but not all, of the key terms to be addressed in the proposed DDA/PSA. The Parties anticipate that the Term Sheet (Exhibit B) will foster the negotiation and discussion for the DDA/PSA. The Parties anticipate presenting a proposed DDA/PSA to the City Council for consideration of approval within 6 months of the Effective Date.

4. City Responsibilities: During the Negotiation Period, the City shall undertake the following activities to further the negotiation process:

- 4.1 Exclusive Negotiations: City shall negotiate exclusively in good faith with Developer regarding the proposed DDA/PSA so that a proposed DDA/PSA, consistent with the Term Sheet, can be considered for approval by the City Council within the time provided herein. During the Negotiation Period, City shall not solicit, market to, or negotiate with any other person or entity regarding the sale, long term lease, development or encumbrance of the Property or solicit or entertain bids or proposals to do so. Notwithstanding the foregoing, City may engage in discussions with one or more governmental agencies, including Navy, State Lands, DTSC, WETA, CalTrans, Vallejo Flood and Wastewater District and the Regional Water Quality Control Board, which are intended to further City's ability to convey the Property to Developer for development purposes.
- 4.2 Entitlements: City, at Developer's expense, will process the appropriate permits and land use entitlement(s) (Specific Plan amendments, Master Plan approvals, Unit Plan approvals, use permit approvals, Tentative and Final Maps, architectural review approvals, and design approvals), if any, including any environmental analysis required by the California Environmental Quality Act ("**CEQA**"), upon submittal of an application by the Developer pursuant to Section 5.5, that the City has deemed as complete. Any and all land use entitlement(s) or CEQA approvals requiring approval of the Planning Commission or City Council are discretionary per Section 12.1.
- 4.3 Conveyance of Parcel XV B-1: City will cooperate with the United States Navy to effectuate conveyance of the approximately 31.8 acres owned by Navy to City in order to complete the assemblage of the Property. Developer acknowledges that Navy's conveyance will not occur until the Navy has completed its remediation and issued a FOST for Parcel XV (B-1) as depicted in Exhibit A, and received remediation-related approvals from DTSC, including DTSC's determination that no further action is required. Developer acknowledges that the future development and use of all or a portion of such Navy-owned property may be restricted pursuant to a DTSC required land use covenant.
- 4.4 Site Access Agreement: City will continue to permit Developer to access the Property during the Negotiating Period for purposes of performing due diligence investigations of the Property pursuant to the terms of the access agreement between City and Developer dated September 1, 2018.

- 4.5 Opportunity Zone: City acknowledges that Mare Island, Vallejo is a designated Opportunity Zone. Developer and/or its constituent members and partners or its subsidiaries may seek designation as qualified opportunity zone businesses. City shall cooperate in all reasonable ways with such qualification efforts with the goal of maximizing the benefits of the Property's designation as an opportunity zone.

5. Developer Responsibilities: During the Negotiation Period, Developer, in addition to engaging in diligent, good faith negotiations with City, shall do the following at its sole expense to further the negotiation process:

- 5.1 City Cost Security Deposit: Pursuant to the Initial Agreement, in August 2018, Developer paid to the City a City Cost security deposit ("**City Cost Security Deposit**") in the initial amount of \$60,000, with additional deposits as security for payment of City Costs anticipated to be incurred in connection with the negotiation and drafting of the proposed DDA/PSA, and for site preparation fees specific to fill testing and SWPPP Review. As used in this Agreement, "**City Costs**" means and includes all of City's reasonable and actual out-of-pocket costs and expenses paid to third-party consultants and attorneys, including City's outside legal counsel, contract project manager, and financial and engineering consultants, in connection with the drafting, negotiation and production of this Agreement and the DDA/PSA, including ancillary documents and agreements including City Costs incurred during the term of the Initial Agreement. "**City Costs**" shall not include internal costs of City staff or City Attorneys' office costs. In the event the City Cost Security Deposit falls below \$30,000, City shall give written notice to Developer, which written notice (each, an "**Additional City Cost Notice**") shall include a accounting of the invoices, bills or other evidence of City Costs that City has incurred during the Negotiation Period, notifying Developer of the need to supplement the City Cost Security Deposit. Upon receipt of an Additional City Cost Notice, Developer shall have ten (10) business days (i) to deliver to City cash or other immediately available funds to return the City Cost Security Deposit to \$60,000 or (ii) to object in writing to the increase in City Costs if Developer believes City's request is not reasonably necessary to conclude negotiation and drafting of the DDA/PSA and any ancillary documents and agreements and processing of Developer's entitlement applications. If Developer objects under clause (ii) above, City shall have no obligation to continue incurring City Costs until such impasse is resolved. If after reasonable and good faith efforts to reach mutual agreement as to the amount of the City Cost Security Deposit increase, Developer and City are unable to mutually agree on an appropriate increase, either Party may give written notice to the other Party of its intention to terminate this Agreement. The Party receiving such notice shall have ten (10) business days from receipt of the notice to accept in writing the other Party's proposed City Cost Security Deposit increase. Failure to accept, in writing, and fully fund the City Cost Security Deposit increase within the above prescribed time period shall result in the termination of this Agreement without further notice. Promptly following the termination of this Agreement and City's receipt of the Work Product (as defined in Section 13 below), City shall return to Developer the unexpended and uncommitted portion of the City Cost Security Deposit, if any, and shall be entitled to retain the Exclusive Negotiating Deposit and, except as otherwise provided herein, following such termination, neither Party

shall have any further rights against or liability to the other Party under this Agreement.

5.2 Exclusive Negotiating Deposit: In August 2018, Developer paid to the City an “**Exclusive Negotiating Deposit**” of \$50,000, for the Developer’s right to exclusively negotiate for the entitlement and acquisition of the Property. If the City Council approves a DDA/PSA, the Exclusive Negotiating Deposit will be deposited into the escrow established for City’s transfer of the Property to Developer pursuant to the DDA/PSA and, upon closing, said deposit will be applied towards the purchase price for the Property to be paid by Developer. If, notwithstanding their good faith negotiating efforts, the Parties’ respective negotiating teams are unable to reach agreement on the terms of a DDA/PSA to be presented to the City Council for consideration of approval prior to the expiration of the Negotiation Period, then the Exclusive Negotiating Deposit shall be retained by City. If, on the other hand, the Parties’ respective negotiating teams are able to reach consensus on the terms of a DDA/PSA to be presented to the City Council, but the City Council fails to approve the proposed DDA/PSA prior to the end of the Negotiation Period, the Exclusive Negotiating Deposit payment, if any, will be returned to Developer upon City’s receipt of the Work Product as provided in Section 13 below.

- 5.3 Project Team: Developer has identified Tom D’ Alesandro and Bronte Prins of Southern Land Company, with which Developer has contracted, as the key individuals on its Project Team who will be dedicated to working with the City during the Negotiation Period, as well as implementing the DDA/PSA. Developer shall be required to promptly notify City of any changes in its negotiating team member(s).
- 5.4 Due Diligence Regarding Physical Condition: Developer, at its expense, shall conduct any and all investigations regarding the marketability, title condition and physical condition of the Property (including any environmental, soil/geotechnical analysis and engineering studies) Developer deems reasonably necessary to negotiate the terms of the DDA/PSA.
- 5.5 Entitlements: Developer, at its expense, may seek permits and entitlements, as needed, for development of the Property, including but not limited to Specific Plan amendments, Master Plan approvals, Unit Plan approvals (as defined in Vallejo Municipal Code chapter 16.116.010), one or more Tentative and Final Maps, design review approvals and studies necessary to ensure compliance with the CEQA. Developer understands and agrees that any proposed project must conform to City’s approval processes and be consistent with the Mare Island Specific Plan, as it may be amended from time to time, including amendments to incorporate a new comprehensive master plan for Mare Island.
- 5.6 Community Meetings: Developer and City agree to organize and host community meetings to provide information to the community on the proposed project and to receive public comments. Public comments will be summarized and provided to the Planning Commission and City Council as appropriate, as part of Council’s consideration of any future entitlements and the proposed DDA/PSA.

- 5.7 **Progress Reports:** From time to time as requested by City, but not more frequently than monthly, Developer shall make oral and summary form written progress reports advising City staff on all progress being made on the Developer Responsibilities listed in this Section 5.
6. **Costs of Entitlements and Permits:** Developer, at its sole cost, shall be responsible for submitting and obtaining any land use entitlements for development of the Property, including all Specific Plan amendments, Master Plan approvals, Unit Plan approvals, use permit approvals, Tentative and Final Maps, architectural review approvals, required environmental review, utility “will serve” letters and building permits, including paying any and all customary fees for such entitlements and permits.
7. **Meetings:** During the Negotiation Period Developer’s representatives and City staff, as needed or as reasonably requested (anticipated to be approximately once every two weeks), shall meet or hold a conference call to discuss the status of activities and tasks related to the DDA/PSA negotiations and such other matters as may be relevant to the transfer and development of North Mare Island.
8. **Termination:** The following will constitute reasons for the City or Developer to terminate this Agreement:
- 8.1 **Developer Failure to Make City Cost Security Deposits.** If the Developer fails to deposit with the City the City Cost Security Deposit amounts required by Section 5.1, including any required augmentations of same, within five (5) business days following notice from City that Developer has defaulted under its obligations under Section 5.1 above, this Agreement may be immediately terminated by City by written notice to Developer without any further cure period.
- 8.2 **Developer Breach.** If Developer fails to participate in negotiations, then City may send Developer a notice of breach and demand to cure. If Developer fails to cure such breach within ten (10) days’ following City’s demand, this Agreement shall terminate and City shall be entitled to retain the Exclusive Negotiating Deposit and, if applicable, the Extended Exclusive Negotiating Deposit(s), provided, however, upon City’s receipt of the Work Product from Developer City shall promptly refund the unexpended and uncommitted balance, if any, of the City Cost Security Deposit.
- 8.3 **Developer’s Termination for Convenience.** Developer may terminate this Agreement if Developer determines its proposed development is not commercially feasible and in such event the City shall be entitled to retain the Exclusive Negotiating Deposit provided, however, upon City’s receipt of the Work Product from Developer City shall promptly refund the unexpended and uncommitted balance, if any, of the City Cost Security Deposit.
9. **Representations and Warranties:**
- 9.1 **Duly Formed and Validly Existing.** Developer represents and warrants that The Nimitz Group, LLC is a limited liability company duly formed and validly existing under the laws of the State of California.

- 9.2 Developer Authority: Developer represents and warrants that the person executing this Agreement on behalf of Developer has the full right, power, and authority to execute this Agreement and to bind Developer hereunder. Developer agrees to provide City with evidence of this authority upon request.
- 9.3 City Authority: City represents and warrants that the person executing this Agreement on behalf of the City has the full right, power, and authority to execute this Agreement and to bind the City hereunder.
10. **No Assignment:** City is entering into this Agreement with Developer based on Developer's (and its members') development experience and track record with similar developments. Accordingly, except as otherwise expressly provided below, Developer may not transfer or assign any or all of its rights or obligations under this Agreement except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole absolute discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. Notwithstanding the foregoing, the Parties acknowledge that Developer may desire to form a new special purpose entity ("SPE Affiliate") to develop the Property and to enter into the proposed DDA/PSA. Developer may assign its rights and obligations under this Agreement to a new SPE Affiliate, provided such SPE Affiliate is under common control with Developer.
11. **Notices:** All notices required or permitted under this Agreement shall be delivered in person; by facsimile, email or overnight courier with written confirmation of receipt, or by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address shown below, or to such other address designated in writing by such Party:

Notices to the City:

City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: City Manager
Telephone: 707-648-4576
Facsimile: 707-648-4426
Email: greg.nyhoff@cityofvallejo.net

With a copy to:

City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: City Attorney
Telephone: 707-648-4545
Facsimile: 707-648-4687
Email: veronica.nebb@cityofvallejo.net

Notices to Developer:

Thomas D'Alesandro

Quarters H, 1195 Walnut Ave.
Vallejo, CA 94592
Tel: (707) 974-6731
Email: thomas.dalesandro@southernlanda.com

With a copy to:

Southern Land Company, LLC
Attn: Legal Department
3990 Hillsboro Pike, Ste. 400
Nashville, TN 37215
(615) 778-3150
Email: legal.notices@southernland.com

Notice shall be deemed received and effective on delivery, if delivered personally or upon receipt of confirmation if by facsimile, email or overnight courier; or three days after deposit into the United States mail if delivered by registered or certified mail.

12. Limitations of this Agreement:

- 12.1 Limitations of the City's Commitments: City is not, by entering this Agreement, committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof. This Agreement is merely an agreement to enter into good faith exclusive negotiations with respect to the proposed DDA/PSA according to the terms hereof so that a mutually acceptable DDA/PSA consistent with the Term Sheet (Exhibit B) which has been agreed upon by the Parties as of the Effective Date can be submitted to the City Council for its consideration, all within the times provided herein with all final discretion and approval remaining with the City Council as to any proposed DDA/PSA, and all proceedings and decisions in connection therewith, as well as any and all future land use entitlements and approvals with respect to development of the Property. If negotiations under this Agreement result in a proposed DDA/PSA, City Council approval thereof may occur only after compliance with all applicable laws and ordinances and any such DDA/PSA shall not be effective until considered and approved by the City Council and executed by duly authorized representatives of the City and the Developer. Until and unless the DDA/PSA is signed by the Developer, approved by the City Council and executed by the City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into a DDA/PSA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.
- 12.2 Effect of Expiration or Termination: If a DDA/PSA has not been approved by the City Council by the date this Agreement expires or is terminated in accordance with its terms, neither Party shall have any further rights, obligations, or liability to the other Party under this Agreement except for those obligations which expressly survive termination hereof.

13. Rights to Studies, Design Concepts and Development Plans. Developer shall provide City with full and complete copies of all development project studies, design concepts and plans and investigation reports and studies applicable to the Property within Developer's possession or direct control, including boring logs, sample or laboratory test results, traffic counts or other technical data and backup produced by Developer or its contractors or subcontractors in connection with Developer's due diligence and pre-development activities (collectively, "**Work Product**") within sixty (60) days following the expiration or termination of this Agreement and concurrently with City delivery to Developer of any remaining City Cost Security Deposit or other deposit funds. Notwithstanding the foregoing, if Developer (or Developer's SPE Affiliate) and City enter into a DDA/PSA, then City rights with respect to use of such Work Product shall be addressed in that agreement. Once delivered, each of Developer and City shall own equal right, title and interest in and to such Work Product. Developer further agrees to make commercially reasonable efforts to ensure that City shall be entitled to third party reliance with respect to all final Work Product prepared for Developer by, among other things, including in each of Developer's contracts with respect to such Work Product a provision granting City third party reliance rights to such final Work Product; provided, that solely with respect to Developer, and notwithstanding any reliance on or representations or warranties of Developer's contractors, Developer shall provide such Work Product solely on an "AS IS" basis for use by City or any of its assigns or contractors at their own respective risk. Developer disclaims all WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Nothing in this Agreement imposes on Developer any obligation to provide Work Product produced after the expiration or termination of this Agreement or update or correct any inaccuracies in any previously provided Work Product. The provisions of this Section 13 shall survive expiration or termination of this Agreement.

14. Miscellaneous Provisions:

14.1 Entire Agreement: This Agreement is the entire agreement between the Parties with respect to the matters set forth herein.

14.2 Amendments: This Agreement may be amended only in a writing signed by all Parties and approved by the City Council.

14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Solano County or, in the case of any federal claims, in federal court for the Eastern District of California.

14.4 Limitation on Remedies: In any action or other legal or administrative proceeding to enforce this Agreement, or that otherwise may arise out of this Agreement, neither the City nor Developer shall be entitled to any damages or monetary relief that exceeds the total remaining unexpended and uncommitted balance of the City Cost Security Deposit, if any, plus the Exclusive Negotiating Deposit, which the Parties hereby agree reflect a reasonable estimate of the maximum amount of

damages the Parties would incur in such event. It is understood and agreed by the Parties that this Agreement is solely to enable the Parties to negotiate in good faith the terms of a proposed DDA/PSA consistent with the Term Sheet, which have been agreed upon by the Parties as of the Effective Date, on an exclusive basis for the Negotiation Period. There is no commitment that any DDA/PSA will be approved by the City Council or that entitlements necessary for the development of the Property will be approved and no damages, monetary relief or specific performance shall be available to Developer based solely on disapproval of any proposed DDA/PSA or entitlements; provided however if, during the Negotiation Period, City engages in any negotiations with any party other than Developer (or one or more governmental agencies, including Navy, State Lands, DTSC, WETA, CalTrans, Vallejo Flood and Wastewater District and the Regional Water Quality Control Board, as expressly permitted in Section 4.1 above) regarding the transfer, long term lease, development or encumbrance of the Property or City solicits or entertains bids or proposals to do so, then, in addition to all remedies available to Developer at law or in equity (including, without limitation, the right to bring an action for injunctive relief and/or specific performance), Developer shall be entitled to a refund of the Exclusive Negotiating Deposit and the City Cost Security Deposit.

- 14.5 Liquidated Damages. DEVELOPER ACKNOWLEDGES AND AGREES THAT TERMINATION OF THIS AGREEMENT UNDER SECTION 8.2 OR 8.3 ABOVE MAY RESULT IN IRREPARABLE HARM TO THE CITY AND THAT THERE IS NO ADEQUATE REMEDY AT LAW IN THE EVENT OF A TERMINATION UNDER SUCH PROVISIONS. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT IN THE EVENT OF TERMINATION UNDER SUCH SECTIONS, CITY WILL SUFFER DAMAGES, INCLUDING LOST OPPORTUNITIES TO PURSUE OTHER DEVELOPMENT AND DELAYED RECEIPT OF PROPERTY TAX REVENUES FROM THE PROPERTY, AND THAT IT WOULD BE IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, IF THIS AGREEMENT IS TERMINATED UNDER SECTION 8.2 OR 8.3 ABOVE, CITY MAY RETAIN THE EXCLUSIVE NEGOTIATING DEPOSIT AS FIXED AND LIQUIDATED DAMAGES AND NOT AS A PENALTY. DEVELOPER'S OBLIGATIONS UNDER THIS SECTION 14.5 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT. BY PLACING THE INITIALS OF THE AGENT EXECUTING THIS AGREEMENT ON ITS BEHALF BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: DEVELOPER _____

CITY _____

- 14.6 Attorneys' Fees: In any action or other legal or administrative proceeding to enforce this Agreement or that otherwise may arise out of this Agreement, each Party shall pay its own attorneys' fees and costs.

- 14.7 Headings: The section headings in this Agreement are for convenience only; they do not explain, modify, or add to the meaning of this Agreement.
- 14.8 Interpretation: This Agreement is the result of the combined efforts of the Parties. If any provision is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor of or against either Party, but by construing the terms according to their generally accepted meaning.
- 14.9 Time Periods: Any time period to be computed under this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, the last day will be extended until the next day the City is open for business. All references to days in this Agreement shall mean calendar days unless otherwise expressly specified. The City offices are closed on Fridays and therefore any reference to business days shall mean Monday through Thursday unless one of those days is a holiday observed by the City.
- 14.10 Severability: The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 14.11 Successors and Assigns: This Agreement is binding on and will inure to the benefit of the Parties and their respective successors. This Agreement cannot be transferred or assigned by either Party without the express written consent of the other Party. In City's case such consent must be by City Council approval.
- 14.12 Independent Capacity. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venture's, or principal and agent with each another.
- 14.13 Conflict of Interest. No officer or employee of the City shall hold any interest in this Agreement (California Government Code § 1090).
- 14.14 Authorization to Execute Agreement: Each individual executing this Agreement represents and warrants he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for whom he or she is signing and this Agreement is binding upon said Party in accordance with its terms.
- 14.15 Counterparts: This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 14.16 Signatures. Facsimile or electronic signatures may be used in place of original signatures on this Agreement. Each party intends to be bound by the signatures on the facsimile or electronic document, is aware that the other parties will rely on the facsimile or electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of a facsimile or electronic signature.

14.17 Exhibits: The following exhibits are attached to this Agreement and incorporated herein as though set forth in full for all purposes:

Exhibit A: Map of the Property

Exhibit B: Term Sheet

[Signatures on following page]

THE NIMITZ GROUP, LLC.
a California limited liability company

By: Southern Land Company, LLC,
a Tennessee limited liability company
its manager

BY: _____

Name: Brian S. Sewell

Title: President

DATE: _____

(City Seal)

CITY OF VALLEJO,
a municipal corporation

BY: _____

Greg Nyhoff
City Manager

DATE: _____

ATTEST: _____

Dawn Abrahamson
City Clerk

APPROVED AS TO CONTENT:

Gillian Hayes
Interim Assistant City Manager

APPROVED AS TO FORM:

Veronica A. F. Nebb
City Attorney

EXHIBIT A PROPERTY MAP



2017-12-07 V:\Mare Island\Projects\Vallejo\010_Reuse_Area_1A\Reuse_Area_1A_aerial.mxd TIE:MI-ABQ simon.cardinale

EXHIBIT B
TERM SHEET

PDF of TERM SHEET TO BE ATTACHED HERE

A.



DATE: December 15, 2020
TO: Mayor and Members of the City Council
FROM: Randy J. Risner, Chief Assistant City Attorney
SUBJECT: **CONSIDERATION OF APPROVAL OF A MASTER AGREEMENT AND ASSOCIATED DOCUMENTS TO UNWIND THE EXISTING FINANCING STRUCTURE AND TRANSFER OWNERSHIP OF THE EMPRESS THEATER TO THE CITY OF VALLEJO; NOTICE OF A PROPOSED BUDGET AMENDMENT TO PAY TRIAD AS PART OF THE TRANSFER OF OWNERSHIP**

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a Master Agreement and supporting documents to complete the exit of Triad Communities L.P. ("Triad"), and dissolve a series of holding companies left over from the tax credit financing plan. With the developer's exit, the City will have direct control of the Theater and will be positioned to negotiate a new Theater operator lease for ongoing community arts programming. In addition, staff recommends that the City Council receive the notice of a proposed budget amendment to be presented to City Council at its meeting on December 21, 2020.

REASONS FOR RECOMMENDATION

The City's acquisition of the Theater will enable the City to provide the public benefits of maintaining a historic structure, preserving a community arts facility, and promoting activity in the City's downtown core. With direct ownership and control of the Theater, the City can lease, invest, and preserve the Theater for the future benefit of the community.

The proposed transaction will also bring closure to a series of holding companies established in 2007 to finance, renovate, own, lease, and operate the Theater. The ownership structure was originally established in order to attract private investment through the federal New Markets Tax Credit (NMTC) program to supplement funding provided by the City/Redevelopment Agency to finance capital renovation and improvements to the Theater. These capital improvements resolved earthquake damage sustained in the 1989 Loma Prieta earthquake which had shuttered the Theater from 1989 to 2007. Parties to the original ownership structure included private corporations, the City and its former Redevelopment Agency, and Triad. Triad implemented the Theater's renovations in 2007, and since their formation, has been the Managing Member and majority owner of the entity that owns the Theater - Empress Theatre Associates, LLC, and the Manager of its master tenant, Empress Theatre Master Tenant, LLC. In 2014, at the end of the seven-year NMTC financing period, the Theater's ownership structure was partially consolidated with the exit of private tax credit investors. In 2016, the Theater's ownership structure was further consolidated when the State Department of Finance approved the transfer of the former Redevelopment Agency's interests to the City.

Subject: CONSIDERATION OF APPROVAL OF A MASTER AGREEMENT AND ASSOCIATED DOCUMENTS TO UNWIND THE EXISTING FINANCING STRUCTURE AND TRANSFER OWNERSHIP OF THE EMPRESS THEATER TO THE CITY OF VALLEJO; NOTICE OF A PROPOSED BUDGET AMENDMENT TO PAY TRIAD AS PART OF THE TRANSFER OF OWNERSHIP

Page 2

The proposed transactions will complete the City's acquisition of the Theater and result in the dissolution of the entities involved in the New Markets Tax Credit financing.

BACKGROUND AND DISCUSSION

For additional background information, see a flow chart of the current Theater ownership structure at **Attachment A**.

The proposed transaction will unwind the complicated corporate structure that was put in place to facilitate the NMTC financing for renovation of the Theater. Staff has worked to develop a proposed structure and set of procedures that would be acceptable to Triad while minimizing risk to the City. To that end, staff engaged the services of tax counsel who advised regarding the correction of prior tax filings and made recommendations regarding the sequence of steps in order to avoid adverse tax consequences that might otherwise accrue to the City.

PROPOSED TRANSACTION DETAILS

The City Council is asked to approve the following documents which will be used to implement the transfer of the Empress Theatre property to the City:

1. Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities ("Empress Theater Master Agreement"). This document provides the general framework for the transaction, and commits the parties to take all actions and execute all of the other required documents for the transaction. The Master Agreement will be executed by:

1. the City, current holder of the beneficial interest in the \$6.3 million loans issued as part of the New Markets Tax Credits (NMTC) financing.
2. Empress Theatre Associates, LLC – owner of the property, debtor under the NMTC loans ("Theater Landlord")
3. Empress Theatre Master Tenant, LLC – lessee of the property ("Master Tenant")
4. Triad – managing member and 51% owner of Theater Landlord; manager of Master Tenant
5. Triad Sky Valley LLC – as general partner of Triad and indemnitor for the benefit of City.

The Master Agreement provides for the following actions:

Subject: CONSIDERATION OF APPROVAL OF A MASTER AGREEMENT AND ASSOCIATED DOCUMENTS TO UNWIND THE EXISTING FINANCING STRUCTURE AND TRANSFER OWNERSHIP OF THE EMPRESS THEATER TO THE CITY OF VALLEJO; NOTICE OF A PROPOSED BUDGET AMENDMENT TO PAY TRIAD AS PART OF THE TRANSFER OF OWNERSHIP

-
1. Triad will cancel a \$42,500 loan payable to Triad and will confirm that no payments are due under a prior reserve agreement or pursuant to previous Triad advances.
 2. Triad will prepare and file state and federal tax returns for the Master Tenant and the Theater Landlord and will make all necessary filings with the California Secretary of State.
 3. The City will reimburse Triad for up to \$32,000 in costs for preparation, filing, and taxes, fees, and penalties associated with tax returns and Secretary of State filings for Master Tenant and Theater Landlord.
 4. To facilitate the transfer of the property and the dissolution of the Theater Landlord, the Master Tenant will assign to the City its 49% interest in Theater Landlord and its interests under the Master Lease of the property.
 5. The Master Lease between the Theater Landlord and the Master Tenant will be terminated.
 6. The Theater Landlord will convey the property to the City by Grant Deed and the \$6.3 million in outstanding loans remaining from the NMTC financing will be deemed satisfied and cancelled.
 7. The Theater Landlord will be dissolved.
 8. Triad and Triad Sky Valley LLC will jointly and severally indemnify City, Master Tenant, and Theater Landlord against liabilities arising from the property prior to the recordation of the Grant Deed, the management of the Master Tenant and Theater Landlord, and state and federal income taxes owed by Master Tenant and Theater Landlord.

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9. The City will be responsible for payment of delinquent property taxes for the Theater property. These total approximately \$58,050 through October 2019, plus taxes due for fiscal years 2018-19, 2019-20, and 2020-21.

2. Confirmation of Sublease Termination. This document confirms the termination of the sublease between Master Tenant and the dissolved Sublessee LLC, which was recorded against the property.

3. Loan Satisfaction Agreement (Triad Loan). This document cancels the \$42,500 loan payable to Triad by the dissolved Investment Fund.

4. Plan of Dissolution and Liquidation (Master Tenant) + Certificate of Dissolution. This document winds up and dissolves Master Tenant.

5. Assignment and Assumption Agreement (Empress Theatre Master Tenant). This document facilitates the wind up process of Master Tenant by assigning Master Tenant's ownership interest in Theater Landlord to the City.

6. Plan of Dissolution and Liquidation (Empress Theatre Associates) + Certificate of Dissolution. This document winds up and dissolves Theater Landlord.

7. Loan Satisfaction Agreement (Notes A and B). This document cancels the \$6.3 million notes that are secured by the Property as part of the wind up of Theater Landlord and the transfer of the property to the City.

Subject: CONSIDERATION OF APPROVAL OF A MASTER AGREEMENT AND ASSOCIATED DOCUMENTS TO UNWIND THE EXISTING FINANCING STRUCTURE AND TRANSFER OWNERSHIP OF THE EMPRESS THEATER TO THE CITY OF VALLEJO; NOTICE OF A PROPOSED BUDGET AMENDMENT TO PAY TRIAD AS PART OF THE TRANSFER OF OWNERSHIP

8. Grant Deed with Certificate of Acceptance. This document transfers ownership of the Empress Theatre to the City of Vallejo.

9. Termination of Lease (Master Lease). This document terminates the Master Lease between Theater Landlord and Master Tenant, which was recorded against the property.

FISCAL IMPACT

Property Acquisition

The proposed transaction will provide the City with title to the Theater property. The property will remain encumbered by a 20-year use restriction recorded in connection with a \$200,000 private foundation grant received in 2007. The use restriction requires the property to be used for activities supporting the Vallejo arts community and for arts education programs through 2027. The property will also be transferred subject to deeds of trust recorded in connection with loans provided as part of the NMTC financing. The City is the holder of the beneficial interest in these loans which will be deemed satisfied as part of the transaction. It is possible that the City may need to file a future quiet title action to remove the liens securing the loans as the original NMTC beneficiary under these deeds of trust has been dissolved.

Loans to Be Cancelled

All inter-party loans related to the Theater are proposed to be cancelled through the transaction. The City is now the holder of the beneficial interest in \$6.3 million of uncollectible loans that were originated in connection with the NMTC financing and secured by the property. These loans were provided to the entity that owns the Theater, and were originally envisioned to be retired through Theater operating cash flows to the extent possible, or otherwise forgiven. The community programs at the Theater do not support cash flow sufficient to repay these loans. Under the proposed transaction, the City would acquire the Theater from the current owner, Empress Theatre Associates, LLC, and the \$6.3 million of improvement loans would be deemed satisfied. An additional \$42,500 loan due to Triad would also be cancelled. In addition, Triad will acknowledge that all advances made by Triad during the 2007 construction period have been satisfied.

During the 2004 to 2007 construction period, the City advanced \$4.3 million to its Redevelopment Agency, which was the source of the Redevelopment Agency's original loans to the Theater. Since Redevelopment Dissolution in 2012, the Successor Agency to the Former Redevelopment Agency has received approval from the State Department of Finance to repay these loans to the City. The City is receiving annual repayment installments from tax increment distributed to the Successor Agency through its annual ROPS (Recognized Obligation Payment Schedule) process. Over a 15-year repayment period, the City anticipates to fully recover its original \$4.3 million investment in Theater capital renovation loans.

Current transaction costs

The acquisition of the Theater would be without cash cost to the City with the exception of the settlement of

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various taxes, regulatory filing fees, title insurance costs, and escrow fees. The proposed agreements provide that the City would reimburse Triad for payment for income taxes and state filing fees since the 2014 end of the tax credit period for Master Tenant and Theater Landlord, up to a total of \$32,000. In addition, the City would take responsibility for payment of property taxes on the Theater property accrued since 2014. These costs are estimated at approximately \$58,000 for the period through October 2019, plus taxes due for fiscal years 2018-19, 2019-20, and 2020-21.

On-going Property Maintenance Costs

Upon acceptance of the Theater, the City will become financially responsible for ongoing property taxes, maintenance, and capital repairs of the property. Acquisition of the Theater will commit the City to financial support for ongoing property maintenance. To anticipate future budget impacts, the City contracted for a third-party building condition assessment with Harris & Associates in 2016. Their report notes that during the 105 years since original construction in 1911, the building has gone through several cycles of decline and renovation, including the 2007 renovation for seismic upgrades. In 2018, Harris & Associates estimated anticipated maintenance costs by year, using an industry CPI factor, which are summarized below in five-year increments. In accepting the Empress Property, the City can anticipate that the following capital improvement budget requirements that will be necessary to sustain the Theater.

Theater Maintenance Budget Estimated by Harris & Associates

2017-2021	\$225,630
2022-2026	\$787,460
2027-2031	\$461,650
2031+	\$1,141,385

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.	Exhibit A Ownership Structure
2.	Agreement Regarding Transfer of Limited Liability Company Assets and Dis...
3.	Confirmation of Sublease Termination (Exhibit F)
4.	Grant Deed (Exhibit P)
5.	Loan Satisfaction Agreement (Notes A & B) (Exhibit H) (Packet 1)
6.	Master Tenant Assignment (Exhibit K) (Packet 1)
7.	Master Tenant Plan of Dissolution (Exhibit J) (Packet 1)

Subject: CONSIDERATION OF APPROVAL OF A MASTER AGREEMENT AND ASSOCIATED DOCUMENTS TO UNWIND THE EXISTING FINANCING STRUCTURE AND TRANSFER OWNERSHIP OF THE EMPRESS THEATER TO THE CITY OF VALLEJO; NOTICE OF A PROPOSED BUDGET AMENDMENT TO PAY TRIAD AS PART OF THE TRANSFER OF OWNERSHIP

8.	Termination of Master Lease (Exhibit L)
9.	Theater Landload Plan of Dissolution (Exhibit N) (Packet 1)
10.	Triad Loan Satisfaction Agreement (Exhibit G) (Packet 1)

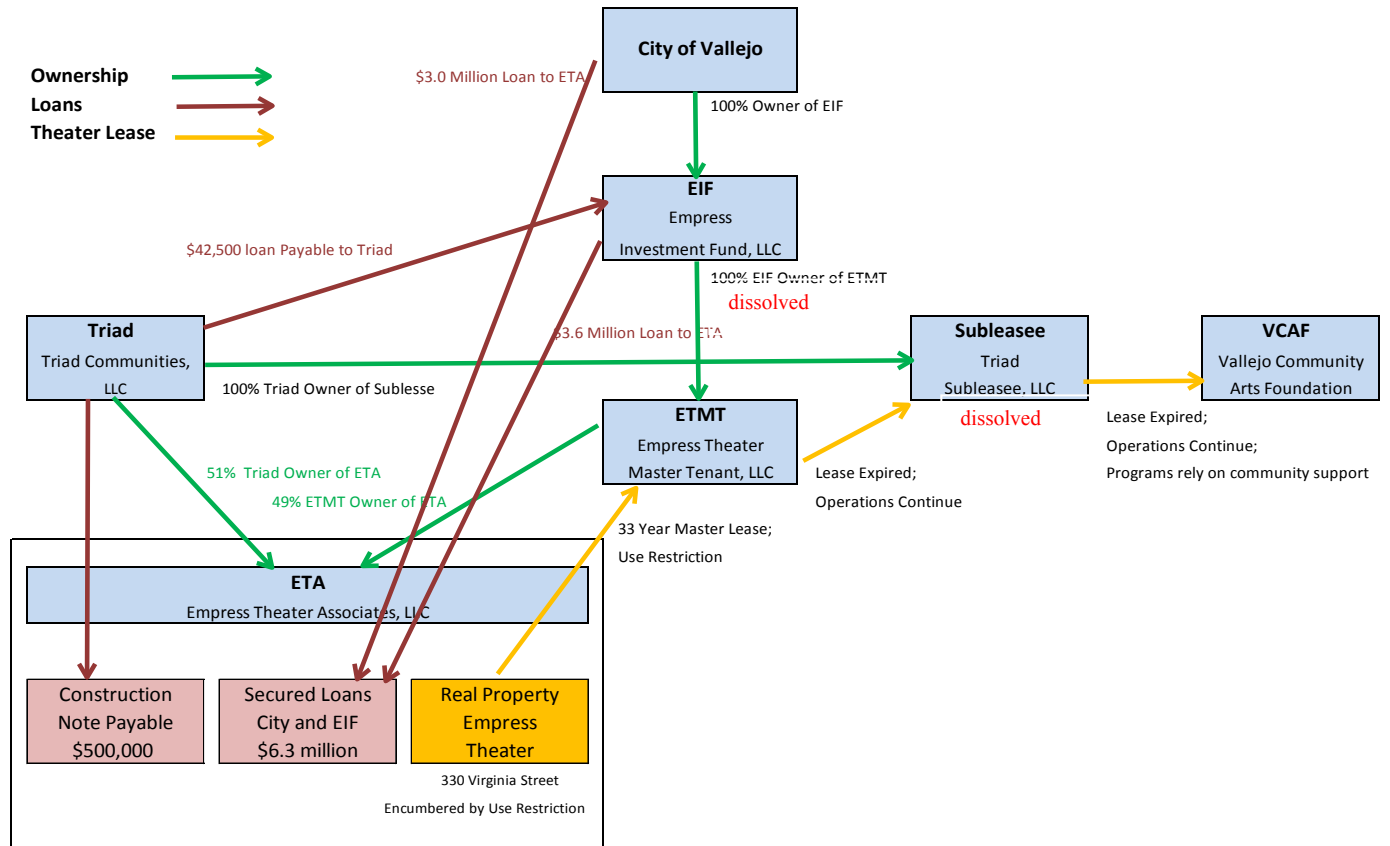
CONTACT

Randy J. Risner, Chief Assistant City Attorney (707) 648-4545

randy.risner@cityofvallejo.net

Exhibit A

Empress Theater Ownership Structure



**AGREEMENT REGARDING TRANSFER
OF LIMITED LIABILITY COMPANY ASSETS AND
DISSOLUTION OF RELATED CORPORATE ENTITIES**

("Empress Theater Master Agreement")

This Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities ("**Agreement**") is entered into by and among the City of Vallejo, a municipal corporation ("**City**"), Empress Theatre Master Tenant, LLC, a California limited liability company ("**Master Tenant**"), Empress Theatre Associates, LLC, a California limited liability company ("**Theater Landlord**"), Triad Communities, L.P., a California limited partnership ("**Triad**"), and Triad Sky Valley LLC, a Washington limited liability company ("**Indemnitor**") (each a "Party" and collectively, the "Parties"), effective as of _____, 2020 ("**Effective Date**").

RECITALS

A. Triad and Master Tenant are the only members of Theater Landlord. The operation of Theater Landlord is governed by that certain Empress Theatre Associates, LLC – Amended and Restated Operating Agreement dated as of July 17, 2007 ("**Landlord Operating Agreement**"). Triad holds a 51% interest in, and is the Managing Member of, Theater Landlord with certain rights commensurate with its interest as set forth in the Landlord Operating Agreement. Master Tenant holds a 49% interest in the Theater Landlord as a non-managing member.

B. As a result of the dissolution of Empress Investment Fund, LLC, a Delaware limited liability company ("**Investment Fund**") and the transfer of its assets by the Successor Agency to the Redevelopment Agency of the City of Vallejo ("**Successor Agency**") to the City, the City is the sole member of Master Tenant. Triad is the non-member Manager of Master Tenant. Master Tenant is governed by that certain Amended and Restated Limited Liability Company Operating Agreement of Empress Theatre Master Tenant, LLC, dated as of July 17, 2007 ("**Master Tenant Operating Agreement**").

C. Theater Landlord owns that certain real property commonly known as the Empress Theatre, located at 330 Virginia Street in Vallejo, California, as more particularly described in Exhibit A ("**Empress Property**").

D. Theater Landlord and Master Tenant are parties to that certain Lease for the Empress Property dated as of June 28, 2007 ("**Master Lease**"), with Theater Landlord as landlord and Master Tenant as tenant, evidenced by that certain Memorandum of Lease recorded in the Official Records of Solano County, California ("**Official Records**") as instrument number 200700086761.

E. Master Tenant and Empress Sublessee LLC, a California limited liability company ("**Subtenant**") entered into that certain Sublease for the Empress Property dated July 17, 2007 ("**Theater Sublease**"), with Master Tenant as sublessor and Subtenant as sublessee.

Subtenant further subleased the Empress Property to Vallejo Community Arts Foundation, Inc., a California nonprofit public benefit corporation ("**VCAF**") pursuant to that certain Agreement to Sublease and Sublease Agreement ("**VCAF Sub-Sublease**"), as evidenced by that certain Memorandum of Agreement to Sublease and Sublease Agreement recorded in the Official Records as instrument number 200700086763. The Theater Sublease and the VCAF Sub-Sublease have now expired. VCAF continues to occupy the Empress Property. Subtenant has been dissolved, with a Certificate of Dissolution filed with the California Secretary of State on December 23, 2014.

F. In 2007, rehabilitation of the Empress Property was financed using federal New Market Tax Credits (the "**NMTC Transaction**"). As part of the NMTC Transaction, Theater Landlord entered into that certain Loan Agreement with NDC New Markets Investments XXXIX, LLC, a Delaware limited liability company ("**QLICI Lender**"), dated as of July 17, 2007 ("**QLICI Loan Agreement**"), wherein QLICI Lender agreed to loan to Theater Landlord, and Theater Landlord agreed to borrow from QLICI Lender, the aggregate principal amount of Six Million, Three Hundred Twenty-Five Thousand, Nine Hundred Three Dollars (\$6,325,903) ("**QLICI Loan**"), as evidenced by (i) that certain Promissory Note A in the principal amount of \$3,000,000 ("**Note A**"), and (ii) that certain Promissory Note B in the principal amount of \$3,325,903 ("**Note B**" and together with Note A, the "**QLICI Notes**", each dated as of July 17, 2007).

G. To secure repayment of Note A, Theater Landlord executed a Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note A) as Trustor for the benefit of QLICI Lender, dated as of July 17, 2007, and recorded in the Official Records on August 7, 2007 as instrument no. 200700086764 ("**Deed of Trust A**"), and to secure repayment of Note B, Theater Landlord executed a Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note B) as Trustor for the benefit of QLICI Lender, dated as of July 17, 2007, and recorded in the Official Records on August 7, 2007 as instrument no. 200700086765 ("**Deed of Trust B**" and together with Deed of Trust A, the "**QLICI Deeds of Trust**"). In addition, Theater Landlord and QLICI Lender executed a Reserve and Security Agreement dated July 17, 2007 ("**Reserve and Security Agreement**"). The QLICI Loan Agreement, the QLICI Notes, the QLICI Deeds of Trust, the Reserve and Security Agreement, and all other instruments related to the QLICI Loan, are collectively referred to herein as the "**QLICI Loan Documents**").

H. In connection with the NMTC Transaction, Investment Fund entered into that certain Fund Loan Agreement with Triad, dated as of July 17, 2007 (the "**Triad Loan Agreement**"), wherein Triad agreed to loan to Investment Fund, and Investment Fund agreed to borrow from Triad, the aggregate principal amount of Forty-Two Thousand Five Hundred Dollars (\$42,500) (the "**Triad Loan**"), as evidenced by that certain Promissory Note in the amount of the Triad Loan (the "**Triad Note**") executed by Investment Fund for the benefit of Triad. In connection with the Triad Loan Agreement, and as security for the Triad Note, Investment Fund and Triad entered into a Fund Pledge Agreement, dated July 17, 2007 (the "**Triad Pledge Agreement**", and together with the Triad Loan Agreement, the Triad Note, and all other instruments related to the Triad Loan, collectively, the "**Triad Loan Documents**"). Pursuant to the dissolution of the Investment Fund and assignment of its interests from the

Successor Agency to the City, the City assumed the Investment Fund's obligations under the Triad Note.

I. Triad made various unsecured operating and construction advances to Theater Landlord and Master Tenant (the "**Triad Advances**").

J. In 2014, in connection with the QLICI Lender's exit from the NMTC Transaction at the end of the tax credit compliance period, the following occurred: (i) QLICI Lender transferred to Investment Fund all of QLICI Lender's rights, title, and interest in the QLICI Loan and the QLICI Loan Documents, including without limitation, QLICI Lender's beneficial interests under the QLICI Notes and the QLICI Deeds of Trust, (ii) QLICI Lender assigned to Investment Fund QLICI Lender's 100% membership interest in the Master Tenant ("**MT Interest Assignment**"), (iii) U.S. Bancorp Community Development Corporation, a Minnesota corporation, assigned its 100% membership interest in the Investment Fund to the Successor Agency, and (iv) the Investment Fund assigned Note A and related documents to the Successor Agency.

K. In 2015, a Certificate of Cancellation was filed with the Delaware Secretary of State, dissolving the Investment Fund. Upon dissolution of the Investment Fund, the Successor Agency became the holder of the Investment Fund's assets by operation of law.

L. In 2016, the Successor Agency transferred its interests in the Investment Fund and its assets to the City. As a result, the City became the legal owner and holder of Note A and Note B and the holder of the beneficial interests under Deed of Trust A and Deed of Trust B. Note A and Note B are each payable by the Theater Landlord, and are secured by Deed of Trust A, and Deed of Trust B, respectively, each recorded against the Empress Property.

M. The Parties desire to enter into this Agreement in order to accomplish the primary objectives of (i) enabling the dissolution of Theater Landlord and the Master Tenant, and (ii) enabling the City to acquire full ownership and control of the Empress Property.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the Parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Incorporation of Recitals and Exhibits. The Parties acknowledge the truth of the foregoing Recitals which are hereby incorporated into this Agreement. Exhibits A and F through Q attached hereto are incorporated into this Agreement.

2. Representations.

2.1 Triad's Representations. Triad covenants that upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.1 to be untrue, Triad shall immediately give written notice of such fact or condition to City. Triad acknowledges that City will rely upon Triad's representations made herein notwithstanding any investigation made by or on behalf of City. Triad hereby represents, warrants, and covenants

that the following are true and correct as of the effective date of this Agreement, and shall be true and correct as of the effective date of recordation of the Grant Deed (described in Section 6.3 below).

(a) Authority of Triad. Triad has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Triad, or to be executed and delivered by Triad pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

(b) Authority of Persons Executing Documents. This Agreement and all other documents or instruments that have been or that will be executed and delivered by Triad pursuant to or in connection with to this Agreement, have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Triad, and all actions required under Triad's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments that have been or that will be executed and delivered by Triad, pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(c) Valid and Binding Agreements. This Agreement and all other documents or instruments that have been or that will be executed and delivered by Triad pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Triad, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(d) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments that have been or that will be executed and delivered by Triad pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on Triad, or any provision of the organizational documents of Triad, or will conflict with or constitute a breach of or a default under any agreement to which Triad is a party, or will result in the creation or imposition of any lien upon any assets or property of Triad, other than liens established pursuant hereto.

(e) Pending Proceedings. Except as disclosed in writing to the City prior to execution of this Agreement, to Triad's knowledge, none of Triad, Triad's general partner(s), Master Tenant, or Theater Landlord are in default under, or in violation of, any law or regulation or under any order of any court, board, commission or agency whatsoever, and to the best knowledge of Triad's principals, there are no claims, actions, suits or proceedings pending, or threatened against, or affecting Triad, Triad's general partner(s), Master Tenant, Theater Landlord, or the Empress Property, at law or in equity, before or by any court, board, commission or agency. Neither Triad nor any of its general partners are the subject of any

bankruptcy or insolvency proceeding, and no general assignment or arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Triad's or any of Triad's general partner's assets has been made.

2.2 City's Representations. City covenants that upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.2 to be untrue, City shall immediately give written notice of such fact or condition to Triad. City acknowledges that Triad will rely upon City's representations made herein notwithstanding any investigation made by or on behalf of Triad. City hereby represents, warrants, and covenants that the following are true and correct as of the effective date of this Agreement, and shall be true and correct as of the effective date of recordation of the Grant Deed.

(a) Authority of City. City has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by City, or to be executed and delivered by City pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

(b) Authority of Persons Executing Documents. This Agreement and all other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with to this Agreement, have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of City, and all actions required under City's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments that have been or that will be executed and delivered by City, pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(c) Valid and Binding Agreements. This Agreement and all other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of City, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(d) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on City, or any provision of the organizational documents of City, or will conflict with or constitute a breach of or a default under any agreement to which City is a party, or will result in the creation or imposition of any lien upon any assets or property of City, other than liens established pursuant hereto.

(e) Pending Proceedings. Except as disclosed in writing to Triad prior to execution of this Agreement, City is not in default under, or in violation of, any law or regulation or under any order of any court, board, commission or agency, related in any matter to the transactions contemplated by this Agreement.

3. Investment Fund Assets and Liabilities Held by City. As a result of Successor Agency's transfer of interests in Investment Fund to the City, the City presently holds all Investment Fund assets and liabilities, including (i) Investment Fund's 100% interest as the sole member of Master Tenant, (ii) Investment Fund's interest as the holder of Note A and Note B, (iii) Investment Fund's beneficial interest in Deed of Trust A and Deed of Trust B, and (iv) Investment Fund's obligations under the Triad Note.

3.1 Deeds of Trust. The Parties acknowledge that QLICI Lender and Investment Fund executed that certain unrecorded Assignment of Loan Documents dated September 2014 pursuant to which QLICI Lender assigned Note A, Note B, Deed of Trust A and Deed of Trust B to Investment Fund, and that QLICI Lender subsequently executed that certain unrecorded Assignment of Deed of Trust dated October 14, 2014 addressing the assignment of Deed of Trust A to Investment Fund, and that certain unrecorded Assignment of Deed of Trust dated October 14, 2014 addressing the assignment of Deed of Trust B to Investment Fund. Triad agrees that it will reasonably cooperate with City in City's efforts to facilitate the release and reconveyance of the Deeds of Trust or their removal from title to the Property.

4. Confirmation of Termination of Sublease; Cancellation of Triad Loan; Confirmation of No Payment Obligations.

4.1 Confirmation and Recordation of Sublease Termination. Triad hereby confirms that as of October 31, 2014, the Theater Sublease was terminated and cancelled. In its capacity as successor in interest to Subtenant (the former sublessee and as manager of Master Tenant (the former sublandlord), Triad will execute, acknowledge, and deliver to City a Confirmation of Sublease Termination substantially in the form attached hereto as Exhibit F ("**Confirmation of Sublease Termination**"). City will cause the Confirmation of Sublease Termination to be recorded in the Official Records.

4.2 Cancellation of Triad Loan. Triad and the City will execute a Loan Satisfaction Agreement substantially in the form attached hereto as Exhibit G ("**Triad Loan Satisfaction Agreement**") which shall be effective as of the Effective Date of this Agreement. Pursuant to the Triad Loan Satisfaction Agreement, Triad will terminate the Triad Loan Agreement, the Triad Note, and the Triad Pledge Agreement, and will return the Triad Note marked "cancelled" to City. In addition, Triad will prepare and file all UCC-3's necessary to terminate any UCC-1 Financing Statements filed as security for the Triad Loan, and will terminate all other documents executed in connection with the Triad Loan.

4.3 Confirmation No Payments Due under Reserve Agreement. Triad hereby confirms that no payments are payable pursuant to the Reserve and Security Agreement by or to any party, and that no reserves deposited pursuant to such agreement remain unspent.

4.4 Confirmation No Payments Due under Triad Advances. Triad hereby confirms that (i) all Triad Advances have been written off or settled, (ii) no payments are payable pursuant to the Triad Advances by any party, (iii) with the exception of Theater Landlord's obligations under Note A and Note B, none of Theater Landlord, Master Tenant, or Investment Fund have any liability or payment obligation to Triad or to any other creditor. Triad agrees to execute, acknowledge, and if applicable, record or file all such instruments reasonably requested by City as necessary to evidence that no such payments are due or payable.

4.5 Intentionally omitted.

4.6 Empress Property; Property Taxes and Assessments. Triad hereby represents and warrants that as of the Effective Date of this Agreement, the Empress Property is and will be subject to no liens or encumbrances other than those identified in that certain preliminary title report for the Empress Property prepared by Old Republic Title Insurance Company, issued as of August 13, 2019, and attached hereto as Exhibit I. City agrees that it will assume responsibility for payment of delinquent property taxes and assessments accrued on the Empress Property for the period commencing on October 10, 2014 (the date of QLIC Lender's exit from the NMTC Transaction).

4.7 Triad Deliverables. Triad and City hereby confirm that prior to the Effective Date of this Agreement, Triad has completed all of the following:

(a) Triad has delivered to the City complete and accurate copies of all state and federal income tax returns that have been filed prior to the Effective Date for Master Tenant and Theater Landlord.

(b) Triad has prepared and filed all required California Secretary of State filings for Master Tenant, and has delivered copies of the same to City.

(c) Triad has completed all steps necessary to obtain, and has obtained, a certificate of revivor from the Franchise Tax Board for Master Tenant, and has delivered a copy of the same to City.

(d) Triad has delivered to City books and records of the Master Tenant and Theater Landlord, including current trial balances through December 31, 2019 (or most recent fiscal period), and all other financial documents as have been requested by City. Triad will deliver to City books and records reflecting cancelation of any remaining Triad or inter-company construction or operating advances and liabilities at the time of or within a reasonable time following the Effective Date.

5. Termination of Master Lease; Dissolution of Master Tenant.

5.1 Master Tenant Plan of Dissolution and Liquidation. Triad, in its capacity as Manager, and City in its capacity as the sole member of Master Tenant, will execute a Plan of Dissolution and Liquidation for Master Tenant substantially in the form attached hereto as

Exhibit J (“**Master Tenant Plan of Dissolution**”), evidencing the complete dissolution of Master Tenant at least one day prior to the effective date for the Grant Deed (as defined below).

5.2 Assignment of Master Tenant’s Assets to City. Pursuant to the Master Tenant Plan of Dissolution, Master Tenant and City will execute an Assignment and Assumption Agreement (Master Tenant) substantially in the form attached hereto as Exhibit K (“**Master Tenant Assignment**”) pursuant to which Master Tenant will assign to City (a) Master Tenant’s interest as tenant under the Master Lease, and (b) Master Tenant’s 49% membership interest in Theater Landlord, in exchange for City’s assignment/relinquishment to Master Tenant of City’s 100% membership interest in Master Tenant. By their execution of this Agreement, Theater Landlord, Triad in its capacity as Manager of Master Tenant, and City in its capacity as the sole member of Master Tenant, each hereby consent to the transactions described in this Section, and agree to execute separate consents to such transactions, as applicable.

5.3 Termination of Master Lease. Pursuant to the Theater Landlord Plan of Dissolution and the Loan Satisfaction Agreement – Notes A and B (described in Section 6.2 below), following City’s acceptance of Master Tenant’s interest as tenant under the Master Lease, Theater Landlord and City will terminate the Master Lease pursuant to a Termination of Lease substantially in the form attached hereto as Exhibit L (“**Termination of Master Lease**”). City will cause the Termination of Master Lease to be recorded in the Official Records.

5.4 Dissolution of Master Tenant. City, in its capacity as the sole member of Master Tenant, will dissolve Master Tenant in accordance with the Master Tenant Plan of Dissolution and Section 12.1 of the Master Tenant Operating Agreement, and if requested by City, Triad will file a Certificate of Dissolution for Master Tenant with the California Secretary of State substantially in the form attached hereto as Exhibit M (“**Master Tenant Certificate of Dissolution**”), dated no later than one day prior to the effective date for the Grant Deed. City’s agreement to dissolve the Master Tenant pursuant to this Section shall not operate as City’s release of any party from any liability associated with the operation of Master Tenant, including without limitation, any Claim for which City is indemnified pursuant to Section 9 below.

6. Conveyance of Property; Satisfaction of Notes A and B; Dissolution of Theater Landlord.

6.1 Theater Landlord Plan of Dissolution. Triad, in its capacity as the Managing Member of Theater Landlord, and City in its capacity as a member of Theater Landlord, will execute a Plan of Dissolution and Liquidation for Theater Landlord substantially in the form attached hereto as Exhibit N (“**Theater Landlord Plan of Dissolution**”).

6.2 Loan Satisfaction Agreement – Notes A and B. Pursuant to the Theater Landlord Plan of Dissolution, Theater Landlord and City will execute a Loan Satisfaction Agreement (Notes A and B) substantially in the form attached hereto as Exhibit H (“**Loan Satisfaction Agreement – Notes A and B**”) pursuant to which: (i) Theater Landlord will convey by grant deed to City the property commonly known as the Empress Theatre, located at 330 Virginia Street in the City of Vallejo (the “**Property**”), (ii) Theater Landlord and Master Tenant will execute the Termination of Master Lease, (iii) the City will cancel or will cause to be cancelled, Theater Landlord’s indebtedness under Note A and Note B.

6.3 Conveyance of Empress Property to City. To implement the Loan Satisfaction Agreement – Notes A and B, Theater Landlord will execute a Grant Deed conveying the Empress Property to City substantially in the form attached hereto as Exhibit P (“**Grant Deed**”), and City will execute a Certificate of Acceptance in the form attached to the Grant Deed (“**Certificate of Acceptance**”). City will cause the Grant Deed and Certificate of Acceptance to be recorded in the Official Records.

6.4 Dissolution of Theater Landlord. Triad, as Managing Member, will dissolve Theater Landlord in accordance with the Theater Landlord Plan of Dissolution and Section 10.1 of the Theater Landlord Operating Agreement, and will file a Certificate of Dissolution for Theater Landlord with California Secretary of State substantially in the form attached hereto as Exhibit Q (“**Theater Landlord Certificate of Dissolution**”), effective at least one day following the effective date of the Grant Deed.

7. Tax Treatment. The Parties intend that the transactions described in this Agreement shall be treated as follows (“**Agreed Tax Treatment**”) for U.S. federal and state income tax purposes, and agree to report the transactions in accordance with the Agreed Tax Treatment, and to refrain from taking any position inconsistent with the Agreed Tax Treatment unless otherwise required by a “determination” (as defined in Section 1313(a) of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”)).

7.1 As a result of the dissolution of the Investment Fund in 2015, for U.S. federal and state income tax purposes, City is the sole owner of the equity interests of Master Tenant, and, as a result, Master Tenant is properly classified as a corporation pursuant to Treasury Regulations Section 301.7701-2(b)(6).

7.2 The dissolution of Master Tenant and the Master Tenant Assignment shall be treated as a liquidation of Master Tenant pursuant to Section 331 of the Code.

7.3 The conveyance of the Empress Property to City shall be treated as the sale or exchange of the Empress Property in full satisfaction of a non-recourse loan, as described in Treasury Regulations Section 1.1001-2(a)(1).

7.4 The dissolution of Theater Landlord shall be treated as a distribution in liquidation of City’s and Triad’s interests in the partnership, as described in Section 731 of the Code.

8. Tax Returns; Costs and Expenses.

8.1 Tax Returns.

(a) City hereby notifies Triad that Master Tenant should be classified as a corporation for tax purposes, and that certain of the income tax returns that were previously filed for taxable years ending prior to the Effective Date for Theater Landlord and Master Tenant contained errors, including in the reporting of Master Tenant’s tax basis in its interest in Theater Landlord and Master Tenant’s capital account balance resulting from the MT Interest

Assignment. In order to properly report the transactions contemplated by this Agreement, those errors must be corrected. By not later than sixty (60) days following the Effective Date, Triad will prepare and deliver to City, for City's approval and consent, drafts of amended state and federal income tax returns for Master Tenant and Theater Landlord for all open years for which such tax returns were previously filed, and drafts of original tax returns for any years ending on or prior to December 31, 2019 for which no return was previously filed. City shall provide any comments to such draft tax returns no later than sixty (60) days following its receipt of such drafts, and Triad shall incorporate all such comments, after which time Triad shall promptly file or cause to be filed such approved tax returns.

(b) By not later than ninety (90) days following the Effective Date, Triad will prepare and deliver to City, for City's approval and consent, drafts of state and federal income tax returns for Master Tenant and Theater Landlord for the tax year ending on the date on which such entities terminate or liquidate, as applicable. City shall provide any comments to such draft tax returns no later than thirty (30) days following its receipt of such drafts, and Triad shall incorporate all such comments, after which time Triad shall promptly file or cause to be filed such approved tax returns.

8.2 Costs. Except as expressly provided in Section 8.3 below, Triad will be responsible for payment of all costs, taxes, fees, charges, penalties, and interest associated with (i) the reinstatement of Master Tenant, (ii) the preparation and filing of all state and federal tax returns, Franchise Tax Board, and Secretary of State filings for Master Tenant and Theater Landlord described in Section 8.1 or Section 8.3, including the payment of all taxes, fees, charges, penalties, and interest due in connection with such tax returns and filings, and (iii) compliance with all other Triad obligations set forth in this Agreement.

8.3 Costs and Expenses. Except as expressly provided herein, each Party will pay its own accounting, legal, consulting, and other fees, costs, and expenses incurred in connection with the transactions contemplated by this Agreement. City agrees that it will reimburse Triad for the following costs, in an aggregate amount not to exceed the sum of Thirty-Two Thousand Dollars (\$32,000) upon City's receipt of all agreements and instruments contemplated by this Agreement that Triad is obligated to prepare or to which Triad or Indemnitor are parties, duly executed and as applicable acknowledged by Triad and Indemnitor, and upon Triad's delivery of invoice(s) for such expenses, accompanied by such documentation as City may reasonably require:

(a) preparation of Master Tenant state and federal tax returns for fiscal years 2015 – 2019 including amendments and corporate returns specified in Section 8.1 above, and Theater Landlord 2018-19 state and federal tax returns;

(b) preparation of final (year 2020) Master Tenant and Theater Landlord state and federal tax returns;

(c) Franchise Tax Board filing fees, penalties, charges, and interest for Master Tenant for fiscal years 2015 – 2020 and Theater Landlord 2019-2020 FTB filing fees;

- (d) Secretary of State filing fees and penalties for Master Tenant.

The City will pay the costs of recordation for any documents required to be filed in the Official Records in connection with the transactions contemplated by this Agreement.

9. Indemnity. Triad and Indemnitor jointly and severally agree, to the greatest extent permitted by law, to indemnify, protect, hold harmless, and defend (by counsel approved by the Indemnitees) the City of Vallejo, the Investment Fund, Master Tenant, and Theater Landlord, together with their respective elected and appointed officers, officials, members, managers, employees, agents, consultants, and contractors (all of the foregoing, the “**Indemnitees**”) from and against all liability, loss, cost, taxes, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising out of, or relating to, or alleged to arise from, or relate to: (i) the Empress Property and arising out of acts, omissions, or events that occurred prior to the date of recordation of the Grant Deed, (ii) Triad’s management of Theater Landlord and/or Master Tenant, and any obligation of Triad under the Landlord Operating Agreement or Master Tenant Operating Agreement, (iii) any taxes imposed on or with respect to Master Tenant, or Theater Landlord, or (iv) the breach of any of Triad’s representations, warranties, covenants, or obligations under this Agreement or under the Loan Satisfaction Agreement (Notes A and B). Notwithstanding the foregoing, Triad and Indemnitor shall not be held liable for payment of any current or delinquent property taxes assessed against the Property.

10. Miscellaneous.

10.1 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

10.2 Binding Effect. This Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties and their respective successors and assigns.

10.3 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

10.4 Severability. If any provisions contained in this Agreement or any document executed in connection herewith is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions consistent with the purpose and meaning of this Agreement.

10.5 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

10.6 Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

10.7 Covenant Not to Sue. In consideration of the mutual promises and benefits exchanged in this Agreement, each Party covenants not to sue and not to assert any claims or causes of action seeking to declare voidable any portion of this Agreement, or any of the transactions set forth herein.

10.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By signing this Agreement, each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party on whose behalf he or she is signing.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

CITY OF VALLEJO, a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

TRIAD COMMUNITIES L.P., a California limited partnership

By: Triad Sky Valley LLC,
a Washington limited liability company

Its: General Partner

By: Frederick W. Grunin

Name: Frederick W. Grunin

Title: Manager

EMPRESS THEATRE MASTER TENANT, LLC,
a California limited liability company

By: Triad Communities, L.P., a California limited
partnership
Its: Manager

By: Triad Sky Valley LLC,
a Washington limited liability company
Its: General Partner

By: Frederick W. Grunin
Name: Frederick W. Grunin
Title: Manager

By: City of Vallejo, a municipal corporation
Its: Sole Member

By: _____
Name: _____
Title: _____

EMPRESS THEATRE ASSOCIATES, LLC,
a California limited liability company

By: Triad Communities, L.P., a California limited
partnership
Its: Managing Member

By: Triad Sky Valley LLC,
a Washington limited liability company
Its: General Partner

By: Frederick W. Grunin
Name: Frederick W. Grunin
Title: Manager

INDEMNITOR:

TRIAD SKY VALLEY LLC, a Washington limited
liability company

By: Frederick W. Grunin
Name: Frederick W. Grunin
Title: Manager

Exhibit A

LEGAL DESCRIPTION

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

THE NORTH 54 FEET OF THE EAST 4 FEET OF LOT 5 AND ALL OF LOT 6, EXCEPT THE SOUTH 76 FEET OF THE WEST 1 FOOT OF SAID LOT 6, ALL IN BLOCK 302 AS THE SAME ARE SHOWN ON THE OFFICIAL MAP OF THE CITY OF VALLEJO, MADE BY E.H. ROWE, C.E., AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA, ON SEPTEMBER 19, 1868, IN BOOK 1 OF MAPS, AT PAGE 123.

APN: 0056-162-090

Exhibit A

Exhibits B through E

Intentionally omitted.

Exhibits B through E

Exhibit F

CONFIRMATION OF SUBLEASE TERMINATION
(Attached form of Confirmation of Sublease Termination.)

Exhibit F

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

APN 0056-162-090

CONFIRMATION OF SUBLEASE TERMINATION

THIS CONFIRMATION OF SUBLEASE TERMINATION (this "**Agreement**") is made as of _____, 2020, by and between EMPRESS THEATRE MASTER TENANT, LLC, a California limited liability company (together with its successors and assigns, the "**Landlord**") and TRIAD COMMUNITIES, L.P., a California limited partnership ("**Triad**").

RECITALS:

A. As evidenced by that certain Memorandum of Agreement to Sublease and Sublease Agreement dated July 17, 2007 and recorded in the official records of Solano County, California on August 7, 2007 under recording number 200700086763 ("**Memorandum**"), Landlord entered into that certain Sublease dated July 17, 2007 (the "**Sublease**") with Empress Sublessee LLC, a California limited liability company ("**Empress Sublessee LLC**") as sublessee, and Landlord as sublessor, for that certain real property commonly known as Empress Theatre located in Vallejo, California, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Demised Premises**").

B. Pursuant to the terms of the Sublease, Empress Sublessee LLC's leasehold interest in the Demised Premises terminated on October 31, 2014 ("**Termination Date**").

C. Empress Sublessee LLC was dissolved, with a Certificate of Dissolution filed with the California Secretary of State on December 23, 2014, and pursuant to the dissolution, Triad is the successor in interest to all assets of Empress Sublessee LLC.

D. As of the date of this Agreement, Triad is the Manager of Landlord.

E. Landlord and Triad desire to confirm termination of the Sublease and to release Landlord, Empress Sublessee LLC, and Triad, as successor in interest to Empress Sublessee LLC, from any and all obligations, if any so remaining, under the Sublease and/ or with respect to the Demised Premises.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Triad agree as follows:

1. Definitions. The capitalized terms used herein shall have the same definitions as set forth in the Sublease, unless otherwise defined herein.

2. Termination of Sublease. Landlord and Triad hereby confirm that as of the Termination Date, the Sublease was terminated and cancelled, and all rights and obligations of Landlord and Empress Sublessee under the Sublease or with respect to the Demised Premises were extinguished.

3. Surrender of Demised Premises. Landlord agrees and acknowledges that Empress Sublessee LLC vacated and surrendered the Demised Premises as of the Termination Date in the same condition in which Empress Sublessee LLC received them, and that Empress Sublessee LLC has no further obligation to repair or compensate Landlord for any damages thereto. All unpaid rents accrued to the Termination Date under the Sublease, if any, are hereby deemed to have been fully paid with no further obligation on the part of Empress Sublessee LLC.

4. Tenant Improvements. Triad agrees and acknowledges that all right and title to any improvements to the Demised Premises undertaken by Empress Sublessee LLC, together with any personal property of Empress Sublessee LLC left on the Demised Premises as of the Termination Date, became the property of Landlord.

5. Release. Triad, on behalf of itself and as successor to Empress Sublessee LLC, hereby releases and forever discharges Landlord, its present and former partners, directors, officers, shareholders, managers, employees, agents, successors and assigns from any and all claims, demands, causes of action, damages, costs, expenses and suits of any nature whatsoever (including attorney fees) arising out of or relating to, directly or indirectly, the Sublease, the delivery and subsequent return of the Demised Premises, or the termination of the Sublease, and Landlord hereby releases and forever discharges Triad, on behalf of itself and as successor to Empress Sublessee LLC, and Triad's present and former partners, directors, officers, shareholders, managers, employees, agents, successors and assigns from any and all claims, demands, causes of action, damages, costs, expenses and suits of any nature whatsoever (including attorney fees) arising out of or relating to, directly or indirectly, the Sublease, the delivery and subsequent return of the Demised Premises, or the termination of the Sublease ("**Released Matters**"). In furtherance of this intention, Triad and Landlord expressly waive any and all rights that might be claimed by reason of fraudulent inducement and any and all rights under Section 1542 of the California Civil Code with respect to the Released Matters, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Triad and Landlord acknowledge and agree that this waiver is an essential and material term of this Agreement and without such waiver neither party would have been entered into this Agreement.

6. Agreement Controls. This Agreement supersedes and cancels any prior agreements and provisions in any other instrument relating thereto, including, but not limited to, those provisions (if any) contained in the Sublease. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Sublease, the terms and conditions of this Agreement shall control.

7. Cooperation. Landlord and Triad agree to promptly execute, acknowledge and deliver all such instruments and take all such action as Landlord may reasonably request in order to realize the intent of this Agreement, including the delivery of all certificates and other documentation required to evidence the termination of the Sublease and the Memorandum.

8. Amendment. This Agreement may be modified or amended only by a written instrument executed by all parties.

9. Binding on Successors. This Agreement constitutes the legal, valid and binding agreement among the parties and shall extend to, be binding upon and available to the heirs, executors, administrators, successors and the assigns of each of the respective parties hereto.

10. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

11. Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

12. Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

13. Severability. If any provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained

herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

14. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be an original, and all of which shall together constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Triad have caused this Confirmation of Sublease Termination to be duly executed as of the date first above written.

EMPRESS THEATRE MASTER TENANT, LLC, a California limited liability company

By: TRIAD COMMUNITIES, L.P., a California limited partnership

Its: Manager

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: _____

Name: _____

Title: _____

By: City of Vallejo, a municipal corporation

Its: Sole Member

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

TRIAD COMMUNITIES, L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: _____

Name: _____

Title: _____

SIGNATURES MUST BE NOTARIZED.

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

On _____, before me, _____
(Name of Notary)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

THE NORTH 54 FEET OF THE EAST 4 FEET OF LOT 5 AND ALL OF LOT 6, EXCEPT THE SOUTH 76 FEET OF THE WEST 1 FOOT OF SAID LOT 6, ALL IN BLOCK 302 AS THE SAME ARE SHOWN ON THE OFFICIAL MAP OF THE CITY OF VALLEJO, MADE BY E.H. ROWE, C.E., AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA, ON SEPTEMBER 19, 1868, IN BOOK 1 OF MAPS, AT PAGE 123.

APN: 0056-162-090

Exhibit G

TRIAD LOAN SATISFACTION AGREEMENT
(Attached form of Triad Loan Satisfaction Agreement.)

Exhibit G

LOAN SATISFACTION AGREEMENT

(Triad)

This LOAN SATISFACTION AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2020, by and between TRIAD COMMUNITIES L.P., a California limited partnership (“**Triad**”) and the City of Vallejo, a municipal corporation (“**City**”). As used herein, the term “**Parties**” shall mean Triad and City, and individually each is referred to as a “**Party**.”

RECITALS

A. Empress Investment Fund, LLC, a Delaware limited liability company (“**Investment Fund**”) and Triad entered into that certain Loan Agreement, dated as of July 17, 2007 (the “**Triad Loan Agreement**”), wherein Triad agreed to loan to Investment Fund, and Investment Fund agreed to borrow from Triad, the aggregate principal amount of Forty-Two Thousand, Five Hundred Dollars (\$42,500) (the “**Triad Loan**”), as evidenced by that certain Promissory Note in the principal amount of the Triad Loan (the “**Triad Note**”), a copy of which is attached hereto as Exhibit A.

B. In connection with the Triad Loan and as security for the Triad Note, Investment Fund and Triad entered into that certain Fund Pledge Agreement dated July 17, 2007 (the “**Triad Pledge Agreement**”). The Triad Loan Agreement, the Triad Note, the Triad Pledge Agreement and all other instruments related to the Triad Loan, are collectively referred to herein as the “**Triad Loan Documents**”).

C. The Parties desire to enter into this Agreement to evidence the forgiveness in full of the Triad Loan, the termination of the Triad Loan Agreement, the termination of the Triad Pledge Agreement, and the cancellation of the Triad Note.

D. This Agreement is executed pursuant to Section 4.2 of that certain Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities dated as of the date hereof, by and among City, Triad, and certain other parties (the “**Master Agreement**”).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Full Satisfaction of the Triad Loan. The Parties agree that the Triad Loan shall be forgiven in full, the Triad Note shall be cancelled, and the Triad Loan Documents shall be terminated. To effectuate the foregoing, Triad shall (a) deliver the Triad Note to City pursuant to Section 4(a) of this Agreement, and (b) prepare and file all documents necessary to terminate any UCC-1 Financing Statements filed as security for the Triad Loan.

2. Confirmation No Payments Due Under Reserve Agreement. Triad represents, warrants, and agrees that no payments are payable pursuant to the Reserve and Security Agreement (as defined in the Master Agreement) by or to any party, and that no reserves deposited pursuant to such agreement remain unspent.

3. Confirmation No Payments Due Under Triad Advances. Triad represents, warrants, and agrees that (i) all Triad Advances (as defined in the Master Agreement) have been written off or settled, (ii) no payments are payable pursuant to the Triad Advances by any party. Triad agrees to execute, acknowledge, and if applicable, record or file all such instruments necessary to evidence that no such payments are due or payable.

4. Triad Deliverables. On the date hereof, Triad shall deliver the following to City:

(a) the Triad Note marked "CANCELLED" on its face, or an affidavit of lost note and confirmation of its satisfaction; and

(b) any other documentation reasonably necessary to complete the transactions contemplated herein.

5. City Deliverables. On the date hereof, City shall deliver to Triad any other documentation reasonably necessary to complete the transactions contemplated herein.

6. Costs and Expenses. Each Party agrees to pay for its respective out-of-pocket legal fees and expenses incurred in connection with its review and preparation of any documents required to effectuate the transactions contemplated herein.

7. Miscellaneous.

7.1 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

7.2 Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns.

7.3 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

7.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

7.5 Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

7.6 Severability. If any provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

7.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By signing this Agreement, each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party on whose behalf he or she is signing.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, this Loan Satisfaction Agreement (Triad) has been duly executed and delivered by the duly authorized person of each Party as of the date first set forth above.

CITY:

City of Vallejo, a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

TRIAD:

TRIAD COMMUNITIES L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: _____

Name: _____

Title: _____

Exhibit A

TRIAD NOTE

(Attached copy of Note)

PROMISSORY NOTE

\$42,500

July 17, 2007

FOR VALUE RECEIVED, the undersigned, **EMPRESS INVESTMENT FUND, LLC**, a Delaware limited liability company, together with such parties successors and assigns (the **"Borrower"**), promises to pay to the order of **TRIAD COMMUNITIES L.P.**, a California limited partnership (the **"Lender"**), in lawful money of the United States of America, the principal sum of Forty-two Thousand Five Hundred and No/100 Dollars (\$42,500.00), together with interest from and after the date hereof on the unpaid principal balance outstanding hereunder at the rate provided for herein.

For the purposes of this Promissory Note, the following definitions shall apply to the words and phrases used herein:

"Business Day" shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Vallejo, California.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as the same may be amended and supplemented from time to time.

"Default Rate" shall mean an annual rate of interest equal to two percent (2%) above the Interest Rate.

"Event of Default" shall mean the failure to make payments on this Promissory Note within ten (10) calendar days of the date such amount becomes due and payable if such failure continues for more than five (5) calendar days after receipt of written notice of default from Lender.

"Interest Rate" shall mean one and fifteen one-hundredths Percent (1.15%).

"Loan" means the loan evidenced by this Promissory Note and by the Loan Agreement.

"Loan Agreement" means that Fund Loan Agreement (as may be amended, supplemented or otherwise modified from time to time) of even date herewith between Borrower and Lender, pursuant to which Lender has agreed to make a term loan to Borrower, the proceeds of which are to be used for the purposes described in the Loan Agreement

"Maturity Date" shall mean the earlier of (i) July 31, 2047, and (ii) the date on which the unpaid principal balance of this Promissory Note becomes due and payable by acceleration or otherwise pursuant to the Fund Loan Documents or the exercise by Lender of any right or remedy under any Fund Loan Document

Subject to the terms and conditions of the Loan Agreement and this Promissory Note, interest will accrue on the outstanding principal amount of this Promissory Note at the Interest

Rate. Interest under this Promissory Note shall be computed, payable and allocated on the basis of the actual number of calendar days elapsed on the basis of a year consisting of three hundred sixty (360) calendar days.

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto.

Beginning October 1, 2007 until September 1, 2014, accrued interest only shall be payable by the Borrower in consecutive quarterly installments due and payable on the first Business Day of each calendar quarter; provided, however, until September 1, 2014, payments of interest shall be contingent upon a positive quarterly Net Cash Flow (as defined in the operating agreement of Borrower), without reduction for payments made under this Note. Beginning September 1, 2014 until the Maturity Date, payments of interest and principal, amortized over a 395-month term, shall be payable by the Borrower in consecutive quarterly installments due and payable on the first Business Day of the calendar quarter. All remaining principal and accrued and unpaid interest shall be due and payable by the Borrower on the Maturity Date.

Any regularly scheduled quarterly installment of interest only or principal and interest payable pursuant to this Promissory Note that is received by Lender before the date it is due shall be deemed to have been received on the due date for the purpose of calculating interest due.

Payments of principal, interest and any other amounts due hereunder shall be made to Lender by crediting before 2:00 p.m., Vallejo, California time, on the appropriate due date, at its offices located at 2801 Alaskan Way, Suite 107, Seattle, WA 98121; or in such other manner as Lender may elect from time to time. If any payment is due on a calendar day other than a Business Day, such payment shall be due on the next succeeding Business Day. All payments due under this Promissory Note and not received within ten (10) calendar days following the date due hereunder shall accrue interest at the Default Rate.

Time is of the essence of this Promissory Note. To the fullest extent permitted by applicable law, Borrower, for itself and its successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, and any and all other notices, demands and consents in connection with the delivery, acceptance, performance, default or enforcement of this Promissory Note, and hereby consents to any extensions of time, renewals, releases of any party to or guarantor of this Promissory Note, waivers and any other modifications that may be granted or consented to by Lender from time to time in respect of the time of payment or any other provision of this Promissory Note.

Subject to the Forbearance Agreement between Lender and Borrower dated as of July 17, 2007, an Event of Default shall entitle Lender, at its option, to declare the then outstanding principal balance, accrued interest and any other amounts due hereunder to be, and the same shall thereupon become, immediately due and payable without notice to or demand upon Borrower, all of which Borrower hereby expressly waives.

Wherever possible each provision of this Promissory Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Promissory Note shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Promissory Note. No delay or failure on the part of Lender in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as acquiescence in any default, nor shall any single or partial exercise by Lender of any right or remedy preclude any other right or remedy. Lender, at its option, may enforce its rights against any collateral securing this Promissory Note without enforcing its rights against Borrower or any other property or indebtedness due or to become due to Borrower. Borrower agrees that, without releasing or impairing Borrower's liability hereunder, Lender may at any time release, surrender, substitute or exchange any collateral securing this Promissory Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Promissory Note.

Except where otherwise specifically provided, any reference in this Promissory Note to a period of "days" means calendar days, not Business Days.

All of the terms, covenants and agreements of the Loan Agreement are incorporated herein by reference.

This Promissory Note shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California.

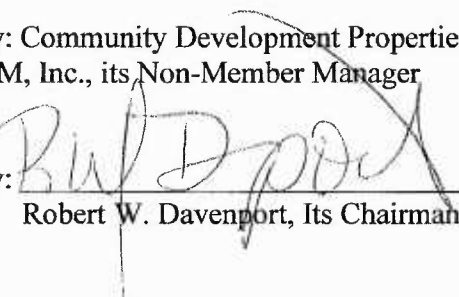
[Signature on following page.]

IN WITNESS WHEREOF, the undersigned has set their signatures and seals to this Promissory Note as of the date first written above.

BORROWER:

EMPRESS INVESTMENT FUND, LLC

By: Community Development Properties New Markets
MM, Inc., its Non-Member Manager

By: 
Robert W. Davenport, Its Chairman

STATE OF NEW YORK)
COUNTY OF Bronx) ss
~~NEW YORK~~)

Before me, the undersigned Notary Public in and for the aforesaid jurisdiction, personally appeared Robert W. Davenport, in his capacity as Chairman of Community Development Properties New Markets MM, Inc., a Delaware nonprofit corporation, the non-member manager of Empress Investment Fund, LLC, a Delaware limited liability company, being duly sworn, acknowledged the execution of the foregoing Promissory Note.

Witness my hand and notarial seal this 17TH day of July, 2007.


Notary Public

VIRGINIA RUIZ BADILLO
NOTARY PUBLIC, State of New York
NO. 4907414
Qualified in Bronx County
Commission Expires October 5, 2009

My Commission Expires:

Exhibit H

LOAN SATISFACTION AGREEMENT (NOTES A AND B)
(Attached form of Loan Satisfaction Agreement – Notes A and B)

Exhibit H

LOAN SATISFACTION AGREEMENT

(Notes A and B)

This LOAN SATISFACTION AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2020, by and between EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company (“**Theater Landlord**”) and CITY OF VALLEJO, a municipal corporation (“**City**”). As used herein, the term “**Parties**” shall mean Theater Landlord and City, and individually each is referred to as a “**Party**.”

RECITALS

A. Theater Landlord and City are parties to that certain Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities, by and among the Theater Landlord, City, Empress Theatre Master Tenant, LLC, a California limited liability company (“**Master Tenant**”), Triad Communities, L.P., a California limited partnership (“**Triad**”) and Triad Sky Valley, LLC, a Washington limited liability company, dated as of the date hereof (the “**Master Agreement**”).

B. To finance the rehabilitation of the Empress Theatre, located at 330 Virginia Street in the City of Vallejo (the “**Property**”), Theater Landlord entered into that certain Loan Agreement with NDC New Markets Investments XXXIX, LLC, a Delaware limited liability company (the “**QLICI Lender**”), dated as of July 17, 2007 (the “**QLICI Loan Agreement**”), wherein QLICI Lender agreed to loan to Theater Landlord, and Theater Landlord agreed to borrow from QLICI Lender, the aggregate principal amount of Six Million Three Hundred Twenty-Five Thousand Nine Hundred Three and No/100 Dollars (\$6,325,903.00) (the “**QLICI Loan**”), as evidenced by those certain (i) Promissory Note A in the principal amount of \$3,000,000 (“**Note A**”); and (ii) Promissory Note B in the principal amount of \$3,325,903 (“**Note B**”), each dated as of July 17, 2007 (together, the “**QLICI Notes**”), copies of which, together with subsequently executed allonges, are attached hereto as Exhibit A.

C. In connection with the QLICI Loan and as security for the QLICI Notes, Theater Landlord entered into the following instruments (such instruments, together with the QLICI Notes and any other instruments related to the QLICI Loan, are collectively referred to herein as the “**QLICI Loan Documents**”):

- a. The QLICI Loan Agreement;
- b. Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note A), executed by Theater Landlord as trustor for the benefit of QLICI Lender, dated July 17, 2007, and recorded on August 7, 2007 in the records of Solano County, California under recording no. 200700086764 (“**Deed of Trust A**”);
- c. Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note B) executed by Theater Landlord as trustor for the benefit of QLICI Lender, dated July 17, 2007, and recorded on August 7, 2007 in the

records of Solano County, California under recording no. 200700086765 (“**Deed of Trust B**”) (collectively, Deed of Trust A and Deed of Trust B are the “**Deeds of Trust**”);

- d. Reserve and Security Agreement, among the Theater Landlord and the QLICI Lender, dated July 17, 2007;

D. All of QLICI Lender’s rights, title to, and interest in the QLICI Loan and any and all documents evidencing the QLICI Loan, including, without limitation, the QLICI Notes, were transferred to Empress Investment Fund LLC, a Delaware limited liability company (“**Investment Fund**”) in 2014.

E. In 2014, Investment Fund assigned Note A and Deed of Trust A to the Successor Agency to the Redevelopment Agency of the City of Vallejo (“**Successor Agency**”). As a result of the subsequent dissolution of the Investment Fund and the transfer of its former assets by the Successor Agency to the City, the City is the sole member of the Master Tenant and the holder of the beneficial interests in Note A, Note B, Deed of Trust A, and Deed of Trust B.

F. Master Tenant owns a 49% non-managing member interest in Theater Landlord which will be assigned to City pursuant to that certain Assignment and Assumption Agreement (Master Tenant) dated as of the date hereof and executed by and between Master Tenant and City. Triad is the Managing Member of Theater Landlord and owns a 51% member interest in Theater Landlord.

G. The Parties desire to enter into this Agreement to implement the Master Agreement, and evidence the forgiveness in full of the QLICI Loan, the termination of the QLICI Loan Agreement, and the cancellation of the QLICI Notes in exchange for Theater Landlord’s conveyance of the Property to City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conveyance of Property to City. Theater Landlord will execute a Grant Deed conveying the Property to the City substantially in the form attached to the Master Agreement as Exhibit P (“**Grant Deed**”), and City will execute a Certificate of Acceptance in the form attached to the Grant Deed (“**Certificate of Acceptance**”). City will cause the Grant Deed and Certificate of Acceptance to be recorded in the Official Records.
2. Termination of Master Lease. Theatre Landlord and Master Tenant will execute the Termination of Master Lease substantially in the form attached to the Master Agreement as Exhibit L. City will cause the Termination of Master Lease to be recorded in the Official Records.

3. Full Satisfaction of the QLICI Loan. The Parties agree that upon recordation of the Grant Deed and the Termination of Master Lease, the QLICI Loan shall be forgiven in full, the QLICI Notes shall be cancelled, the Deeds of Trust shall be deemed satisfied, and the QLICI Loan Documents will be terminated. To implement the foregoing, City shall (a) mark each of Note A and Note B "cancelled," and return the same to Triad or deliver to Triad affidavits of lost notes and confirmation of their satisfaction, and (b) if applicable, prepare and file UCC-3 statements as necessary to terminate all UCC-1 Financing Statements filed as security for the QLICI Loan.

4. Reconveyance of Deeds of Trust. The Parties agree to cooperate to obtain from QLICI Lender or its successors such instruments as may be necessary to release and reconvey Deed of Trust A and Deed of Trust B. Triad agrees that it will reasonably cooperate with City in City's efforts to facilitate the release and reconveyance of Deed of Trust A and Deed of Trust B, or their removal from title to the Property.

5. Theater Landlord Deliverables. Theater Landlord shall execute and deliver to City such additional instruments and documentation reasonably necessary to complete the transactions contemplated herein.

6. Costs and Expenses. Each Party agrees to pay for its respective out-of-pocket legal fees and expenses incurred in connection with its review and preparation of any documents required to effectuate the transactions contemplated herein.

7. MISCELLANEOUS.

7.1 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

7.2 Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns.

7.3 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

7.4 Severability. If any provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

7.5 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or

establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

7.6 Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

7.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By signing this Agreement, each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party on whose behalf he or she is signing. This Agreement shall become effective upon the execution of a counterpart hereof by all Parties. A signature of a Party to this Agreement sent by facsimile, email, or other electronic transmission shall have the same force and effect as an original signature of such Party.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, this Loan Satisfaction Agreement (Notes A and B) has been duly executed and delivered by the duly authorized person of each Party as of the date first set forth above.

CITY:

CITY OF VALLEJO, a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

THEATER LANDLORD:

EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership
Its: Managing Member

By: Triad Sky Valley LLC, a Washington limited liability company
Its: General Partner

By: _____

Name: _____

Title: _____

Exhibit A

QLICI NOTES

(Attached Note A and Note B, together with executed allonges.)

PROMISSORY NOTE A

\$3,000,000.00

July 17, 2007

FOR VALUE RECEIVED, the undersigned, **EMPRESS THEATRE ASSOCIATES, LLC** a California limited liability company ("**Borrower**"), promises to pay to the order of **NDC NEW MARKETS INVESTMENTS XXXIX, LLC**, a Delaware limited liability company ("**Lender**"), in lawful money of the United States of America, the principal sum of Three Million and No/100 Dollars (\$3,000,000.00) together with interest from and after the date hereof on the unpaid principal balance outstanding hereunder at the rate provided for herein.

For the purposes of this Promissory Note, capitalized terms shall have the meaning ascribed to such terms pursuant to the Loan Agreement (defined below).

"Business Day" shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in the State of California.

"Default Rate" shall mean a rate of interest per annum equal to two percent (2%) in excess of the rate of the Interest Rate.

"Event of Default" shall mean any of those events set forth in Section 6.1 of the Loan Agreement.

"Interest Rate" shall mean one-half of one percent (0.500%).

"Loan Agreement" shall mean that certain Loan Agreement dated July 17, 2007, made between Borrower and Lender.

"Loan Documents" shall mean this Promissory Note A; that certain Promissory Note B, the Loan Agreement; the Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note A) made by Borrower (the "**Deed of Trust**"); the Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note B); and all other documents, instruments and agreements which evidence, secure or are otherwise executed in connection with the Loan, including all amendments, modifications, renewals, extensions, restatements and replacements thereof.

"Maturity Date" shall mean the earlier of (i) July 31, 2047, and (ii) the date on which the unpaid principal balance of this Promissory Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document.

Subject to the terms and conditions of this Promissory Note A, interest will accrue on the outstanding principal amount of this Promissory Note A at the Interest Rate. Interest under this Promissory Note A shall be computed, payable and allocated on the basis of the actual number of

calendar days elapsed on the basis of a year consisting of three hundred sixty (360) calendar days.

In the event that after the date hereof any governmental authority subjects Lender to any new or additional charge, fee, withholding or tax of any kind with respect to any loans hereunder or changes the method of taxation of such loans or changes the reserve or deposit requirements applicable to such loans, Borrower shall pay to Lender such additional amounts as will compensate Lender for such cost of lost income resulting therefrom as reasonably determined by Lender (other than franchise taxes and taxes based upon or measured by the income or profits of Lender).

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto.

Payments shall begin on October 1, 2007. Until September 1, 2014, accrued interest only shall be payable by the Borrower in consecutive quarterly installments due and payable on the first Business Day of each calendar quarter; provided, however, until September 1, 2014, payments of interest shall be contingent upon a positive quarterly Net Cash Flow (as defined in the operating agreement of Borrower), without reduction for payments made under this Note. An installment payment of principal in the amount of Twenty-Nine Thousand Sixty-Four and No/100 Dollars (\$29,064) shall also be payable on August 15, 2014. Beginning September 1, 2014 until the Maturity Date, payments of interest and principal, amortized over a 395-month term, shall be payable by the Borrower in consecutive quarterly installments due and payable on the first Business Day of the calendar quarter. All remaining principal and accrued and unpaid interest shall be due and payable by the Borrower on the Maturity Date.

The Loan may be prepaid in whole or in part prior to the Maturity Date. Any regularly scheduled quarterly installment of interest only or principal and interest payable pursuant to this Promissory Note that is received by Lender before the date it is due shall be deemed to have been received on the due date for the purpose of calculating interest due.

Payments of principal and interest shall be made to Lender before 12:00 noon, New York time, on the appropriate due date, at the offices of NDC New Markets Investment XXXIX, LLC, located at 708 Third Avenue, Suite 710, New York, New York 10017 or in such other manner as Lender may elect from time to time. If any payment is due on a calendar day other than a Business Day, such payment shall be due on the next succeeding Business Day. All payments due under this Promissory Note and not received within five (5) calendar days of the date such amount becomes due and payable shall accrue interest at the Default Rate.

Time is of the essence of this Promissory Note A. To the fullest extent permitted by applicable law, Borrower, for itself and its successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, and any and all other notices, demands and consents in connection with the delivery, acceptance, performance, default or enforcement of this Promissory Note A, and hereby consents to any extensions of time, renewals, releases of any party to or guarantor of this Promissory Note, waivers and any other modifications that may be

granted or consented to by Lender from time to time in respect of the time of payment or any other provision of this Promissory Note A.

This Promissory Note A is secured by the Deed of Trust (Note A).

An Event of Default shall entitle Lender, at its option, to declare the then outstanding principal balance and accrued interest hereof to be, and the same shall thereupon become, immediately due and payable without notice to or demand upon Borrower, all of which Borrower hereby expressly waives.

Wherever possible each provision of this Promissory Note A shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Promissory Note A shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Promissory Note A. No delay or failure on the part of Lender in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as acquiescence in any default, nor shall any single or partial exercise by Lender of any right or remedy preclude any other right or remedy. Lender, at its option, may enforce its rights against any collateral securing this Promissory Note A without enforcing its rights against Borrower of the indebtedness evidenced hereby or any other property or indebtedness due or to become due to Borrower. Borrower agrees that, without releasing or impairing Borrower's liability hereunder, Lender may at any time release, surrender, substitute or exchange any collateral securing this Promissory Note A and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Promissory Note A.

Except where otherwise specifically provided, any reference in this Promissory Note A to a period of "days" means calendar days, not Business Days.

All of the terms, covenants and agreements of the Loan Agreement, the Deed of Trust (Note A) and the other Loan Documents are incorporated herein by reference.

This Promissory note is nonrecourse. Borrower, and its members, partners, officers, directors, agents and contractors, shall have no personal liability for payment of the indebtedness evidenced hereby, and the sole recourse of the Payee shall be confined to the exercise of its rights under the Loan Agreement and Deed of Trust executed in connection with this Note.

This Promissory Note shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California.

[Signature on following page.]

IN WITNESS WHEREOF, Borrower has caused this Promissory Note A to be duly executed as of the day and year first above written.

BORROWER:

EMPRESS THEATRE ASSOCIATES, LLC

By: TRIAD COMMUNITIES L.P.,
a California limited partnership
Its: Manager

By: TRIAD SKY VALLEY LLC,
a Washington limited liability company,
Its: General Partner

By: Frederick W. Grimm
Frederick W. Grimm
Its: Authorized Member

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Frederick W. Grimm is the person who appeared before me, and said person acknowledged that he was authorized to sign this instrument as the Authorized Member of Triad Sky Valley LLC, the General Partner of Triad Communities L.P., the Manager of Empress Theatre Associates, LLC, a California limited liability company, and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: July 17, 2007



Rebecca Marie Hockert
(Signature)
Rebecca Marie Hockert
(Please print name legibly)
NOTARY PUBLIC in and for the State of
Washington, residing at Everett
My commission expires 5/5/2010

ALLONGE TO PROMISSORY NOTE A

This Allonge to Promissory Note A is to be affixed to and made a part of that certain Promissory Note A dated July 17, 2007 in the stated principal amount of \$3,000,000.00 executed by EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company and made to the order of NDC NEW MARKETS INVESTMENTS XXXIX, LLC, a Delaware limited liability company.

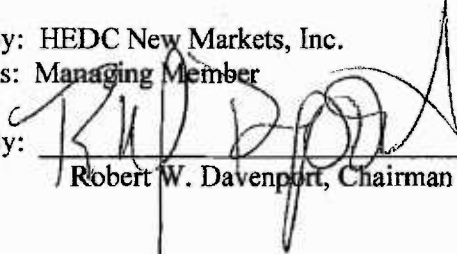
Pay to the order of **EMPRESS INVESTMENT FUND, LLC**, a Delaware limited liability company without recourse or warranty.

Dated as of October 9, 2014.

**NDC NEW MARKETS INVESTMENTS
XXXIX, LLC**, a Delaware limited liability
company

By: HEDC New Markets, Inc.

Its: ~~Managing Member~~

By: 
Robert W. Davenport, Chairman

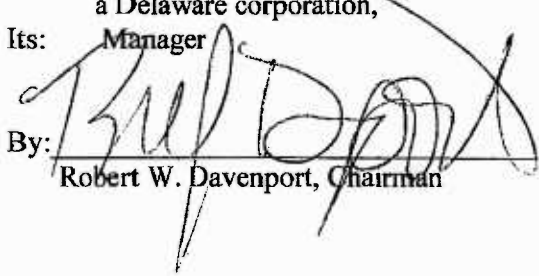
Pay to the order of the **SUCCESSOR AGENCY FOR THE CITY OF VALLEJO
REDEVELOPMENT AGENCY**, without recourse or warranty.

Dated as of October 9, 2014.

EMPRESS INVESTMENT FUND
a Delaware limited liability company

By: Community Development Properties
New Markets MM, Inc.,
a Delaware corporation,

Its: ~~Manager~~

By: 
Robert W. Davenport, Chairman

PROMISSORY NOTE B

\$3,325,903.00

July 17, 2007

FOR VALUE RECEIVED, the undersigned, **EMPRESS THEATRE ASSOCIATES, LLC** a California limited liability company ("**Borrower**"), promises to pay to the order of **NDC NEW MARKETS INVESTMENTS XXXIX, LLC**, a Delaware limited liability company ("**Lender**"), in lawful money of the United States of America, the principal sum of Three Million Three Hundred Twenty-Five Thousand Nine Hundred Three and No/100 Dollars (\$3,325,903.00) together with interest from and after the date hereof on the unpaid principal balance outstanding hereunder at the rate provided for herein.

For the purposes of this Promissory Note B, capitalized terms shall have the meaning ascribed to such terms pursuant to the Loan Agreement (defined below).

"Business Day" shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in the State of California.

"Default Rate" shall mean a rate of interest per annum equal to two percent (2%) in excess of the rate of the Interest Rate.

"Event of Default" shall mean any of those events set forth in Section 6.1 of the Loan Agreement.

"Interest Rate" shall mean one-half of one percent (0.500%).

"Loan Agreement" shall mean that certain Loan Agreement dated July 17, 2007, made between Borrower and Lender.

"Loan Documents" shall mean this Promissory Note B; that certain Promissory Note A, the Loan Agreement; the Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note B) made by Borrower (the "**Deed of Trust**"); the Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note A); and all other documents, instruments and agreements which evidence, secure or are otherwise executed in connection with the Loan, including all amendments, modifications, renewals, extensions, restatements and replacements thereof.

"Maturity Date" shall mean the earlier of (i) July 31, 2047, and (ii) the date on which the unpaid principal balance of this Promissory Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document.

Subject to the terms and conditions of this Promissory Note B, interest will accrue on the outstanding principal amount of this Promissory Note B at the Interest Rate. Interest under this Promissory Note B shall be computed, payable and allocated on the basis of the actual number of

calendar days elapsed on the basis of a year consisting of three hundred sixty (360) calendar days.

In the event that after the date hereof any governmental authority subjects Lender to any new or additional charge, fee, withholding or tax of any kind with respect to any loans hereunder or changes the method of taxation of such loans or changes the reserve or deposit requirements applicable to such loans, Borrower shall pay to Lender such additional amounts as will compensate Lender for such cost of lost income resulting therefrom as reasonably determined by Lender (other than franchise taxes and taxes based upon or measured by the income or profits of Lender).

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto.

Payments shall begin on October 1, 2007. Until September 1, 2014, accrued interest only shall be payable by the Borrower in consecutive quarterly installments due and payable on the first Business Day of each calendar quarter; provided, however, until September 1, 2014, payments of interest shall be contingent upon a positive quarterly Net Cash Flow (as defined in the operating agreement of Borrower), without reduction for payments made under this Note. Beginning September 1, 2014 until the Maturity Date, payments of interest and principal, amortized over a 395-month term, shall be payable by the Borrower in consecutive quarterly installments due and payable on the first Business Day of the calendar quarter. All remaining principal and accrued and unpaid interest shall be due and payable by the Borrower on the Maturity Date.

The Loan may be prepaid in whole or in part prior to the Maturity Date. Any regularly scheduled quarterly installment of interest only or principal and interest payable pursuant to this Promissory Note that is received by Lender before the date it is due shall be deemed to have been received on the due date for the purpose of calculating interest due.

Payments of principal and interest shall be made to Lender before 12:00 noon, New York time, on the appropriate due date, at the offices of NDC New Markets Investment XXXIX, LLC, located at 708 Third Avenue, Suite 710, New York, New York 10017 or in such other manner as Lender may elect from time to time. If any payment is due on a calendar day other than a Business Day, such payment shall be due on the next succeeding Business Day. All payments due under this Promissory Note and not received within five (5) calendar days of the date such amount becomes due and payable shall accrue interest at the Default Rate.

Time is of the essence of this Promissory Note B. To the fullest extent permitted by applicable law, Borrower, for itself and its successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, and any and all other notices, demands and consents in connection with the delivery, acceptance, performance, default or enforcement of this Promissory Note B, and hereby consents to any extensions of time, renewals, releases of any party to or guarantor of this Promissory Note, waivers and any other modifications that may be

granted or consented to by Lender from time to time in respect of the time of payment or any other provision of this Promissory Note B.

This Promissory Note B is secured by the Deed of Trust (Note B).

An Event of Default shall entitle Lender, at its option, to declare the then outstanding principal balance and accrued interest hereof to be, and the same shall thereupon become, immediately due and payable without notice to or demand upon Borrower, all of which Borrower hereby expressly waives.

Wherever possible each provision of this Promissory Note B shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Promissory Note B shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Promissory Note B. No delay or failure on the part of Lender in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as acquiescence in any default, nor shall any single or partial exercise by Lender of any right or remedy preclude any other right or remedy. Lender, at its option, may enforce its rights against any collateral securing this Promissory Note B without enforcing its rights against Borrower of the indebtedness evidenced hereby or any other property or indebtedness due or to become due to Borrower. Borrower agrees that, without releasing or impairing Borrower's liability hereunder, Lender may at any time release, surrender, substitute or exchange any collateral securing this Promissory Note B and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Promissory Note B.

Except where otherwise specifically provided, any reference in this Promissory Note B to a period of "days" means calendar days, not Business Days.

All of the terms, covenants and agreements of the Loan Agreement, the Deed of Trust (Note B) and the other Loan Documents are incorporated herein by reference.

This Promissory note is nonrecourse. Borrower, and its members, partners, officers, directors, agents and contractors, shall have no personal liability for payment of the indebtedness evidenced hereby, and the sole recourse of the Payee shall be confined to the exercise of its rights under the Loan Agreement and Deed of Trust executed in connection with this Note.

This Promissory Note shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California.

[Signatures on following page.]

IN WITNESS WHEREOF, Borrower has caused this Promissory Note B to be duly executed as of the day and year first above written.

BORROWER:

EMPRESS THEATRE ASSOCIATES, LLC

By: TRIAD COMMUNITIES L.P.,
a California limited partnership
Its: Manager

By: TRIAD SKY VALLEY LLC,
a Washington limited liability company,
Its: General Partner

By: Frederick W. Grimm
Frederick W. Grimm
Its: Authorized Member

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Frederick W. Grimm is the person who appeared before me, and said person acknowledged that he was authorized to sign this instrument as the Authorized Member of Triad Sky Valley LLC, the General Partner of Triad Communities L.P., the Manager of Empress Theatre Associates, LLC, a California limited liability company, and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: July 17, 2007



Rebecca Marie Hockert
(Signature)
Rebecca Marie Hockert
(Please print name legibly)
NOTARY PUBLIC in and for the State of
Washington, residing at Everett
My commission expires 5/5/2010

ALLONGE TO PROMISSORY NOTE B

This Allonge to Promissory Note B is to be affixed to and made a part of that certain Promissory Note B dated July 17, 2007 in the stated principal amount of \$3,325,903.00 executed by EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company and made to the order of NDC NEW MARKETS INVESTMENTS XXXIX, LLC, a Delaware limited liability company.

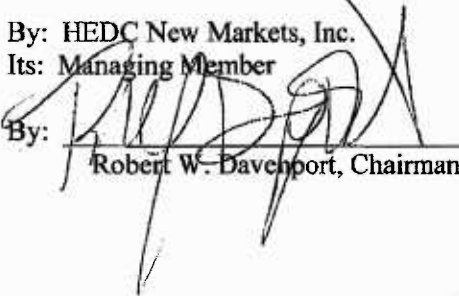
Pay to the order of **EMPRESS INVESTMENT FUND, LLC**, a Delaware limited liability company without recourse or warranty.

Dated as of October 9, 2014.

**NDC NEW MARKETS INVESTMENTS
XXXIX, LLC**, a Delaware limited liability
company

By: HEDC New Markets, Inc.

Its: Managing Member

By: 

Robert W. Davenport, Chairman

Exhibit I

TITLE REPORT

(Attached most recent preliminary report.)

Exhibit I



OLD REPUBLIC
TITLE COMPANY

555 12th Street, Suite 2000
Oakland, CA 94607
(510) 272-1121 Fax: (510) 208-5045

PRELIMINARY REPORT

UPDATE

CITY OF VALLEJO -ECONOMIC DEVELOPMENT
555 Santa Clara St.
Vallejo, CA 94590

Our Order Number 1117020609-JM

Attention: JUSTIN PETERS

When Replying Please Contact:

Julie Massey
JMassey@ortc.com
(510) 272-1121

Property Address:

330 Virginia Street, Vallejo, CA 94590

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY, as issuing Agent of Old Republic National Title Insurance Company, hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit I attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit I. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit I of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of August 2, 2019, at 8:00 AM

OLD REPUBLIC TITLE COMPANY
For Exceptions Shown or Referred to, See Attached

Page 1 of 7 Pages

OLD REPUBLIC TITLE COMPANY
ORDER NO. 1117020609-JM
UPDATE

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Policy -1990. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Fee

Title to said estate or interest at the date hereof is vested in:

Empress Theatre Associates, LLC, a California limited liability company

The land referred to in this Report is situated in the County of Solano, City of Vallejo, State of California, and is described as follows:

The North 54 feet of the East 4 feet of Lot 5 and all of Lot 6, except the South 76 feet of the West 1 foot of said Lot 6, all in Block 302, as the same are shown on the Official Map of the City of Vallejo, made by E. H. Rowe, C.E., and filed in the Office of the County Recorder of Solano County, on September 19, 1868, in Book 1 of Maps, at Page 123.

APN: 0056-162-090

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1. Taxes and assessments, general and special, for the fiscal year 2019 - 2020, a lien, but not yet due or payable.
2. Taxes and assessments, general and special, for the fiscal year 2018 - 2019, as follows:

Assessor's Parcel No	:	0056-162-090	
Code No.	:	007-065	
1st Installment	:	\$4,471.47	Delinquent
Penalty	:	\$447.14	
2nd Installment	:	\$4,471.47	Delinquent
Penalty	:	\$467.14	
Land Value	:	\$152,000.00	
Imp. Value	:	\$373,000.00	
P.P. Value	:	\$103,994.00	

The amount of the installment(s), plus penalty, is included in the amount to redeem shown as Exception No. 3 of the Preliminary Report Herein.

OLD REPUBLIC TITLE COMPANY
ORDER NO. 1117020609-JM
UPDATE

3. Said property having been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2014 - 2015, and subsequent delinquencies

Amount to redeem by August 31, 2019, for the above stated year (and subsequent years, if any) is \$56,855.42.

and by September 30, 2019 : is \$57,453.12
and by October 31, 2019 : is \$58,050.82

Default No. : 2015000398
Assessor's Parcel No. : 0056-162--090

4. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

5. Municipal Service Charges in favor of the City of Vallejo, if any. Further information may be obtained by calling (707) 552-3110.

6. The herein described property lies within the boundaries of the Vallejo Sanitation and Flood Control District and is, therefore, subject to taxes and assessments thereof. Further information may be obtained by contacting said district at (707) 644-8949.

7. The herein described land is within the Downtown Vallejo Maintenance District, upon the terms and provisions contained therein by Resolution No. 97-11, of the City Council of the City of Vallejo, dated January 7, 1997, and

Recorded : August 4, 1997, in Official Records under Recorder's Serial No. 1997-00049087

8. An unrecorded lease upon the terms, covenants, and conditions contained or referred to therein,

Lessor : Empress Theatre Associates, LLC, a California limited liability company
Lessee : Empress Theatre Master Tenant, LLC, a California limited liability company
Disclosed by : Memorandum of Lease
Dated : June 28, 2007
Recorded : August 7, 2007 in Official Records under Recorder's Serial Number 200700086761

OLD REPUBLIC TITLE COMPANY
ORDER NO. 1117020609-JM
UPDATE

NOTE: Said Lease by the provisions of an agreement

Dated : July 17, 2007
Recorded : August 7, 2007 in Official Records under Recorder's Serial Number
200700086762
was made subordinate to the Deeds of Trust referred to herein as Instruments No.
200700086764 and 200700086765.

NOTE: The present ownership of said leasehold or leaseholds and other matters
affecting the interest of the lessee or lessees are not shown herein.

9. An unrecorded lease upon the terms, covenants, and conditions contained or referred to
therein,

Lessor : Empress Sublessee LLC, a California limited liability company
Lessee : Vallejo Community Arts Foundation, Inc., a California nonprofit public
benefit corporation
Disclosed by : Memorandum of Agreement to Sublease and Sublease Agreement
Dated : July 17, 2007
Recorded : August 7, 2007 in Official Records under Recorder's Serial Number
200700086763

NOTE: The present ownership of said leasehold or leaseholds and other matters
affecting the interest of the lessee or lessees are not shown herein.

10. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts
payable under the terms thereof,

Amount : \$3,000,000.00
Trustor/Borrower : Empress Theatre Associates, LLC, a California limited liability
company
Trustee : First American Title Insurance Company
Beneficiary/Lender : NDC New Markets Investments XXXIX, LLC, a Delaware limited
liability company
Dated : July 17, 2007
Recorded : August 7, 2007 in Official Records under Recorder's Serial Number
200700086764
Returned to : Kantor Taylor McCarthy, P.C., 1501 Fourth Avenue, #1610,
Seattle, WA 98101-1662

OLD REPUBLIC TITLE COMPANY

ORDER NO. 1117020609-JM

UPDATE

The effect of The record beneficial interest under said Deed of Trust as a result of the last recorded assignment thereof is,

Vested In : City of Vallejo, a municipal corporation
By Assignment From : Successor Agency to the Redevelopment Agency of the City of Vallejo
Dated : September 27, 2016
Recorded : April 5, 2017 in Official Records under Recorder's Serial Number 201700028526

11. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$3,325,903.00
Trustor/Borrower : Empress Theatre Associates, LLC, a California limited liability company
Trustee : First American Title Insurance Company
Beneficiary/Lender : NDC New Markets Investments XXXIX, LLC, a Delaware limited liability company
Dated : July 17, 2007
Recorded : August 7, 2007 in Official Records under Recorder's Serial Number 200700086765
Returned to : Kantor Taylor McCarthy, P.C., 1501 Fourth Avenue, #1610, Seattle, WA 98101-1662

12. Any unrecorded and subsisting leases.

13. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

OLD REPUBLIC TITLE COMPANY
ORDER NO. 1117020609-JM
UPDATE

14. Prior to the issuance of any policy of title insurance, the Company requires the following with respect to Empress Theatre Associates, LLC, a California Limited Liability Company:
1. A copy of any management or operating agreements and any amendments thereto, together with a current list of all members of said LLC.
 2. A certified copy of its Articles of Organization (LLC-1), any Certificate of Correction (LLC-11), Certificate of Amendment (LLC-2), or Restatement of Articles of Organization (LLC-10).
 3. Recording a Certified copy of said LLC-1 and any "amendments thereto".

----- **Informational Notes** -----

- A. The applicable rate(s) for the policy(s) being offered by this report or commitment appears to be section(s) to be determined.
- B. The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented to reflect the following additional items relating to the issuance of an American Land Title Association loan form policy:

NONE

NOTE: Our investigation has been completed and there is located on said land a commercial building known as 330 Virginia Street, Vallejo, CA 94590.

The ALTA loan policy, when issued, will contain the CLTA 100 Endorsement and 116 series Endorsement.

Unless shown elsewhere in the body of this report, there appear of record no transfers or agreements to transfer the land described herein within the last three years prior to the date hereof, except as follows:

NONE

OLD REPUBLIC TITLE COMPANY
ORDER NO. 1117020609-JM
UPDATE

C. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument	:	
Entitled	:	Grant Deed
By/From	:	Robert G. Litwin, an unmarried man and Amelito O. Gomez, an unmarried man, as joint tenants
To	:	Empress Theatre Associates, LLC, a California limited liability company
Recorded	:	April 30, 2004 in Official Records under Recorder's Serial Number 200400057136

**CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.-

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments Which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims Which are not shown by the public records but which could be ascertained by an inspection of the land which may be asserted by persons in possession thereof,
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

FACTS
**WHAT DOES OLD REPUBLIC TITLE
DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share

Questions

Go to www.oldrepublictitle.com (Contact Us)

Who we are

Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.
-------------------------------	--

What we do

How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit http://www.OldRepublicTitle.com/newnational/Contact/privacy .
How does Old Republic Title collect my personal information?	We collect your personal information, for example, when you: • Give us your contact information or show your driver's license • Show your government-issued ID or provide your mortgage information • Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: • Sharing for affiliates' everyday business purposes - information about your creditworthiness • Affiliates from using your information to market to you • Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the "Other important information" section below for your rights under state law.

Definitions

Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • <i>Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., Mississippi Valley Title Services Company, and The Title Company of North Carolina.</i>
Non-affiliates	Companies not related by common ownership or control. They can be financial and non-financial companies. • <i>Old Republic Title does not share with non-affiliates so they can market to you</i>
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • <i>Old Republic Title doesn't jointly market.</i>

Other Important Information

Oregon residents only: We are providing you this notice under state law. We may share your personal information (described on page one) obtained from you or others with non-affiliate service providers with whom we contract, such as notaries and delivery services, in order to process your transactions. You may see what personal information we have collected about you in connection with your transaction (other than personal information related to a claim or legal proceeding). To see your information, please click on "Contact Us" at www.oldrepublictitle.com and submit your written request to the Legal Department. You may see and copy the information at our office or ask us to mail you a copy for a reasonable fee. If you think any information is wrong, you may submit a written request online to correct or delete it. We will let you know what actions we take. If you do not agree with our actions, you may send us a statement.

Affiliates Who May be Delivering This Notice

American First Abstract, LLC	American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.
eRecording Partners Network, LLC	Genesis Abstract, LLC	Kansas City Management Group, LLC	L.T. Service Corp.	Lenders Inspection Company
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mara Escrow Company	Mississippi Valley Title Services Company	National Title Agent's Services Company
Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.	Old Republic Exchange Company	Old Republic National Title Insurance Company	Old Republic Title and Escrow of Hawaii, Ltd.
Old Republic Title Co.	Old Republic Title Company of Conroe	Old Republic Title Company of Indiana	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma
Old Republic Title Company of Oregon	Old Republic Title Company of St. Louis	Old Republic Title Company of Tennessee	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.
Old Republic Title, Ltd.	Republic Abstract & Settlement, LLC	Sentry Abstract Company	The Title Company of North Carolina	Title Services, LLC
Trident Land Transfer Company, LLC				

Exhibit J

MASTER TENANT PLAN OF DISSOLUTION
(Attached form of Master Tenant Plan of Dissolution.)

Exhibit J

PLAN OF DISSOLUTION AND LIQUIDATION
(Empress Theatre Master Tenant, LLC)

This Plan of Dissolution and Liquidation (the "**Plan**") dated as of _____, 2020, is entered into by TRIAD COMMUNITIES, L.P., a California limited partnership (the "**Manager**"), in its capacity as the Manager of EMPRESS THEATRE MASTER TENANT, LLC, a California limited liability company (the "**Company**"), and the CITY OF VALLEJO, a California municipal corporation (the "**City**"), in its capacity as the sole Member of the Company, for the purpose of effecting the complete dissolution and liquidation of the Company in accordance with the laws of the State of California. Capitalized terms used and not defined herein shall have the meanings given to them in the Operating Agreement (defined below).

WHEREAS, the Company was formed as of June 26, 2007 by the filing of the Company's Articles of Organization with the California Secretary of State and is operated pursuant to that certain Amended and Restated Operating Agreement, dated as of July 17, 2007 (the "**Operating Agreement**"); and

WHEREAS, the Manager and the sole Member have determined that it is in the best interest of the Company to complete the liquidation and dissolution of the Company pursuant to the adoption of this Plan.

NOW THEREFORE, the Manager and the City as the sole Member, in furtherance of the liquidation and dissolution of the Company, adopt and approve this Plan, and agree as follows:

1. Effective as of the date hereof, the Manager and the sole Member consent to, and the Company is hereby dissolved without any further action by or on behalf of the Company. Except for the purpose of winding up and liquidating the business of the Company, no Member shall transact any further business nor incur any further obligations on behalf of the Company after the date hereof.

2. To effectuate the orderly liquidation of the Company, the Company and the City shall execute an Assignment and Assumption Agreement pursuant to which, in exchange for the City's assignment/relinquishment to Company of City's 100% membership interest in the Company, the Company shall assign its assets to the City, consisting of (a) Company's 49% membership interest in Empress Theatre Associates, LLC, a California limited liability company, and (b) Company's interest as tenant under that certain Master Lease Agreement dated as of June 28, 2007 and evidenced by a Memorandum of Lease dated June 28, 2007 and recorded in the official records of Solano County, California, on August 7, 2007 under recording number 200700086761, by and between Empress Theatre Associates, LLC as landlord and Company as tenant relating to the property commonly known as the Empress Theatre, located at 330 Virginia Street in the City of Vallejo.

3. Thereafter, the Manager shall act as Liquidator and take all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company. The Liquidator shall sell all of the remaining assets of the Company, if any, and shall apply the funds of the Company to the payment of any fees, expenses or taxes resulting from the sale of the assets of the Company, and the winding up, liquidation and termination of the Company.

4. The net proceeds of the liquidation shall be distributed in the following manner and in the following order and priority:

(a) first, to creditors to pay or make provision to pay the debts and liabilities of the Company (excluding debts and liabilities to Members and Affiliates);

(b) second, to the setting up of any reserves (to be held by the Liquidator in an interest-bearing account) which the Liquidator may deem necessary or appropriate for any contingent or unforeseen liabilities or obligations of the company; and upon expiration of such period that the Liquidator deems necessary or appropriate, the reserve balances remaining after payment of any such liabilities or obligations shall be distributed by the Liquidator in the manner below; and

(c) third, to satisfy debts and liabilities owed to Members, or their successors-in-interest, based on their respective Capital Account balances, in accordance with Section 12.2(b) of the Operating Agreement.

5. The Manager hereby acknowledges and agrees that, as of the date of dissolution:

(a) there are no claims, obligations, including any contingent, conditional or unmatured contractual claims, known to the Company;

(b) there are no pending actions, suits, or proceedings to which the Company is a party; and

(c) there are no claims, based on facts known to the Company, that are likely to arise or to become known to the Company within ten (10) years from the date hereof that would require payment or provision for payment, for which payment or provision for payment has not been made.

6. The Manager shall file all certificates and notices of the dissolution of the Company required by law. Upon the complete liquidation and distribution of the Company assets, the Members shall cease to be Members of the Company, and the Manager shall execute, acknowledge and cause to be timely filed all certificates and notices required by law to terminate the Company, including the filing of a Certificate of Cancellation with the Secretary of State of the State of California.

7. Upon the dissolution of the Company, the Accountants for the Company shall promptly prepare, and the Manager shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Manager shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

8. The Manager shall take, or cause the Company to take, such other acts and deeds and shall do, or cause the Company to do, such other things, as are necessary or appropriate in connection with the dissolution, winding up and liquidation of the Company, the termination of

the responsibilities and liabilities of the Company under applicable law, and the termination of the existence of the Company.

9. This Plan may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Manager and the City, as sole Member, have made and executed this Plan of Dissolution and Liquidation (Empress Theatre Master Tenant, LLC) as of the date first written above.

MANAGER:

Triad Communities, L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: _____

Name: _____

Title: _____

CITY:

City of Vallejo, a California municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

Exhibit K

MASTER TENANT ASSIGNMENT

(Attached form of Assignment and Assumption Agreement (Master Tenant).)

Exhibit K

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Master Tenant – Membership and Leasehold Interests)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”) is entered into as of _____, 2020, by and between by and between Empress Theatre Master Tenant, LLC, a California limited liability company (the “**Assignor**”) and the City of Vallejo, a municipal corporation (the “**Assignee**”).

RECITALS

A. Assignor and Assignee are parties to that certain Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities, by and among the Assignor, Assignee, Empress Theatre Associates, LLC, a California limited liability company (“**Theater Landlord**”), Triad Communities, L.P., a California limited partnership (“**Triad**”) and Triad Sky Valley, LLC, a Washington limited liability company dated as of the date hereof (the “**Master Agreement**”), and desire to transfer certain assets to effectuate the orderly dissolution of certain corporate entities.

B. The operation of Theater Landlord is governed by that certain Empress Theatre Associates, LLC – Amended and Restated Operating Agreement dated as of July 17, 2007 (“**Landlord Operating Agreement**”). Assignor currently holds a 49% interest in Theater Landlord as a non-managing member with certain rights commensurate with its interest as set forth in the Landlord Operating Agreement. Triad holds a 51% interest in Theater Landlord and is the Managing Member of Theater Landlord.

C. Assignee is the present holder of a 100% interest in Assignor.

D. Assignor wishes to assign to Assignee (a) Assignor’s interest as tenant under that certain Lease dated as of June 28, 2007 by and between Theater Landlord as landlord and Master Tenant as tenant relating to the property commonly known as the Empress Theatre, and located at 330 Virginia Street in the City of Vallejo (the “**Lease**”), and (b) Assignor’s 49% membership interest in Theater Landlord, and Assignee wishes to accept such assignment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Assignment of Membership Interest in Theater Landlord. Assignor hereby transfers, conveys, and assigns to Assignee Assignor’s 49% membership interest in Theater Landlord and all right and obligations of Assignor under the Landlord Operating Agreement, free and clear of all encumbrances, and Assignee hereby accepts such assignment and conveyance. As of the date hereof, Assignor relinquishes all of its rights under the Landlord Operating Agreement, withdraws as a member of Theater Landlord, grants to Assignee the right to be admitted to Theater Landlord as a substitute member thereof, and acknowledges that it is not a necessary party to any amendment to the Landlord Operating Agreement to reflect its withdrawal as a member of Theater Landlord.

2. Assignment of Interest Under the Lease. Effective as of the date hereof, Assignor hereby assigns to Assignee, all of Assignor's right, title, interest, and obligations as tenant under the Lease, and Assignee hereby assumes all such rights, title, interests, and obligations.

3. Conveyance of Membership Interest in Master Tenant. In exchange for Assignor's assignment to Assignee of Assignor's membership interest in Theater Landlord and Assignor's interest under the Lease, Assignee agrees to assign and relinquish to Assignor, Assignee's 100% membership interest in Assignor, and Assignee agrees to execute and deliver all instruments necessary to implement such assignment and relinquishment.

4. Further Assurances. At any time and from time to time after the date hereof, Assignor and Assignee shall execute and deliver such other instruments of transfer, conveyance, assignment and confirmation and take such other action as either party may reasonably request as necessary or desirable in order to implement the intent of this Agreement.

5. Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

6. Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns.

7. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of California without regard to conflict of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

8. Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

9. Severability. If any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall the same affect the validity or enforceability of any other provision of this Agreement.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed and delivered by their respective duly authorized persons as of the date first written above.

ASSIGNOR:

Empress Theatre Master Tenant, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership
Its: Manager

By: Triad Sky Valley LLC,
a Washington limited liability company
Its: General Partner

By: _____
Name: _____
Title: _____

By: City of Vallejo
Its: Sole Member

By: _____
Name: _____
Title: _____

Approved as to form:

City Attorney

ASSIGNEE:

City of Vallejo, a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form:

City Attorney

Exhibit L

TERMINATION OF MASTER LEASE
(Attached form of Termination of Lease.)

Exhibit L

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

APN 0056-162-090

TERMINATION OF LEASE

This TERMINATION OF LEASE ("***Termination***"), dated as of _____, 2020, is executed by and between Empress Theatre Associates, LLC, a California limited liability company ("***Landlord***") and the City of Vallejo, a municipal corporation ("***Tenant***").

RECITALS

A. Landlord and Empress Theatre Master Tenant, LLC, a California limited liability company ("***Original Tenant***") executed that certain Master Lease Agreement dated as of June 28, 2007 ("***Lease***"), concerning certain real property legally described on Exhibit A, attached hereto and incorporated herein by reference.

B. The Lease is evidenced by that certain Memorandum of Lease dated June 28, 2007 and recorded in the official records of Solano County, California, on August 7, 2007 under recording number 200700086761.

C. Pursuant to that certain unrecorded Assignment and Assumption Agreement (Master Tenant) dated as of the date hereof, Original Tenant assigned its interest as tenant under the Lease to Tenant.

D. Landlord and Tenant, having terminated the Lease, desire to execute this Termination to evidence such termination of the Lease.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Termination. The Lease has been duly terminated by Landlord and Tenant.
2. Recordation of Termination. Landlord or Tenant may record this Termination in the official records of Solano County, California, to memorialize such termination of the Lease.

3. Counterparts. This instrument may be executed in multiple counterparts each of which shall be an original, and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Termination of Lease as of the date first above written.

LANDLORD:

Empress Theatre Associates, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership

Its: Managing Member

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: _____

Name: _____

Title: _____

TENANT:

City of Vallejo, a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form: _____

City Attorney

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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

State of California)
County of Solano) ss

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

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

State of California)
) ss
County of Solano)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

Exhibit A

LEGAL DESCRIPTION

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

THE NORTH 54 FEET OF THE EAST 4 FEET OF LOT 5 AND ALL OF LOT 6, EXCEPT THE SOUTH 76 FEET OF THE WEST 1 FOOT OF SAID LOT 6, ALL IN BLOCK 302 AS THE SAME ARE SHOWN ON THE OFFICIAL MAP OF THE CITY OF VALLEJO, MADE BY E.H. ROWE, C.E., AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA, ON SEPTEMBER 19, 1868, IN BOOK 1 OF MAPS, AT PAGE 123.

APN: 0056-162-090

Exhibit M

MASTER TENANT CERTIFICATE OF DISSOLUTION
(Attached form of Master Tenant Certificate of Dissolution.)

Exhibit M



Limited Liability Company (LLC) Cancellation Requirements – What Form to File

What form do I file to cancel my Limited Liability Company's registration in California?

Form to Use	Entity	Requirements
Short Form Cancellation Certificate - Form LLC-4/8	ONLY LLCs formed in California (Domestic)	All of the following statements about the California LLC must be true in order to file Form LLC-4/8: a) Was registered in California within the last 12 months; b) Has no debts or other liabilities, except as provided in Item c; c) All required California final tax returns have been or will be filed with the California Franchise Tax Board; d) The assets have been distributed or acquired no known assets. e) No business has been conducted from the date of registration; f) 50 percent or more of the voting interests of the managers or members voted, or if no managers or members, the person or 50 percent or more of the persons who signed the Articles of Organization, voted to dissolve; and g) Any payments received from investors have been returned to those investors. Note: If filing Form LLC-4/8, you do not need to file Form LLC-3 and Form LLC-4/7. (California Corporations Code section 17707.02.)
Certificate of Cancellation – Form LLC-4/7	LLCs formed in California (Domestic)	If the California LLC cannot answer yes to all of the items a) – g) above and the vote to dissolve was made by ALL the members. Must check the box on Form LLC-4/7 indicating the dissolution was made by a vote of all the members. (California Corporations Code section 17707.08.)
	LLCs formed outside of California and registered in California (Foreign)	Foreign LLC no longer will be conducting business in California and wants to cancel its Registration with the California Secretary of State. (California Corporations Code section 17708.06.)
A Certificate of Dissolution – Form LLC-3	ONLY LLCs formed in California (Domestic)	If the California LLC cannot answer yes to all of the items a) – g) above and the vote to dissolve was made by less than all the members. Form LLC-3 must be filed prior to or together with the Certificate of Cancellation - Form LLC-4/7. (California Corporations Code section 17707.08.)

The status of the LLC **must be active** on the records of the California Secretary of State in order to file cancellation documents. The status of the LLC can be checked online on the Secretary of State's Business Search at BusinessSearch.sos.ca.gov.



**Secretary of State
Business Programs Division**

Business Entities
1500 11th Street, Sacramento, CA 95814
P.O. Box 944260, Sacramento, CA 94244-2600

Submission Cover Sheet

Instructions:

- Complete and include this form with your submission. **This information only will be used to communicate with you in writing about the submission.** This form will be treated as correspondence and will not be made part of the filed document.
- Make all **checks or money orders** payable to the Secretary of State.
- In person submissions: \$15 handling fee; do not include a \$15 handling fee when submitting documents by mail.
- Standard processing time for submissions to this office is approximately 5 business days from receipt. All submissions are reviewed in the date order of receipt. For updated processing time information, visit www.sos.ca.gov/business/be/processing-dates.

Optional Copy and Certification Fees:

- If applicable, include optional copy and certification fees with your submission.
- For applicable copy and certification fee information, refer to the instructions of the specific form you are submitting.

Contact Person: (Please type or print legibly)

First Name: _____ Last Name: _____

Phone (optional): _____

Entity Information: (Please type or print legibly)

Name: _____

Entity Number (if applicable): _____

Comments: _____

Return Address: For written communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address.

Name: [_____]

Company: _____

Address: _____

City/State/Zip: [_____]

Secretary of State Use Only	
T/TR:	
AMT REC'D:	\$

Instructions for Completing the Certificate of Dissolution (Form LLC-3) (California LLC ONLY)

To put all on notice that the California limited liability company (LLC) has elected to wind up the business of the LLC, the LLC must complete the Certificate of Dissolution (Form LLC-3). Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

Note: The status of the corporation **must be active** in order to file cancellation documents. The status of the LLC can be checked online on the Secretary of State's Business Search at [BusinessSearch.sos.ca.gov](https://www.sos.ca.gov/businesssearch).

Important Additional Steps to Terminate the LLC:

- Completing the Cancellation Process:** To complete the cancellation process, the LLC also **must file a** Certificate of Cancellation (Form LLC-4/7). This Form LLC-3 is not required when the vote to dissolve was made by **all** of the members and that fact is stated on the Form LLC-4/7.
- Final Tax Returns:** See California Franchise Tax Board's (FTB) Publication 1038 – Guide to Dissolve, Surrender, or Cancel a California [or Foreign] Business Entity – <https://www.ftb.ca.gov/forms/misc/1038.html>.
 - All final returns required under the California Revenue and Taxation Code must be filed timely (Form 568 [for LLCs not classified as a corporation] or Form 100/100S [for LLCs classified as a corporation]) with the FTB and the \$800 annual tax for the tax year of the final return must be paid. If final returns are not filed, the LLC will remain FTB active and continue to be subject to the \$800 annual tax and/or fee.
 - For information regarding FTB forms and publications visit their website at <https://www.ftb.ca.gov> or contact the FTB at (800) 852-5711 (from within the U.S.) or (916) 845-6500 (from outside the U.S.).

Fees:

- Filing Fee:** There is **no fee** for filing this Certificate of Dissolution (Form LLC-3).
- Faster Service Fee:**
 - Counter and guaranteed expedite services are available only for documents *submitted in person (drop off)* to our Sacramento office.
 - Counter Drop Off:** A separate, non-refundable **\$15.00** counter drop off fee is required if you submit in person your completed document at our Sacramento office. The \$15.00 counter drop off fee provides priority service over documents submitted by mail. The special handling fee is not refundable whether the document is filed or rejected.
 - Guaranteed Expedite Drop Off:** For more urgent submissions, documents can be processed within a guaranteed timeframe for a non-refundable fee instead of the counter drop off fee. For detailed information about this faster processing service through our Preclearance and Expedited Filing Services, go to www.sos.ca.gov/business/be/service-options.

Copies: To get a copy of the filed document, include payment for copy fees when the document is submitted. Copy fees are \$1.00 for the first page and \$.50 for each attachment page. For certified copies, there is an additional \$5.00 certification fee, per copy.

Payment Type: Check(s) or money orders should be made payable to the Secretary of State. **Do not send cash by mail.** If submitting the document in person in our Sacramento office, payment also may be made by credit card (Visa or Mastercard®).

Processing Times: For current processing dates, go to www.sos.ca.gov/business/be/processing-dates.

If you are not completing this form online, please **type or legibly print** in black or blue ink. **Complete the Certificate of Dissolution (Form LLC-3) as follows:**

Item	Instruction	Tips
1.	Enter the name of the LLC exactly as it appears on file with the California Secretary of State, including the entity ending (ex: "Jones & Company, LLC" or "Smith Construction, a Limited Liability Company").	If the LLC is a registered foreign (formed outside of California) LLC, do not file this Form LLC-3; file the Certificate of Cancellation (Form LLC-4/7) to terminate registration in California.

2.	Enter the 12-digit file number issued to the LLC by the California Secretary of State at the time of registration.	• The 12-digit file number is provided by the Secretary of State above the file stamp at the top of the LLC's registration document filed with the California Secretary of State. • To ensure you have the correct file number and exact name of the LLC, look to your registration document filed with the California Secretary of State and any name change amendments. • Secretary of State Records can be accessed online through our Business Search at BusinessSearch.sos.ca.gov. While searching the Business Search, be sure to identify your LLC correctly including the jurisdiction that matches your LLC.
3.	You must check the appropriate box (check one).	• This Form LLC-3 is not required if the vote to dissolve was made by ALL of the members, and that fact is stated on the Certificate of Cancellation (Form LLC-4/7). • This Form LLC-3 puts all on notice that the LLC has elected to wind up the business of the LLC and is in the process of paying liabilities and distributing assets. • In order to terminate the LLC, the LLC also must file a Certificate of Cancellation (Form LLC-4/7).
4.	Form LLC-3 must be signed by the managers, unless the LLC has had no members for 90 consecutive days, in which case the form must be signed by the person(s) authorized to pay liabilities, distribute assets and terminate the LLC.	• If you need more space for signatures: – Place the additional signatures on only one side of a standard letter-sized piece of paper (8 1/2" x 11") clearly marked as an attachment to Form LLC-3 and attach the extra page(s) to the completed Form LLC-3. – All attachments are part of this document. • Multiple Form LLC-3s with different signatures will be returned without being filed – use only one form. • If Form LLC-3 is signed by an entity, the person who signs on behalf of the entity should note their name and position/title, the exact entity name and the entity's relation to the dissolving LLC. Example: If the LLC ("Smith LLC") is the manager of the canceling LLC, the signature of the person signing on behalf of Smith LLC should be reflected as Joe Smith, Manager of Smith LLC, Manager. • If Form LLC-3 is signed by a trust, the trustee should sign as follows: _____, trustee for _____ trust (including the date of the trust, if applicable). Example: Mary Todd, trustee of the Lincoln Family Trust (U/T/A 5-1-1994), Member. • Do not use a computer generated signature.

Submission Cover Sheet (Optional): To make it easier to receive communication related to **this document**, including receipt of the copy of the filed document, if purchased, complete the Submission Cover Sheet. For the Return Address: enter the name of a designated person and/or company and the corresponding mailing address. Please note: the Submission Cover Sheet will be treated as correspondence and will not be made part of the filed document.

Where to File: Completed forms along with the applicable fees, if any can be mailed to Secretary of State, Business Entities Filings Unit, P.O. Box 944260, Sacramento, CA 94244-2600 or delivered in person (drop off) to the Sacramento office, 1500 11th Street, 3rd Floor, Sacramento, CA 95814. This form is filed only in the Sacramento office.

Return Receipt Requested: It is recommended for proof of submittal that if the Certificate of Dissolution (Form LLC-3) is mailed to the Secretary of State, it be sent by Certified Mail with Return Receipt Requested.

Legal Authority: General statutory filing provisions are found in California Corporations Code section [17702.03](#), [17707.01](#), [17707.04](#), [17707.08](#).



Secretary of State
Certificate of Dissolution
Limited Liability Company (LLC)
(California LLC ONLY)

LLC-3

IMPORTANT — Read Instructions before completing this form.

There is **No Fee** for filing a Certificate of Dissolution

Copy Fees – First page \$1.00; each attachment page \$0.50;
Certification Fee - \$5.00 plus copy fees

This Space For Office Use Only

1. Limited Liability Company Name (Enter the exact name of the LLC as it is recorded with the California Secretary of State)

Empress Theatre Master Tenant LLC

2. LLC 12-Digit Entity (File) Number (Enter the exact 12-digit Entity (File) Number issued by the California Secretary of State.)

2	0	0	7	1	9	1	0	0	4	3	
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3. Dissolution (Check the applicable statement. This Form LLC-3 is not required when the vote to dissolve was made by all of the members and that fact is noted on the Certificate of Cancellation (Form LLC-4/7).)

The dissolution of this LLC was caused by one of the following circumstances (**check one**):

- ☐ The happening of an event as set forth in the Articles of Organization or in the LLC's written Operating Agreement.
- ☒ The vote of 50 percent or more of the voting interests of the members of the LLC or a greater percentage of the voting interests of members as specified in the Articles of Organization or written Operating Agreement.
- ☐ The passage of 90 consecutive days during which the LLC has no members, except on the death of a natural person who is the sole member of the LLC, the status of the member, including a membership interest, may pass to the heirs, successors and assigns of the member by will or applicable law.
- ☐ The entry of a decree of judicial dissolution pursuant to California Corporations Code section 17707.03.

The Certificate of Dissolution puts all on notice that the LLC has elected to wind up the business of the LLC and is in the process of paying liabilities and distributing assets. In order to terminate the LLC, the LLC also **must file a Certificate of Cancellation (Form LLC-4/7)**.

4. Read and Sign Below (See instructions for signature requirements. Do not use a computer generated signature.)

By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.

Signature

Type or Print Name

Signature

Type or Print Name

Exhibit N

THEATER LANDLORD PLAN OF DISSOLUTION
(Attached form of Theater Landlord Plan of Dissolution.)

Exhibit N

PLAN OF DISSOLUTION AND LIQUIDATION
(Empress Theatre Associates, LLC)

This Plan of Dissolution and Liquidation (the "**Plan**") dated as of _____, 2020, is entered into by Triad Communities, L.P., a California limited partnership (the "**Managing Member**") and CITY OF VALLEJO, a municipal corporation ("**City**") for the purpose of effecting the complete dissolution and liquidation of EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company (the "**Company**") in accordance with the laws of the State of California. Capitalized terms used and not defined herein shall have the meanings given to them in the Operating Agreement (defined below).

WHEREAS, the Company was formed as of February 18, 2004 by the filing of the Company's Articles of Organization with the California Secretary of State, and is operated pursuant to that certain Amended and Restated Operating Agreement by and between the Members, dated as of July 17, 2007 ("**Operating Agreement**"); and

WHEREAS, the Managing Member owns a 51% interest in the Company, and pursuant to that certain Assignment and Assumption Agreement dated as of the date hereof and executed by and between City and Empress Theatre Master Tenant, LLC, a California limited liability company ("**Master Tenant**"), City owns a 49% interest in the Company, and collectively, the Managing Member and the City are the only Members of the Company; and

WHEREAS, the Members have determined that it is in the best interest of the Company to complete the liquidation and dissolution of the Company pursuant to the adoption of this Plan.

NOW THEREFORE, the Members, in furtherance of the liquidation and dissolution of the Company, adopt and approve this Plan, and agree as follows:

1. Effective as of the date hereof, the Members consent to, and the Company is hereby dissolved without any further action by or on behalf of the Company. Except for the purpose of winding up and liquidating the business of the Company, no Member shall transact any further business nor incur any further obligations on behalf of the Company after the date hereof.

2. To effectuate the orderly liquidation of the Company, the Company and the City shall execute and implement a Loan Satisfaction Agreement pursuant to which: (i) the Company shall convey by grant deed to City the property commonly known as the Empress Theatre, located at 330 Virginia Street in the City of Vallejo (the "**Property**"), (ii) the Company and Master Tenant shall execute a Termination of Lease Agreement evidencing the termination of that certain Master Lease Agreement dated as of June 28, 2007, and evidenced by a Memorandum of Lease dated June 28, 2007 and recorded in the official records of Solano County, California, on August 7, 2007 under recording number 200700086761, and (iii) the City, as the present holder of the beneficial interests thereunder, shall cancel the Company's indebtedness under that certain Promissory Note A in the principal amount of \$3,000,000 ("**Note A**") and that certain Promissory Note B in the principal amount of \$3,325,903 ("**Note B**"), each originally executed for the benefit of NDC New Markets Investments XXXIX, LLC, a Delaware limited liability company.

3. Thereafter, the Managing Member shall act as Liquidating Manager and take all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company. The Managing Member as liquidator for the Company shall sell all of the assets of the Company, if any, and shall apply the funds of the Company to the payment of any fees, expenses or taxes resulting from the sale of the assets of the Company, and the winding up, liquidation and termination of the Company.

4. The net proceeds of the liquidation shall be distributed in the following manner and in the following order and priority:

(a) first, to creditors to pay or make provision to pay the debts and obligations of the Company (excluding any loans made by a Member or an Affiliate of a Member) and the expenses of winding up of the affairs and business of the Company;

(b) second, to the setting up of any reserves (to be held by the Liquidation Manager in an interest-bearing account) which the Liquidation Manager may deem necessary or appropriate for any contingent or unforeseen liabilities or obligations of the company; and upon expiration of such period that the Liquidation Manager deems necessary or appropriate, the reserve balances remaining after payment of any such liabilities or obligations shall be distributed by the Liquidation Manager in the manner below;

(c) third, to satisfy debts and liabilities owed to Members and their Affiliates described in section 4.2 of the Operating Agreement and in accordance with the priority set forth therein;

(d) fourth, to be distributed in compliance with section 1.704-1(b)(2)(ii)(b)(2) of the Regulations to the Members in accordance with their positive Capital Account balances, after giving effect to all contributions, distributions and allocations for all periods.

5. The Managing Member hereby acknowledges and agrees that, as of the date of dissolution:

(a) there are no claims, obligations, including any contingent, conditional or unmatured contractual claims, known to the Company;

(b) there are no pending actions, suits, or proceedings to which the Company is a party; and

(c) there are no claims, based on facts known to the Company, that are likely to arise or to become known to the Company within ten (10) years from the date hereof that would require payment or provision for payment, for which payment or provision for payment has not been made.

6. The Managing Member shall file all certificates and notices of the dissolution of the Company required by law. Upon the complete liquidation and distribution of the Company assets, the Members shall cease to be Members of the Company, and the Managing Member shall execute, acknowledge and cause to be timely filed all certificates and notices required by

law to terminate the Company, including the filing of a Certificate of Cancellation with the Secretary of State of the State of California.

7. Upon the dissolution of the Company, the Accountants for the Company shall promptly prepare, and the Liquidation Manager shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Liquidation Manager shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

8. The Managing Member shall take, or cause the Company to take, such other acts and deeds and shall do, or cause the Company to do, such other things, as are necessary or appropriate in connection with the dissolution, winding up and liquidation of the Company, the termination of the responsibilities and liabilities of the Company under applicable law, and the termination of the existence of the Company.

9. This Plan may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Managing Member and City have made and executed this Plan of Dissolution and Liquidation (Empress Theatre Associates, LLC) as of the date first written above.

MANAGING MEMBER:

Triad Communities, L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: _____
Name: _____
Title: _____

CITY:

City of Vallejo, a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form:

City Attorney

Exhibit O

Intentionally omitted.

Exhibit O

Exhibit P

GRANT DEED

(Attached form of Grant Deed with Certificate of Acceptance.)

Exhibit P

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

APN 0056-162-090

Transfer is exempt from documentary transfer tax
pursuant to R&T Code Section 11922.

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Empress Theatre Associates, LLC, a California limited liability company ("**Grantor**") hereby grants and conveys to City of Vallejo, a municipal corporation ("**Grantee**"), the real property located at 330 Virginia Street, known as Solano County Assessor's Parcel No. 0056-162-090, and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Property**").

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of
_____, 20__.

GRANTOR:

Empress Theater Associates, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership

Its: Managing Member

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

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

State of California)
) ss
County of Solano)

On _____, 20____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

Exhibit A

LEGAL DESCRIPTION

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

THE NORTH 54 FEET OF THE EAST 4 FEET OF LOT 5 AND ALL OF LOT 6, EXCEPT THE SOUTH 76 FEET OF THE WEST 1 FOOT OF SAID LOT 6, ALL IN BLOCK 302 AS THE SAME ARE SHOWN ON THE OFFICIAL MAP OF THE CITY OF VALLEJO, MADE BY E.H. ROWE, C.E., AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA, ON SEPTEMBER 19, 1868, IN BOOK 1 OF MAPS, AT PAGE 123.

APN: 0056-162-090

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 20__, executed by Empress Theater Associates, LLC, a California limited liability company ("**Grantor**") to the City of Vallejo, a municipal corporation ("**Grantee**"), is hereby accepted on behalf of the Grantee by its _____ pursuant to authority conferred by Resolution No. _____, adopted by the governing board of the Grantee on _____, 20__, and that the Grantee consents to recordation of the Grant Deed by its duly authorized officer.

Dated _____, 20__

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

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

State of California)
) ss
County of Solano)

On _____, 2019, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

Exhibit Q

THEATER LANDLORD CERTIFICATE OF DISSOLUTION
(Attached form of Theater Landlord Certificate Of Dissolution.)

Exhibit Q



Limited Liability Company (LLC) Cancellation Requirements – What Form to File

What form do I file to cancel my Limited Liability Company's registration in California?

Form to Use	Entity	Requirements
Short Form Cancellation Certificate - Form LLC-4/8	ONLY LLCs formed in California (Domestic)	All of the following statements about the California LLC must be true in order to file Form LLC-4/8: a) Was registered in California within the last 12 months; b) Has no debts or other liabilities, except as provided in Item c; c) All required California final tax returns have been or will be filed with the California Franchise Tax Board; d) The assets have been distributed or acquired no known assets. e) No business has been conducted from the date of registration; f) 50 percent or more of the voting interests of the managers or members voted, or if no managers or members, the person or 50 percent or more of the persons who signed the Articles of Organization, voted to dissolve; and g) Any payments received from investors have been returned to those investors. Note: If filing Form LLC-4/8, you do not need to file Form LLC-3 and Form LLC-4/7. (California Corporations Code section 17707.02.)
Certificate of Cancellation – Form LLC-4/7	LLCs formed in California (Domestic)	If the California LLC cannot answer yes to all of the items a) – g) above and the vote to dissolve was made by ALL the members. Must check the box on Form LLC-4/7 indicating the dissolution was made by a vote of all the members. (California Corporations Code section 17707.08.)
	LLCs formed outside of California and registered in California (Foreign)	Foreign LLC no longer will be conducting business in California and wants to cancel its Registration with the California Secretary of State. (California Corporations Code section 17708.06.)
A Certificate of Dissolution – Form LLC-3	ONLY LLCs formed in California (Domestic)	If the California LLC cannot answer yes to all of the items a) – g) above and the vote to dissolve was made by less than all the members. Form LLC-3 must be filed prior to or together with the Certificate of Cancellation - Form LLC-4/7. (California Corporations Code section 17707.08.)

The status of the LLC **must be active** on the records of the California Secretary of State in order to file cancellation documents. The status of the LLC can be checked online on the Secretary of State's Business Search at BusinessSearch.sos.ca.gov.



Secretary of State
Business Programs Division
Business Entities

1500 11th Street, Sacramento, CA 95814
P.O. Box 944260, Sacramento, CA 94244-2600

Submission Cover Sheet

Instructions:

- Complete and include this form with your submission. **This information only will be used to communicate with you in writing about the submission.** This form will be treated as correspondence and will not be made part of the filed document.
- Make all **checks or money orders** payable to the Secretary of State.
- In person submissions: \$15 handling fee; do not include a \$15 handling fee when submitting documents by mail.
- Standard processing time for submissions to this office is approximately 5 business days from receipt. All submissions are reviewed in the date order of receipt. For updated processing time information, visit www.sos.ca.gov/business/be/processing-dates.

Optional Copy and Certification Fees:

- If applicable, include optional copy and certification fees with your submission.
- For applicable copy and certification fee information, refer to the instructions of the specific form you are submitting.

Contact Person: (Please type or print legibly)

First Name: _____ Last Name: _____

Phone (optional): _____

Entity Information: (Please type or print legibly)

Name: _____

Entity Number (if applicable): _____

Comments: _____

Return Address: For written communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address.

Name: [_____]

Company: _____

Address: _____

City/State/Zip: [_____]

Secretary of State Use Only	
T/TR:	
AMT REC'D:	\$

Instructions for Completing the Certificate of Dissolution (Form LLC-3) (California LLC ONLY)

To put all on notice that the California limited liability company (LLC) has elected to wind up the business of the LLC, the LLC must complete the Certificate of Dissolution (Form LLC-3). Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

Note: The status of the corporation **must be active** in order to file cancellation documents. The status of the LLC can be checked online on the Secretary of State's Business Search at [BusinessSearch.sos.ca.gov](https://www.sos.ca.gov/BusinessSearch).

Important Additional Steps to Terminate the LLC:

- Completing the Cancellation Process:** To complete the cancellation process, the LLC also **must file a** Certificate of Cancellation ([Form LLC-4/7](#)). This Form LLC-3 is not required when the vote to dissolve was made by **all** of the members and that fact is stated on the Form LLC-4/7.
- Final Tax Returns:** See California Franchise Tax Board's (FTB) Publication 1038 – Guide to Dissolve, Surrender, or Cancel a California [or Foreign] Business Entity – <https://www.ftb.ca.gov/forms/misc/1038.html>.
 - All final returns required under the California Revenue and Taxation Code must be filed timely (Form 568 [for LLCs not classified as a corporation] or Form 100/100S [for LLCs classified as a corporation]) with the FTB and the \$800 annual tax for the tax year of the final return must be paid. If final returns are not filed, the LLC will remain FTB active and continue to be subject to the \$800 annual tax and/or fee.
 - For information regarding FTB forms and publications visit their website at <https://www.ftb.ca.gov> or contact the FTB at (800) 852-5711 (from within the U.S.) or (916) 845-6500 (from outside the U.S.).

Fees:

- Filing Fee:** There is **no fee** for filing this Certificate of Dissolution (Form LLC-3).
- Faster Service Fee:**
 - Counter and guaranteed expedite services are available only for documents *submitted in person (drop off) to our Sacramento office*.
 - Counter Drop Off:** A separate, non-refundable **\$15.00** counter drop off fee is required if you submit in person your completed document at our Sacramento office. The \$15.00 counter drop off fee provides priority service over documents submitted by mail. The special handling fee is not refundable whether the document is filed or rejected.
 - Guaranteed Expedite Drop Off:** For more urgent submissions, documents can be processed within a guaranteed timeframe for a non-refundable fee instead of the counter drop off fee. For detailed information about this faster processing service through our Preclearance and Expedited Filing Services, go to www.sos.ca.gov/business/be/service-options.

Copies: To get a copy of the filed document, include payment for copy fees when the document is submitted. Copy fees are \$1.00 for the first page and \$.50 for each attachment page. For certified copies, there is an additional \$5.00 certification fee, per copy.

Payment Type: Check(s) or money orders should be made payable to the Secretary of State. **Do not send cash by mail.** If submitting the document in person in our Sacramento office, payment also may be made by credit card (Visa or Mastercard®).

Processing Times: For current processing dates, go to www.sos.ca.gov/business/be/processing-dates.

If you are not completing this form online, please **type or legibly print** in black or blue ink. **Complete the Certificate of Dissolution (Form LLC-3) as follows:**

Item	Instruction	Tips
1.	Enter the name of the LLC exactly as it appears on file with the California Secretary of State, including the entity ending (ex: "Jones & Company, LLC" or "Smith Construction, a Limited Liability Company").	If the LLC is a registered foreign (formed outside of California) LLC, do not file this Form LLC-3; file the Certificate of Cancellation (Form LLC-4/7) to terminate registration in California.

2.	Enter the 12-digit file number issued to the LLC by the California Secretary of State at the time of registration.	• The 12-digit file number is provided by the Secretary of State above the file stamp at the top of the LLC's registration document filed with the California Secretary of State. • To ensure you have the correct file number and exact name of the LLC, look to your registration document filed with the California Secretary of State and any name change amendments. • Secretary of State Records can be accessed online through our Business Search at BusinessSearch.sos.ca.gov. While searching the Business Search, be sure to identify your LLC correctly including the jurisdiction that matches your LLC.
3.	You must check the appropriate box (check one).	• This Form LLC-3 is not required if the vote to dissolve was made by ALL of the members, and that fact is stated on the Certificate of Cancellation (Form LLC-4/7). • This Form LLC-3 puts all on notice that the LLC has elected to wind up the business of the LLC and is in the process of paying liabilities and distributing assets. • In order to terminate the LLC, the LLC also must file a Certificate of Cancellation (Form LLC-4/7).
4.	Form LLC-3 must be signed by the managers, unless the LLC has had no members for 90 consecutive days, in which case the form must be signed by the person(s) authorized to pay liabilities, distribute assets and terminate the LLC.	• If you need more space for signatures: – Place the additional signatures on only one side of a standard letter-sized piece of paper (8 1/2" x 11") clearly marked as an attachment to Form LLC-3 and attach the extra page(s) to the completed Form LLC-3. – All attachments are part of this document. • Multiple Form LLC-3s with different signatures will be returned without being filed – use only one form. • If Form LLC-3 is signed by an entity, the person who signs on behalf of the entity should note their name and position/title, the exact entity name and the entity's relation to the dissolving LLC. Example: If the LLC ("Smith LLC") is the manager of the canceling LLC, the signature of the person signing on behalf of Smith LLC should be reflected as Joe Smith, Manager of Smith LLC, Manager. • If Form LLC-3 is signed by a trust, the trustee should sign as follows: _____, trustee for _____ trust (including the date of the trust, if applicable). Example: Mary Todd, trustee of the Lincoln Family Trust (U/T/A 5-1-1994), Member. • Do not use a computer generated signature.

Submission Cover Sheet (Optional): To make it easier to receive communication related to **this document**, including receipt of the copy of the filed document, if purchased, complete the Submission Cover Sheet. For the Return Address: enter the name of a designated person and/or company and the corresponding mailing address. Please note: the Submission Cover Sheet will be treated as correspondence and will not be made part of the filed document.

Where to File: Completed forms along with the applicable fees, if any can be mailed to Secretary of State, Business Entities Filings Unit, P.O. Box 944260, Sacramento, CA 94244-2600 or delivered in person (drop off) to the Sacramento office, 1500 11th Street, 3rd Floor, Sacramento, CA 95814. This form is filed only in the Sacramento office.

Return Receipt Requested: It is recommended for proof of submittal that if the Certificate of Dissolution (Form LLC-3) is mailed to the Secretary of State, it be sent by Certified Mail with Return Receipt Requested.

Legal Authority: General statutory filing provisions are found in California Corporations Code section [17702.03](#), [17707.01](#), [17707.04](#), [17707.08](#).



Secretary of State
Certificate of Dissolution
Limited Liability Company (LLC)
(California LLC ONLY)

LLC-3

IMPORTANT — Read Instructions before completing this form.

There is **No Fee** for filing a Certificate of Dissolution

Copy Fees – First page \$1.00; each attachment page \$0.50;
Certification Fee - \$5.00 plus copy fees

This Space For Office Use Only

1. Limited Liability Company Name (Enter the exact name of the LLC as it is recorded with the California Secretary of State)

Empress Theatre Associates, LLC

2. LLC 12-Digit Entity (File) Number (Enter the exact 12-digit Entity (File) Number issued by the California Secretary of State.)

2	0	0	4	0	5	0	1	0	0	1	5
---	---	---	---	---	---	---	---	---	---	---	---

3. Dissolution (Check the applicable statement. This Form LLC-3 is not required when the vote to dissolve was made by all of the members and that fact is noted on the Certificate of Cancellation (Form LLC-4/7).)

The dissolution of this LLC was caused by one of the following circumstances (**check one**):

- ☐ The happening of an event as set forth in the Articles of Organization or in the LLC's written Operating Agreement.
- ☒ The vote of 50 percent or more of the voting interests of the members of the LLC or a greater percentage of the voting interests of members as specified in the Articles of Organization or written Operating Agreement.
- ☐ The passage of 90 consecutive days during which the LLC has no members, except on the death of a natural person who is the sole member of the LLC, the status of the member, including a membership interest, may pass to the heirs, successors and assigns of the member by will or applicable law.
- ☐ The entry of a decree of judicial dissolution pursuant to California Corporations Code section 17707.03.

The Certificate of Dissolution puts all on notice that the LLC has elected to wind up the business of the LLC and is in the process of paying liabilities and distributing assets. In order to terminate the LLC, the LLC also **must file a Certificate of Cancellation (Form LLC-4/7)**.

4. Read and Sign Below (See instructions for signature requirements. Do not use a computer generated signature.)

By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.

Signature

Type or Print Name

Signature

Type or Print Name

Exhibit F

CONFIRMATION OF SUBLEASE TERMINATION
(Attached form of Confirmation of Sublease Termination.)

Exhibit F

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

APN 0056-162-090

CONFIRMATION OF SUBLEASE TERMINATION

THIS CONFIRMATION OF SUBLEASE TERMINATION (this "**Agreement**") is made as of _____, 2020, by and between EMPRESS THEATRE MASTER TENANT, LLC, a California limited liability company (together with its successors and assigns, the "**Landlord**") and TRIAD COMMUNITIES, L.P., a California limited partnership ("**Triad**").

RECITALS:

A. As evidenced by that certain Memorandum of Agreement to Sublease and Sublease Agreement dated July 17, 2007 and recorded in the official records of Solano County, California on August 7, 2007 under recording number 200700086763 ("**Memorandum**"), Landlord entered into that certain Sublease dated July 17, 2007 (the "**Sublease**") with Empress Sublessee LLC, a California limited liability company ("**Empress Sublessee LLC**") as sublessee, and Landlord as sublessor, for that certain real property commonly known as Empress Theatre located in Vallejo, California, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Demised Premises**").

B. Pursuant to the terms of the Sublease, Empress Sublessee LLC's leasehold interest in the Demised Premises terminated on October 31, 2014 ("**Termination Date**").

C. Empress Sublessee LLC was dissolved, with a Certificate of Dissolution filed with the California Secretary of State on December 23, 2014, and pursuant to the dissolution, Triad is the successor in interest to all assets of Empress Sublessee LLC.

D. As of the date of this Agreement, Triad is the Manager of Landlord.

E. Landlord and Triad desire to confirm termination of the Sublease and to release Landlord, Empress Sublessee LLC, and Triad, as successor in interest to Empress Sublessee LLC, from any and all obligations, if any so remaining, under the Sublease and/ or with respect to the Demised Premises.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Triad agree as follows:

1. Definitions. The capitalized terms used herein shall have the same definitions as set forth in the Sublease, unless otherwise defined herein.

2. Termination of Sublease. Landlord and Triad hereby confirm that as of the Termination Date, the Sublease was terminated and cancelled, and all rights and obligations of Landlord and Empress Sublessee under the Sublease or with respect to the Demised Premises were extinguished.

3. Surrender of Demised Premises. Landlord agrees and acknowledges that Empress Sublessee LLC vacated and surrendered the Demised Premises as of the Termination Date in the same condition in which Empress Sublessee LLC received them, and that Empress Sublessee LLC has no further obligation to repair or compensate Landlord for any damages thereto. All unpaid rents accrued to the Termination Date under the Sublease, if any, are hereby deemed to have been fully paid with no further obligation on the part of Empress Sublessee LLC.

4. Tenant Improvements. Triad agrees and acknowledges that all right and title to any improvements to the Demised Premises undertaken by Empress Sublessee LLC, together with any personal property of Empress Sublessee LLC left on the Demised Premises as of the Termination Date, became the property of Landlord.

5. Release. Triad, on behalf of itself and as successor to Empress Sublessee LLC, hereby releases and forever discharges Landlord, its present and former partners, directors, officers, shareholders, managers, employees, agents, successors and assigns from any and all claims, demands, causes of action, damages, costs, expenses and suits of any nature whatsoever (including attorney fees) arising out of or relating to, directly or indirectly, the Sublease, the delivery and subsequent return of the Demised Premises, or the termination of the Sublease, and Landlord hereby releases and forever discharges Triad, on behalf of itself and as successor to Empress Sublessee LLC, and Triad's present and former partners, directors, officers, shareholders, managers, employees, agents, successors and assigns from any and all claims, demands, causes of action, damages, costs, expenses and suits of any nature whatsoever (including attorney fees) arising out of or relating to, directly or indirectly, the Sublease, the delivery and subsequent return of the Demised Premises, or the termination of the Sublease ("**Released Matters**"). In furtherance of this intention, Triad and Landlord expressly waive any and all rights that might be claimed by reason of fraudulent inducement and any and all rights under Section 1542 of the California Civil Code with respect to the Released Matters, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Triad and Landlord acknowledge and agree that this waiver is an essential and material term of this Agreement and without such waiver neither party would have been entered into this Agreement.

6. Agreement Controls. This Agreement supersedes and cancels any prior agreements and provisions in any other instrument relating thereto, including, but not limited to, those provisions (if any) contained in the Sublease. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Sublease, the terms and conditions of this Agreement shall control.

7. Cooperation. Landlord and Triad agree to promptly execute, acknowledge and deliver all such instruments and take all such action as Landlord may reasonably request in order to realize the intent of this Agreement, including the delivery of all certificates and other documentation required to evidence the termination of the Sublease and the Memorandum.

8. Amendment. This Agreement may be modified or amended only by a written instrument executed by all parties.

9. Binding on Successors. This Agreement constitutes the legal, valid and binding agreement among the parties and shall extend to, be binding upon and available to the heirs, executors, administrators, successors and the assigns of each of the respective parties hereto.

10. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

11. Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

12. Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

13. Severability. If any provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained

herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

14. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be an original, and all of which shall together constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Triad have caused this Confirmation of Sublease Termination to be duly executed as of the date first above written.

EMPRESS THEATRE MASTER TENANT, LLC, a California limited liability company

By: TRIAD COMMUNITIES, L.P., a California limited partnership

Its: Manager

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: Frederick W. Grimm

Name: Frederick W. Grimm

Title: manager

By: City of Vallejo, a municipal corporation

Its: Sole Member

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

TRIAD COMMUNITIES, L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: Frederick W. Grimm

Name: Frederick W. Grimm

Title: manager

SIGNATURES MUST BE NOTARIZED.

STATE OF WASHINGTON)
)ss.
COUNTY OF King)

On this 23rd day of November, 2020 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Frederick W. Grimm, to me known to be the manager of Triad Sky Valley, LLC that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.





Theresa T. Rivkin
Notary Public in and for the State of
Washington, residing at mountlake Terrace
My commission expires: 1/26/2021

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

THE NORTH 54 FEET OF THE EAST 4 FEET OF LOT 5 AND ALL OF LOT 6, EXCEPT THE SOUTH 76 FEET OF THE WEST 1 FOOT OF SAID LOT 6, ALL IN BLOCK 302 AS THE SAME ARE SHOWN ON THE OFFICIAL MAP OF THE CITY OF VALLEJO, MADE BY E.H. ROWE, C.E., AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA, ON SEPTEMBER 19, 1868, IN BOOK 1 OF MAPS, AT PAGE 123.

APN: 0056-162-090

Exhibit P

GRANT DEED

(Attached form of Grant Deed with Certificate of Acceptance.)

Exhibit P

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

APN 0056-162-090

Transfer is exempt from documentary transfer tax
pursuant to R&T Code Section 11922.

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Empress Theatre Associates, LLC, a California limited liability company ("**Grantor**") hereby grants and conveys to City of Vallejo, a municipal corporation ("**Grantee**"), the real property located at 330 Virginia Street, known as Solano County Assessor's Parcel No. 0056-162-090, and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Property**").

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of
_____, 20__.

GRANTOR:

Empress Theater Associates, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership

Its: Managing Member

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: Frederick W. Grimm

Name: Frederick W. Grimm

Title: Manager

STATE OF WASHINGTON)
)ss.
COUNTY OF King)

On this 23rd day of November, 2020 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Frederick W. Grimm, to me known to be the manager of Triad Sky Valley, LLC that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



Theresa T. Rivkin
Theresa T. Rivkin
Notary Public in and for the State of
Washington, residing at Mountlake Terrace
My commission expires: 1/26/2021

Exhibit A

LEGAL DESCRIPTION

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

THE NORTH 54 FEET OF THE EAST 4 FEET OF LOT 5 AND ALL OF LOT 6, EXCEPT THE SOUTH 76 FEET OF THE WEST 1 FOOT OF SAID LOT 6, ALL IN BLOCK 302 AS THE SAME ARE SHOWN ON THE OFFICIAL MAP OF THE CITY OF VALLEJO, MADE BY E.H. ROWE, C.E., AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, CALIFORNIA, ON SEPTEMBER 19, 1868, IN BOOK 1 OF MAPS, AT PAGE 123.

APN: 0056-162-090

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 20__, executed by Empress Theater Associates, LLC, a California limited liability company ("**Grantor**") to the City of Vallejo, a municipal corporation ("**Grantee**"), is hereby accepted on behalf of the Grantee by its _____ pursuant to authority conferred by Resolution No. _____, adopted by the governing board of the Grantee on _____, 20__, and that the Grantee consents to recordation of the Grant Deed by its duly authorized officer.

Dated _____, 20__

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

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

State of California)
) ss
County of Solano)

On _____, 2019, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

Exhibit H

LOAN SATISFACTION AGREEMENT (NOTES A AND B)
(Attached form of Loan Satisfaction Agreement – Notes A and B)

Exhibit H

LOAN SATISFACTION AGREEMENT

(Notes A and B)

This LOAN SATISFACTION AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2020, by and between EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company (“**Theater Landlord**”) and CITY OF VALLEJO, a municipal corporation (“**City**”). As used herein, the term “**Parties**” shall mean Theater Landlord and City, and individually each is referred to as a “**Party**.”

RECITALS

A. Theater Landlord and City are parties to that certain Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities, by and among the Theater Landlord, City, Empress Theatre Master Tenant, LLC, a California limited liability company (“**Master Tenant**”), Triad Communities, L.P., a California limited partnership (“**Triad**”) and Triad Sky Valley, LLC, a Washington limited liability company, dated as of the date hereof (the “**Master Agreement**”).

B. To finance the rehabilitation of the Empress Theatre, located at 330 Virginia Street in the City of Vallejo (the “**Property**”), Theater Landlord entered into that certain Loan Agreement with NDC New Markets Investments XXXIX, LLC, a Delaware limited liability company (the “**QLICI Lender**”), dated as of July 17, 2007 (the “**QLICI Loan Agreement**”), wherein QLICI Lender agreed to loan to Theater Landlord, and Theater Landlord agreed to borrow from QLICI Lender, the aggregate principal amount of Six Million Three Hundred Twenty-Five Thousand Nine Hundred Three and No/100 Dollars (\$6,325,903.00) (the “**QLICI Loan**”), as evidenced by those certain (i) Promissory Note A in the principal amount of \$3,000,000 (“**Note A**”); and (ii) Promissory Note B in the principal amount of \$3,325,903 (“**Note B**”), each dated as of July 17, 2007 (together, the “**QLICI Notes**”), copies of which, together with subsequently executed allonges, are attached hereto as Exhibit A.

C. In connection with the QLICI Loan and as security for the QLICI Notes, Theater Landlord entered into the following instruments (such instruments, together with the QLICI Notes and any other instruments related to the QLICI Loan, are collectively referred to herein as the “**QLICI Loan Documents**”):

- a. The QLICI Loan Agreement;
- b. Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note A), executed by Theater Landlord as trustor for the benefit of QLICI Lender, dated July 17, 2007, and recorded on August 7, 2007 in the records of Solano County, California under recording no. 200700086764 (“**Deed of Trust A**”);
- c. Deed of Trust, Assignment of Rents and Leases and Security Agreement (Note B) executed by Theater Landlord as trustor for the benefit of QLICI Lender, dated July 17, 2007, and recorded on August 7, 2007 in the

records of Solano County, California under recording no. 200700086765 (“**Deed of Trust B**”) (collectively, Deed of Trust A and Deed of Trust B are the “**Deeds of Trust**”);

- d. Reserve and Security Agreement, among the Theater Landlord and the QLICI Lender, dated July 17, 2007;

D. All of QLICI Lender’s rights, title to, and interest in the QLICI Loan and any and all documents evidencing the QLICI Loan, including, without limitation, the QLICI Notes, were transferred to Empress Investment Fund LLC, a Delaware limited liability company (“**Investment Fund**”) in 2014.

E. In 2014, Investment Fund assigned Note A and Deed of Trust A to the Successor Agency to the Redevelopment Agency of the City of Vallejo (“**Successor Agency**”). As a result of the subsequent dissolution of the Investment Fund and the transfer of its former assets by the Successor Agency to the City, the City is the sole member of the Master Tenant and the holder of the beneficial interests in Note A, Note B, Deed of Trust A, and Deed of Trust B.

F. Master Tenant owns a 49% non-managing member interest in Theater Landlord which will be assigned to City pursuant to that certain Assignment and Assumption Agreement (Master Tenant) dated as of the date hereof and executed by and between Master Tenant and City. Triad is the Managing Member of Theater Landlord and owns a 51% member interest in Theater Landlord.

G. The Parties desire to enter into this Agreement to implement the Master Agreement, and evidence the forgiveness in full of the QLICI Loan, the termination of the QLICI Loan Agreement, and the cancellation of the QLICI Notes in exchange for Theater Landlord’s conveyance of the Property to City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conveyance of Property to City. Theater Landlord will execute a Grant Deed conveying the Property to the City substantially in the form attached to the Master Agreement as Exhibit P (“**Grant Deed**”), and City will execute a Certificate of Acceptance in the form attached to the Grant Deed (“**Certificate of Acceptance**”). City will cause the Grant Deed and Certificate of Acceptance to be recorded in the Official Records.

2. Termination of Master Lease. Theatre Landlord and Master Tenant will execute the Termination of Master Lease substantially in the form attached to the Master Agreement as Exhibit L. City will cause the Termination of Master Lease to be recorded in the Official Records.

3. Full Satisfaction of the QLICI Loan. The Parties agree that upon recordation of the Grant Deed and the Termination of Master Lease, the QLICI Loan shall be forgiven in full, the QLICI Notes shall be cancelled, the Deeds of Trust shall be deemed satisfied, and the QLICI Loan Documents will be terminated. To implement the foregoing, City shall (a) mark each of Note A and Note B "cancelled," and return the same to Triad or deliver to Triad affidavits of lost notes and confirmation of their satisfaction, and (b) if applicable, prepare and file UCC-3 statements as necessary to terminate all UCC-1 Financing Statements filed as security for the QLICI Loan.

4. Reconveyance of Deeds of Trust. The Parties agree to cooperate to obtain from QLICI Lender or its successors such instruments as may be necessary to release and reconvey Deed of Trust A and Deed of Trust B. Triad agrees that it will reasonably cooperate with City in City's efforts to facilitate the release and reconveyance of Deed of Trust A and Deed of Trust B, or their removal from title to the Property.

5. Theater Landlord Deliverables. Theater Landlord shall execute and deliver to City such additional instruments and documentation reasonably necessary to complete the transactions contemplated herein.

6. Costs and Expenses. Each Party agrees to pay for its respective out-of-pocket legal fees and expenses incurred in connection with its review and preparation of any documents required to effectuate the transactions contemplated herein.

7. MISCELLANEOUS.

7.1 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

7.2 Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns.

7.3 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

7.4 Severability. If any provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

7.5 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or

establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

7.6 Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

7.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By signing this Agreement, each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party on whose behalf he or she is signing. This Agreement shall become effective upon the execution of a counterpart hereof by all Parties. A signature of a Party to this Agreement sent by facsimile, email, or other electronic transmission shall have the same force and effect as an original signature of such Party.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, this Loan Satisfaction Agreement (Notes A and B) has been duly executed and delivered by the duly authorized person of each Party as of the date first set forth above.

CITY:

CITY OF VALLEJO, a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

THEATER LANDLORD:

EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership
Its: Managing Member

By: Triad Sky Valley LLC, a Washington limited liability company
Its: General Partner

By: Frederick W. Gimon

Name: Frederick W. Gimon

Title: Manager

Exhibit K

MASTER TENANT ASSIGNMENT

(Attached form of Assignment and Assumption Agreement (Master Tenant).)

Exhibit K

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Master Tenant – Membership and Leasehold Interests)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”) is entered into as of _____, 2020, by and between by and between Empress Theatre Master Tenant, LLC, a California limited liability company (the “**Assignor**”) and the City of Vallejo, a municipal corporation (the “**Assignee**”).

RECITALS

A. Assignor and Assignee are parties to that certain Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities, by and among the Assignor, Assignee, Empress Theatre Associates, LLC, a California limited liability company (“**Theater Landlord**”), Triad Communities, L.P., a California limited partnership (“**Triad**”) and Triad Sky Valley, LLC, a Washington limited liability company dated as of the date hereof (the “**Master Agreement**”), and desire to transfer certain assets to effectuate the orderly dissolution of certain corporate entities.

B. The operation of Theater Landlord is governed by that certain Empress Theatre Associates, LLC – Amended and Restated Operating Agreement dated as of July 17, 2007 (“**Landlord Operating Agreement**”). Assignor currently holds a 49% interest in Theater Landlord as a non-managing member with certain rights commensurate with its interest as set forth in the Landlord Operating Agreement. Triad holds a 51% interest in Theater Landlord and is the Managing Member of Theater Landlord.

C. Assignee is the present holder of a 100% interest in Assignor.

D. Assignor wishes to assign to Assignee (a) Assignor’s interest as tenant under that certain Lease dated as of June 28, 2007 by and between Theater Landlord as landlord and Master Tenant as tenant relating to the property commonly known as the Empress Theatre, and located at 330 Virginia Street in the City of Vallejo (the “**Lease**”), and (b) Assignor’s 49% membership interest in Theater Landlord, and Assignee wishes to accept such assignment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Assignment of Membership Interest in Theater Landlord. Assignor hereby transfers, conveys, and assigns to Assignee Assignor’s 49% membership interest in Theater Landlord and all right and obligations of Assignor under the Landlord Operating Agreement, free and clear of all encumbrances, and Assignee hereby accepts such assignment and conveyance. As of the date hereof, Assignor relinquishes all of its rights under the Landlord Operating Agreement, withdraws as a member of Theater Landlord, grants to Assignee the right to be admitted to Theater Landlord as a substitute member thereof, and acknowledges that it is not a necessary party to any amendment to the Landlord Operating Agreement to reflect its withdrawal as a member of Theater Landlord.

2. Assignment of Interest Under the Lease. Effective as of the date hereof, Assignor hereby assigns to Assignee, all of Assignor's right, title, interest, and obligations as tenant under the Lease, and Assignee hereby assumes all such rights, title, interests, and obligations.

3. Conveyance of Membership Interest in Master Tenant. In exchange for Assignor's assignment to Assignee of Assignor's membership interest in Theater Landlord and Assignor's interest under the Lease, Assignee agrees to assign and relinquish to Assignor, Assignee's 100% membership interest in Assignor, and Assignee agrees to execute and deliver all instruments necessary to implement such assignment and relinquishment.

4. Further Assurances. At any time and from time to time after the date hereof, Assignor and Assignee shall execute and deliver such other instruments of transfer, conveyance, assignment and confirmation and take such other action as either party may reasonably request as necessary or desirable in order to implement the intent of this Agreement.

5. Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

6. Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns.

7. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of California without regard to conflict of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

8. Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

9. Severability. If any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall the same affect the validity or enforceability of any other provision of this Agreement.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed and delivered by their respective duly authorized persons as of the date first written above.

ASSIGNOR:

Empress Theatre Master Tenant, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership
Its: Manager

By: Triad Sky Valley LLC,
a Washington limited liability company
Its: General Partner

By: Frederick W. Grimm
Name: Frederick W. Grimm
Title: Manager

By: City of Vallejo
Its: Sole Member

By: _____
Name: _____
Title: _____

Approved as to form:

City Attorney

ASSIGNEE:

City of Vallejo, a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form:

City Attorney

Exhibit J

MASTER TENANT PLAN OF DISSOLUTION
(Attached form of Master Tenant Plan of Dissolution.)

Exhibit J

PLAN OF DISSOLUTION AND LIQUIDATION
(Empress Theatre Master Tenant, LLC)

This Plan of Dissolution and Liquidation (the "**Plan**") dated as of _____, 2020, is entered into by TRIAD COMMUNITIES, L.P., a California limited partnership (the "**Manager**"), in its capacity as the Manager of EMPRESS THEATRE MASTER TENANT, LLC, a California limited liability company (the "**Company**"), and the CITY OF VALLEJO, a California municipal corporation (the "**City**"), in its capacity as the sole Member of the Company, for the purpose of effecting the complete dissolution and liquidation of the Company in accordance with the laws of the State of California. Capitalized terms used and not defined herein shall have the meanings given to them in the Operating Agreement (defined below).

WHEREAS, the Company was formed as of June 26, 2007 by the filing of the Company's Articles of Organization with the California Secretary of State and is operated pursuant to that certain Amended and Restated Operating Agreement, dated as of July 17, 2007 (the "**Operating Agreement**"); and

WHEREAS, the Manager and the sole Member have determined that it is in the best interest of the Company to complete the liquidation and dissolution of the Company pursuant to the adoption of this Plan.

NOW THEREFORE, the Manager and the City as the sole Member, in furtherance of the liquidation and dissolution of the Company, adopt and approve this Plan, and agree as follows:

1. Effective as of the date hereof, the Manager and the sole Member consent to, and the Company is hereby dissolved without any further action by or on behalf of the Company. Except for the purpose of winding up and liquidating the business of the Company, no Member shall transact any further business nor incur any further obligations on behalf of the Company after the date hereof.

2. To effectuate the orderly liquidation of the Company, the Company and the City shall execute an Assignment and Assumption Agreement pursuant to which, in exchange for the City's assignment/relinquishment to Company of City's 100% membership interest in the Company, the Company shall assign its assets to the City, consisting of (a) Company's 49% membership interest in Empress Theatre Associates, LLC, a California limited liability company, and (b) Company's interest as tenant under that certain Master Lease Agreement dated as of June 28, 2007 and evidenced by a Memorandum of Lease dated June 28, 2007 and recorded in the official records of Solano County, California, on August 7, 2007 under recording number 200700086761, by and between Empress Theatre Associates, LLC as landlord and Company as tenant relating to the property commonly known as the Empress Theatre, located at 330 Virginia Street in the City of Vallejo.

3. Thereafter, the Manager shall act as Liquidator and take all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company. The Liquidator shall sell all of the remaining assets of the Company, if any, and shall apply the funds of the Company to the payment of any fees, expenses or taxes resulting from the sale of the assets of the Company, and the winding up, liquidation and termination of the Company.

4. The net proceeds of the liquidation shall be distributed in the following manner and in the following order and priority:

(a) first, to creditors to pay or make provision to pay the debts and liabilities of the Company (excluding debts and liabilities to Members and Affiliates);

(b) second, to the setting up of any reserves (to be held by the Liquidator in an interest-bearing account) which the Liquidator may deem necessary or appropriate for any contingent or unforeseen liabilities or obligations of the company; and upon expiration of such period that the Liquidator deems necessary or appropriate, the reserve balances remaining after payment of any such liabilities or obligations shall be distributed by the Liquidator in the manner below; and

(c) third, to satisfy debts and liabilities owed to Members, or their successors-in-interest, based on their respective Capital Account balances, in accordance with Section 12.2(b) of the Operating Agreement.

5. The Manager hereby acknowledges and agrees that, as of the date of dissolution:

(a) there are no claims, obligations, including any contingent, conditional or unmatured contractual claims, known to the Company;

(b) there are no pending actions, suits, or proceedings to which the Company is a party; and

(c) there are no claims, based on facts known to the Company, that are likely to arise or to become known to the Company within ten (10) years from the date hereof that would require payment or provision for payment, for which payment or provision for payment has not been made.

6. The Manager shall file all certificates and notices of the dissolution of the Company required by law. Upon the complete liquidation and distribution of the Company assets, the Members shall cease to be Members of the Company, and the Manager shall execute, acknowledge and cause to be timely filed all certificates and notices required by law to terminate the Company, including the filing of a Certificate of Cancellation with the Secretary of State of the State of California.

7. Upon the dissolution of the Company, the Accountants for the Company shall promptly prepare, and the Manager shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Manager shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

8. The Manager shall take, or cause the Company to take, such other acts and deeds and shall do, or cause the Company to do, such other things, as are necessary or appropriate in connection with the dissolution, winding up and liquidation of the Company, the termination of

the responsibilities and liabilities of the Company under applicable law, and the termination of the existence of the Company.

9. This Plan may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Manager and the City, as sole Member, have made and executed this Plan of Dissolution and Liquidation (Empress Theatre Master Tenant, LLC) as of the date first written above.

MANAGER:

Triad Communities, L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: Frederick W. Grimm

Name: Frederick W. Grimm

Title: Manager

CITY:

City of Vallejo, a California municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

Exhibit L

TERMINATION OF MASTER LEASE
(Attached form of Termination of Lease.)

Exhibit L

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

APN 0056-162-090

TERMINATION OF LEASE

This TERMINATION OF LEASE ("***Termination***"), dated as of _____, 2020, is executed by and between Empress Theatre Associates, LLC, a California limited liability company ("***Landlord***") and the City of Vallejo, a municipal corporation ("***Tenant***").

RECITALS

A. Landlord and Empress Theatre Master Tenant, LLC, a California limited liability company ("***Original Tenant***") executed that certain Master Lease Agreement dated as of June 28, 2007 ("***Lease***"), concerning certain real property legally described on Exhibit A, attached hereto and incorporated herein by reference.

B. The Lease is evidenced by that certain Memorandum of Lease dated June 28, 2007 and recorded in the official records of Solano County, California, on August 7, 2007 under recording number 200700086761.

C. Pursuant to that certain unrecorded Assignment and Assumption Agreement (Master Tenant) dated as of the date hereof, Original Tenant assigned its interest as tenant under the Lease to Tenant.

D. Landlord and Tenant, having terminated the Lease, desire to execute this Termination to evidence such termination of the Lease.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Termination. The Lease has been duly terminated by Landlord and Tenant.
2. Recordation of Termination. Landlord or Tenant may record this Termination in the official records of Solano County, California, to memorialize such termination of the Lease.

3. Counterparts. This instrument may be executed in multiple counterparts each of which shall be an original, and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Termination of Lease as of the date first above written.

LANDLORD:

Empress Theatre Associates, LLC, a California limited liability company

By: Triad Communities, L.P., a California limited partnership

Its: Managing Member

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: Frederick W. Grimm

Name: Frederick W. Grimm

Title: Manager

TENANT:

City of Vallejo, a municipal corporation

By: _____

Name: _____

Title: _____

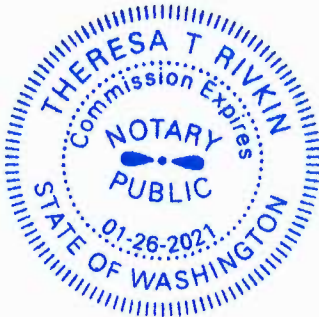
Approved as to form: _____
City Attorney

SIGNATURES MUST BE NOTARIZED.

STATE OF WASHINGTON)
)ss.
COUNTY OF King)

On this 23rd day of November, 2020 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Frederick W. Grimm, to me known to be the manager of Triad Sky Valley, LLC that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



Theresa T. Rivkin
Theresa T. Rivkin
Notary Public in and for the State of
Washington, residing at Mountain Terrace
My commission expires: 1/26/2021

ACKNOWLEDGMENT

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

State of California)
) ss
County of Solano)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

Exhibit N

THEATER LANDLORD PLAN OF DISSOLUTION
(Attached form of Theater Landlord Plan of Dissolution.)

Exhibit N

PLAN OF DISSOLUTION AND LIQUIDATION
(Empress Theatre Associates, LLC)

This Plan of Dissolution and Liquidation (the "**Plan**") dated as of _____, 2020, is entered into by Triad Communities, L.P., a California limited partnership (the "**Managing Member**") and CITY OF VALLEJO, a municipal corporation ("**City**") for the purpose of effecting the complete dissolution and liquidation of EMPRESS THEATRE ASSOCIATES, LLC, a California limited liability company (the "**Company**") in accordance with the laws of the State of California. Capitalized terms used and not defined herein shall have the meanings given to them in the Operating Agreement (defined below).

WHEREAS, the Company was formed as of February 18, 2004 by the filing of the Company's Articles of Organization with the California Secretary of State, and is operated pursuant to that certain Amended and Restated Operating Agreement by and between the Members, dated as of July 17, 2007 ("**Operating Agreement**"); and

WHEREAS, the Managing Member owns a 51% interest in the Company, and pursuant to that certain Assignment and Assumption Agreement dated as of the date hereof and executed by and between City and Empress Theatre Master Tenant, LLC, a California limited liability company ("**Master Tenant**"), City owns a 49% interest in the Company, and collectively, the Managing Member and the City are the only Members of the Company; and

WHEREAS, the Members have determined that it is in the best interest of the Company to complete the liquidation and dissolution of the Company pursuant to the adoption of this Plan.

NOW THEREFORE, the Members, in furtherance of the liquidation and dissolution of the Company, adopt and approve this Plan, and agree as follows:

1. Effective as of the date hereof, the Members consent to, and the Company is hereby dissolved without any further action by or on behalf of the Company. Except for the purpose of winding up and liquidating the business of the Company, no Member shall transact any further business nor incur any further obligations on behalf of the Company after the date hereof.

2. To effectuate the orderly liquidation of the Company, the Company and the City shall execute and implement a Loan Satisfaction Agreement pursuant to which: (i) the Company shall convey by grant deed to City the property commonly known as the Empress Theatre, located at 330 Virginia Street in the City of Vallejo (the "**Property**"), (ii) the Company and Master Tenant shall execute a Termination of Lease Agreement evidencing the termination of that certain Master Lease Agreement dated as of June 28, 2007, and evidenced by a Memorandum of Lease dated June 28, 2007 and recorded in the official records of Solano County, California, on August 7, 2007 under recording number 200700086761, and (iii) the City, as the present holder of the beneficial interests thereunder, shall cancel the Company's indebtedness under that certain Promissory Note A in the principal amount of \$3,000,000 ("**Note A**") and that certain Promissory Note B in the principal amount of \$3,325,903 ("**Note B**"), each originally executed for the benefit of NDC New Markets Investments XXXIX, LLC, a Delaware limited liability company.

3. Thereafter, the Managing Member shall act as Liquidating Manager and take all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company. The Managing Member as liquidator for the Company shall sell all of the assets of the Company, if any, and shall apply the funds of the Company to the payment of any fees, expenses or taxes resulting from the sale of the assets of the Company, and the winding up, liquidation and termination of the Company.

4. The net proceeds of the liquidation shall be distributed in the following manner and in the following order and priority:

(a) first, to creditors to pay or make provision to pay the debts and obligations of the Company (excluding any loans made by a Member or an Affiliate of a Member) and the expenses of winding up of the affairs and business of the Company;

(b) second, to the setting up of any reserves (to be held by the Liquidation Manager in an interest-bearing account) which the Liquidation Manager may deem necessary or appropriate for any contingent or unforeseen liabilities or obligations of the company; and upon expiration of such period that the Liquidation Manager deems necessary or appropriate, the reserve balances remaining after payment of any such liabilities or obligations shall be distributed by the Liquidation Manager in the manner below;

(c) third, to satisfy debts and liabilities owed to Members and their Affiliates described in section 4.2 of the Operating Agreement and in accordance with the priority set forth therein;

(d) fourth, to be distributed in compliance with section 1.704-1(b)(2)(ii)(b)(2) of the Regulations to the Members in accordance with their positive Capital Account balances, after giving effect to all contributions, distributions and allocations for all periods.

5. The Managing Member hereby acknowledges and agrees that, as of the date of dissolution:

(a) there are no claims, obligations, including any contingent, conditional or unmatured contractual claims, known to the Company;

(b) there are no pending actions, suits, or proceedings to which the Company is a party; and

(c) there are no claims, based on facts known to the Company, that are likely to arise or to become known to the Company within ten (10) years from the date hereof that would require payment or provision for payment, for which payment or provision for payment has not been made.

6. The Managing Member shall file all certificates and notices of the dissolution of the Company required by law. Upon the complete liquidation and distribution of the Company assets, the Members shall cease to be Members of the Company, and the Managing Member shall execute, acknowledge and cause to be timely filed all certificates and notices required by

law to terminate the Company, including the filing of a Certificate of Cancellation with the Secretary of State of the State of California.

7. Upon the dissolution of the Company, the Accountants for the Company shall promptly prepare, and the Liquidation Manager shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Liquidation Manager shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

8. The Managing Member shall take, or cause the Company to take, such other acts and deeds and shall do, or cause the Company to do, such other things, as are necessary or appropriate in connection with the dissolution, winding up and liquidation of the Company, the termination of the responsibilities and liabilities of the Company under applicable law, and the termination of the existence of the Company.

9. This Plan may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Managing Member and City have made and executed this Plan of Dissolution and Liquidation (Empress Theatre Associates, LLC) as of the date first written above.

MANAGING MEMBER:

Triad Communities, L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: Frederick W. Grimm
Name: Frederick W. Grimm
Title: manager

CITY:

City of Vallejo, a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form:

City Attorney

Exhibit G

TRIAD LOAN SATISFACTION AGREEMENT
(Attached form of Triad Loan Satisfaction Agreement.)

Exhibit G

LOAN SATISFACTION AGREEMENT

(Triad)

This LOAN SATISFACTION AGREEMENT (this "**Agreement**") is made and entered into as of _____, 2020, by and between TRIAD COMMUNITIES L.P., a California limited partnership ("**Triad**") and the City of Vallejo, a municipal corporation ("**City**"). As used herein, the term "**Parties**" shall mean Triad and City, and individually each is referred to as a "**Party**."

RECITALS

A. Empress Investment Fund, LLC, a Delaware limited liability company ("**Investment Fund**") and Triad entered into that certain Loan Agreement, dated as of July 17, 2007 (the "**Triad Loan Agreement**"), wherein Triad agreed to loan to Investment Fund, and Investment Fund agreed to borrow from Triad, the aggregate principal amount of Forty-Two Thousand, Five Hundred Dollars (\$42,500) (the "**Triad Loan**"), as evidenced by that certain Promissory Note in the principal amount of the Triad Loan (the "**Triad Note**"), a copy of which is attached hereto as Exhibit A.

B. In connection with the Triad Loan and as security for the Triad Note, Investment Fund and Triad entered into that certain Fund Pledge Agreement dated July 17, 2007 (the "**Triad Pledge Agreement**"). The Triad Loan Agreement, the Triad Note, the Triad Pledge Agreement and all other instruments related to the Triad Loan, are collectively referred to herein as the "**Triad Loan Documents**").

C. The Parties desire to enter into this Agreement to evidence the forgiveness in full of the Triad Loan, the termination of the Triad Loan Agreement, the termination of the Triad Pledge Agreement, and the cancellation of the Triad Note.

D. This Agreement is executed pursuant to Section 4.2 of that certain Agreement Regarding Transfer of Limited Liability Company Assets and Dissolution of Related Corporate Entities dated as of the date hereof, by and among City, Triad, and certain other parties (the "**Master Agreement**").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Full Satisfaction of the Triad Loan. The Parties agree that the Triad Loan shall be forgiven in full, the Triad Note shall be cancelled, and the Triad Loan Documents shall be terminated. To effectuate the foregoing, Triad shall (a) deliver the Triad Note to City pursuant to Section 4(a) of this Agreement, and (b) prepare and file all documents necessary to terminate any UCC-1 Financing Statements filed as security for the Triad Loan.

2. Confirmation No Payments Due Under Reserve Agreement. Triad represents, warrants, and agrees that no payments are payable pursuant to the Reserve and Security Agreement (as defined in the Master Agreement) by or to any party, and that no reserves deposited pursuant to such agreement remain unspent.

3. Confirmation No Payments Due Under Triad Advances. Triad represents, warrants, and agrees that (i) all Triad Advances (as defined in the Master Agreement) have been written off or settled, (ii) no payments are payable pursuant to the Triad Advances by any party. Triad agrees to execute, acknowledge, and if applicable, record or file all such instruments necessary to evidence that no such payments are due or payable.

4. Triad Deliverables. On the date hereof, Triad shall deliver the following to City:

(a) the Triad Note marked "CANCELLED" on its face, or an affidavit of lost note and confirmation of its satisfaction; and

(b) any other documentation reasonably necessary to complete the transactions contemplated herein.

5. City Deliverables. On the date hereof, City shall deliver to Triad any other documentation reasonably necessary to complete the transactions contemplated herein.

6. Costs and Expenses. Each Party agrees to pay for its respective out-of-pocket legal fees and expenses incurred in connection with its review and preparation of any documents required to effectuate the transactions contemplated herein.

7. Miscellaneous.

7.1 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

7.2 Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns.

7.3 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Solano County, California or in the Federal District Court for the Northern District of California.

7.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

7.5 Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

7.6 Severability. If any provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

7.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By signing this Agreement, each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party on whose behalf he or she is signing.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, this Loan Satisfaction Agreement (Triad) has been duly executed and delivered by the duly authorized person of each Party as of the date first set forth above.

CITY:

City of Vallejo, a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

City Attorney

TRIAD:

TRIAD COMMUNITIES L.P., a California limited partnership

By: Triad Sky Valley LLC, a Washington limited liability company

Its: General Partner

By: Frederick W. Grimm

Name: Frederick W. Grimm

Title: Manager