AGENDA

VALLEJO CITY COUNCIL
VALLEJO REDEVELOPMENT AGENCY
FEBRUARY 27, 2007

VALLEJO SANITATION & FLOOD CONTROL DISTRICT
6:00 P.M.

City Hall
555 Santa Clara Street
Vallejo, CA 94590

MAYOR
Anthony Intintoli, Jr.

CITY COUNCIL
Gary Cloutier, Vice Mayor
Gerald Davis
Tony Pearsall
Tom Bartee
Hermie Sunga
Stephanie Gomes

This AGENDA contains a brief general description of each item to be considered. The posting of the recommended actions does not indicate what action may be taken. If comments come to the City Council without prior notice and are not listed on the AGENDA, no specific answers or response should be expected at this meeting per State law.

Those wishing to address the Council on any matter for which another opportunity to speak is not provided on the AGENDA but which is within the jurisdiction of the Council to resolve may come forward to the podium during the "COMMUNITY FORUM" portion of the AGENDA. Those wishing to speak on a "PUBLIC HEARING" matter will be called forward at the appropriate time during the public hearing consideration.

Copies of written documentation relating to each item of business on the AGENDA are on file in the Office of the City Clerk and are available for public inspection. Information may be obtained by calling (707) 648-4527, TDD (707) 649-3562, or at our web site: http://www.ci.vallejo.ca.us/

Vallejo City Council Chambers is ADA compliant. Devices for the hearing impaired are available from the City Clerk. Requests for disability related modifications or accommodations, aids or services may be made by a person with a disability to the City Clerk's office no less than 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act of 1990 and the federal rules and regulations adopted in implementation thereof.

ITEM **ACTION**

NOTICE: Members of the public shall have the opportunity to address the City Council concerning any item listed on the notice before or during consideration of that item. No other items may be discussed at this special meeting.

VALLEJO CITY COUNCIL
SPECIAL MEETING/CLOSED SESSION
5:00 P.M. CITY COUNCIL CONFERENCE ROOM

A. CONFERENCE WITH LEGAL COUNSEL: Anticipated Litigation: Significant Exposure to Litigation, Pursuant to Government Code Section 54956.9(b); Number of Potential Cases: One (1)

VALLEJO CITY COUNCIL
SPECIAL MEETING
6:30 P.M. CITY COUNCIL CONFERENCE ROOM

A. INTERVIEWS FOR HOUSING AND REDEVELOPMENT COMMISSION

REGULAR MEETING
7:00 P.M. CITY COUNCIL CHAMBERS

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PRESENTATIONS AND COMENDATIONS – NONE

5. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS

Members of the public wishing to address the Council on Consent Calendar Items are requested to submit a completed speaker card to the City Clerk. 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.

6. CONSENT CALENDAR AND APPROVAL OF AGENDA

All matters are approved under one motion unless requested to be removed for discussion by a Councilmember, City Manager, or member of the public subject to a majority vote of the Council.

A. APPROVAL OF MINUTES FOR THE MEETINGS OF FEBRUARY 7, 2006 and FEBRUARY 6, 2007

B. APPROVAL OF A RESOLUTION TO AMEND THE FISCAL YEAR (FY) 2006/2007 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM BUDGET

PROPOSED ACTION: Adopt the resolution amending the Fiscal Year (FY) 2006/2007 Federal Community Development Block Grant (CDBG) Program Budget, allocating additional funds to the Reynaissance Family Center Project, and delaying consideration of the Benson Avenue Project not later than April 30, 2007.

C. CONSIDERATION OF A RESOLUTION APPROVING THE STREET NAME CHANGE FOR A PORTION OF KENTUCKY STREET BETWEEN TUOLUMNE STREET AND SOLANO AVENUE TO LEE V. ELLENBURG STREET

PROPOSED ACTION: Staff recommends adoption of a resolution approving street name change for a portion of Kentucky Street between Tuolumne Street and Solano Avenue to Lee V. Ellenburg Street.

D. APPROVAL OF A RESOLUTION ESTABLISHING THE ANNUAL SIDEWALK REPAIR POLICY AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ACCESS CAPITAL SERVICES, INC. FOR THE PROCESSING OF INVOICES

PROPOSED ACTION: Adopt a resolution approving the Annual Sidewalk Repair Policy and authorizing the City Manager or his designee to execute an agreement

with Access Capital Services, Inc. to handle the processing of invoices to property owners that have been assessed their share of the cost to repair hazardous sidewalk abutting their property.

E. APPROVAL OF A RESOLUTION OF SUPPORT FOR THE SAN FRANCISCO BAY TRAIL AND BAY AREA RIDGE TRAIL FEASIBILITY STUDY TO IDENTIFY AND RECOMMEND A PREFERRED TRAIL ALIGNMENT

PROPOSED ACTION: Staff recommends that the City Council approve the attached resolution of support for the San Francisco Bay Trail and Bay Area Ridge Trail feasibility study to identify and recommend a preferred trail alignment.

F. APPROVAL OF A RESOLUTION OF SUPPORT FOR ASSEMBLY BILL 112, HIGHWAY SAFETY ENHANCEMENT – DOUBLE FINE ZONE ON STATE ROUTE 12

PROPOSED ACTION: Staff recommends support of proposed legislation AB 112 to re-establish a double fine zone for Highway 12 between its intersection with Interstate 80 in Solano County and Interstate 5 in San Joaquin County as a ''Safety Enhancement-Double Fine Zone'' between 2007 and 2012.

G. APPROVAL OF RESOLUTION ADOPTING THE CITY'S STATEMENT OF INVESTMENT POLICY PURSUANT TO STATE OF CALIFORNIA GOVERNMENT CODE SECTION 53646 AND DELEGATION OF INVESTMENT AUTHORITY TO CITY FINANCE DIRECTOR/TREASURER.

PROPOSED ACTION: Adopt a Resolution of the City Council of the City of Vallejo approving the revised Statement of Investment Policy, and continue delegation of investment authority to the City Finance Director/Treasurer for the period March 1, 2007, through February 28, 2008.

7. PUBLIC HEARINGS

A. CONSIDERATION OF RESOLUTIONS ADOPTING 1) AN ADDENDUM TO THE VALLEJO STATION PROJECT AND WATERFRONT PROJECT FINAL ENVIRONMENTAL IMPACT REPORT, 2) AN ORDINANCE AMENDING THE WATERFRONT PLANNED DEVELOPMENT MASTER PLAN AND DESIGN GUIDELINES, AND 3) AN AMENDMENT TO THE DEVELOPMENT AGREEMENT TO IMPLEMENT THE REQUIREMENTS OF THE SETTLEMENT AGREEMENT WITH THE VALLEJO WATERFRONT COALITION. (CONTINUED FROM MEETING OF FEBRUARY 13, 2007)

The Final EIR for the Vallejo Station and Waterfront projects was certified by the City Council in November of 2005. The Vallejo Waterfront Coalition subsequently filed a lawsuit challenging the EIR. After almost a year of negotiation, the Coalition, Callahan DeSilva Vallejo, LLC, and the City reached an agreement to settle the lawsuit contingent upon several modifications to the project Planned Development Master Plan (PDMP) and Development agreement (DA). The Settlement Agreement was approved by the City Council on November 28, 2006. Although the overall scope of the project, land use pattern, and general design of the project is not proposed to be changed, the terms of the Settlement Agreement require several modifications to the Planned Development Master Plan and the Development Agreement.

PROPOSED ACTION:

1. Adopt a resolution approving the Addendum to the Vallejo Station Project and Waterfront Project Final EIR.
2. Adopt a resolution holding on first reading an ordinance amending the Waterfront Planned Development Master Plan (PD #00-0022)
3. Adopt a resolution holding on first reading an ordinance amending Development Agreement (DA #05-0008)

B. CONSIDERATION OF A RESOLUTION HOLDING ON FIRST READING AN ORDINANCE AMENDING TITLE 16 OF THE VALLEJO MUNICIPAL CODE RELATED TO THE CREATION OF THE DESIGN REVIEW BOARD AND THE IMPLEMENTATION OF THE DOWNTOWN SPECIFIC PLAN AND DESIGN GUIDELINES AND THE WATERFRONT MASTER PLAN

The newly created Design Review Board (DRB) will utilize the existing Planned Development Unit Plan process to review development in the Downtown and Waterfront areas. These additions to the ordinance language integrate the DRB, created in Title 2, with the unit plan process which is found in Title 16 of the Vallejo Municipal Code.

PROPOSED ACTION: Adopt a resolution holding on first reading an ordinance amending several chapters of Title 16 of the Vallejo Municipal Code related to the establishment for the DRB and the implementation of the Downtown Specific Plan and Design Guidelines and the Waterfront Planned Development Master Plan.

8. POLICY ITEMS – NONE

9. ADJOURN TO A SPECIAL JOINT MEETING WITH THE VALLEJO REDEVELOPMENT AGENCY AND THE VALLEJO CITY COUNCIL

10. RECONVENE THE CITY COUNCIL MEETING

11. ADMINISTRATIVE ITEMS

A. CONSIDERATION OF RESOLUTION HOLDING ON FIRST READING ORDINANCE AMENDING MUNICIPAL CODE REGARDING REAL ESTATE ASSET MANAGEMENT AND RESOLUTION REGARDING ADOPTION OF CITY OF VALLEJO REAL PROPERTY ASSET MANAGEMENT POLICY

The purpose of the Real Property Asset Management Policy is to define the process by which the City of Vallejo will manage real property assets, including interests owned and/or controlled by the City. The Real Property Asset Management Policy applies to all real estate assets owned and/or controlled by the City of Vallejo, including but not limited to, City owned and occupied structures, owned properties licensed or leased to third parties (tenants) and vacant parcels. An amendment to the section of the Vallejo Municipal Code that deals with real estate transactions will update the Municipal Code to conform to the Real Property Asset Management Policy.

PROPOSED ACTION: Adopt the resolution holding on first reading an ordinance adding Section 3.20.260 to the Vallejo Municipal Code and adoption of the Real Property Asset Management Policy dated February 27, 2007.

B. CONSIDERATION OF MARE ISLAND EARLY TRANSFER PROCESSING AGREEMENT BETWEEN THE CITY AND WESTON SOLUTIONS

A proposed Early Transfer Processing Agreement has been developed between the City of Vallejo and Weston Solutions regarding the transfer of the remaining Navy-owned land on Mare Island. The agreement addresses the timing and obligations of both parties regarding the transfer of all remaining parcels.

PROPOSED ACTION: Approve the attached resolution authorizing the City Manager to execute an Early Transfer Processing Agreement between the City of Vallejo and Weston Solutions.

12. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

A. APPOINT MEMBERS TO THE HOUSING & REDEVELOPMENT COMMISSION

Applicants for the Housing & Redevelopment Commission were interviewed earlier this evening.

PROPOSED ACTION: Adopt a resolution appointing members to the Housing & Redevelopment Commission.

13. WRITTEN COMMUNICATIONS

Correspondence addressed to the City Council or a majority thereof, and not added to the agenda by the Mayor or a Council member in the manner prescribed in Government Code, Section 54954.2, will be filed unless referred to the City Manager for a response. Such correspondence is available for public inspection at the City Clerk's office during regular business hours.

14. CITY MANAGER'S REPORT

15. CITY ATTORNEY'S REPORT

16. COMMUNITY FORUM

Anyone wishing to address the Council on any matter for which another opportunity to speak is not provided on the agenda, and which is within the jurisdiction of the Council to resolve, is requested to submit a completed speaker card to the City Clerk. When called upon, each speaker should step to the podium, state his /her name, and address for the record. Each speaker is limited to three minutes pursuant to Vallejo Municipal Code Section 2.20.300.

17. REPORT OF THE PRESIDING OFFICER AND MEMBERS OF THE CITY COUNCIL

18. CLOSED SESSION: *May recess to consider matters of pending litigation (GC 54956.9), personnel (GC 54957), labor relations (GC 54957.6), and real property negotiations (GC 54956.8). Records are not available for public inspection.*

19. ADJOURNMENT

JOINT SPECIAL MEETING OF THE
VALLEJO REDEVELOPMENT AGENCY AND
THE VALLEJO CITY COUNCIL
7:00 P.M. – CITY COUNCIL CHAMBERS

NOTICE: Members of the public shall have the opportunity to address the City Council concerning any item listed on the notice before or during consideration of that item. No other items may be discussed at this special meeting.

1. CALL TO ORDER

A. ROLL CALL

2. CONSENT CALENDAR

A. APPROVAL OF RESOLUTION ADOPTING THE REDEVELOPMENT AGENCY'S STATEMENT OF INVESTMENT POLICY PURSUANT TO STATE OF CALIFORNIA GOVERNMENT CODE SECTION 53646 AND DELEGATION OF INVESTMENT AUTHORITY TO CITY FINANCE DIRECTOR/TREASURER.

PROPOSED ACTION: Adopt a Resolution of the Redevelopment Agency of the City of Vallejo approving the revised Statement of Investment Policy, and continue delegation of investment authority to the City Finance Director/Treasurer for the period March 1, 2007, through February 28, 2008.

3. PUBLIC HEARINGS (CITY COUNCIL AND REDEVELOPMENT AGENCY)

A. CONSIDERATION OF AN AMENDED AND RESTATED (THIRD) DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO AND CALLAHAN DESILVA VALLEJO, LLC

On October 17, 2000 the Redevelopment Agency of the City of Vallejo (Agency) entered into a Disposition and Development Agreement (DDA) with Callahan/DeSilva Vallejo, LLC (Developer) for the acquisition, disposition and development of certain public and private parcels located within the boundaries of the Marina Vista Redevelopment Project Area, the Vallejo Central Project Area and the Vallejo Waterfront Redevelopment Project Area. The original DDA was amended four times, most recently as of October 27, 2005.

In December 2005 the Vallejo Waterfront Coalition filed an action challenging certain aspects of the Project. The Agency, City, Developer and the Vallejo Waterfront Coalition entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 to resolve the action. The Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made over the last year, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement.

PROPOSED ACTION: Adopt the following attached resolutions:

1) A Resolution of the Redevelopment Agency of the City of Vallejo authorizing the execution of an Amended and Restated (Third) Disposition and Development Agreement between the Redevelopment Agency of the City of Vallejo and Callahan/DeSilva Vallejo, LLC; and
2) A Resolution of the City of Vallejo authorizing the execution of an Amended and Restated (Third) Disposition and Development Agreement between the Redevelopment Agency of the City of Vallejo and Callahan/DeSilva Vallejo, LLC.

4. ADJOURNMENT

VALLEJO CITY COUNCIL

MINUTES

CONSENT A

FEBRUARY 7, 2006

The City Council met in special meeting to interview applicants for the Economic Development Commission, the Housing and Redevelopment Commission and the Greater Vallejo Recreation District. The meeting was called to order at 5:00 p.m. by Mayor Anthony J. Intintoli, Jr. All Councilmembers were present.

1. CALL TO ORDER

A regular meeting of the Vallejo City Council was held on the above date in the Council Chambers of the Vallejo City Hall. The meeting was called to order at 7:00 p.m. by Mayor Anthony J. Intintoli, Jr.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Present: Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier , Davis, Bartee, Gomes, Sunga.

Absent: None

Staff: Interim City Manager John P. Thompson
City Attorney Fred Soley
City Clerk Allison Villarante

4. PRESENTATIONS AND COMMENDATIONS – None

5. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS

6. CONSENT CALENDAR AND APPROVAL OF AGENDA

Hearing no additions or deletions, the agenda was approved and the following resolutions were offered by Vice Mayor Pearsall:

RESOLUTION NO.06-32 N.C., FOR THE PAYMENT OF CLAIMS

RESOLUTION NO.06-33 N.C., RATIFY AND APPROVE THE CIVIL SERVICE COMMISSION'S ACTION TO AMEND RULE 8, APPLICATIONS.

RESOLUTION NO.06-34 N.C., A RESOLUTION OF INTENTION DIRECTING STAFF TO PROCESS A CODE TEXT AMENDMENT TO CHANGE THE RESIDENCY REQUIREMENTS OF THE ARCHITECTURAL HERITAGE AND LANDMARKS COMMISSION.

RESOLUTION NO.06-35 N.C., A RESOLUTION TO AMEND THE FISCAL YEAR 2005-2006 WATER ENTERPRISE FUND BUDGET BY ONE MILLION FIVE HUNDRED AND

SEVENTY-FIVE THOUSAND AND FOUR HUNDRED DOLLARS ($1,575,400) FOR THE HOMEACRES WATER MAINS IMPROVEMENT PROJECT.

The above resolutions were adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier , Davis, Bartee, Gomes, Sunga.
NOES:	None
ABSENT:	None
ABSTENTIONS:	Councilmembers Pearsall and Davis on those items pertaining to the companies/corporations/firms, in which their stock ownership is $10,000 or more as listed in their current FPPC Form 700 Statement of Economic Interests, and Councilmember Gomes on Consent Item 10.L due to conflict of interest.

7. PUBLIC HEARINGS

A. CONSIDERATION OF: 1) ZONING MAP AMENDMENT #05-0004 CHANGING THE ZONING OF THE SUBJECT PARCEL FROM HIGH DENSITY RESIDENTIAL (HDR) TO PLANNED DEVELOPMENT RESIDENTIAL (PDR), 2) PLANNED DEVELOPMENT #05-0020 TO FACILITATE THE DEVELOPMENT OF 28 RESIDENTIAL PARCELS COMPLETING THE DEVELOPMENT KNOWN AS WHITE PINE CONDOMINIUMS LOCATED BETWEEN TENNESSEE STREET AND AVIAN DRIVE; AND 3) AN APPEAL OF THE PLANNING COMMISSION'S FAILED MOTION TO APPROVE TENTATIVE MAP #05-0010 (PUBLIC/ADAMS/ K:\AI\PL\FORESTHILLSCONDOS-APPEAL)

On November 21, 2005, the Planning Commission considered a proposal by the applicant to construct 28 condominium units on a currently vacant 2.27 acre parcel (Parcel A). The actions before the Commission included: a) Zoning Map Amendment #05-0004 changing the zoning from High Density Residential (HDR) to Planned Development Residential (PDR) in order to allow more flexibility in the development standards b) Planned Development (Unit Plan) #05-0020 for the design of the units and; c) Tentative Map #05-0010 to create 28 residential parcels and one common parcel. The item was continued to December 19, 2005, to allow the applicant to revise the project to address view issues. At the December 19th hearing, the Commission voted 4-1 to recommend to the City Council adoption of Zoning Map Amendment #05-0004 and a revised Planned Development #05-0020, but failed to approve the Tentative Map. The vote on the Tentative Map was 3-2 which failed to provide the requisite four votes in favor of the application. The project applicant appealed the Planning Commission's Tentative Map decision on December 23, 2005.

Mayor Intintoli directed the Council's attention to a memorandum dated February 7, 2006 regarding the process of the Public Hearing.

Brian Dolan, Acting Development Services Director, presented a staff report on the item. He reviewed the technical layout of the project, its changes and its impacts. He also described citizen concerns.

Mr. Giudio, representative of Abbas Maroofi, the appellant, presented background information on the project. He addressed the issues related to the proposed changes and also addressed concerns and criticism.

Planning Commissioner Charles Legales offered a rebuttal and explanations.

Jerry L. Johnson, 102 White Pine Drive, Forest Hill Town Home Association, spoke against the appeal and expressed various concerns.

Mayor Intintoli went over the proposed actions and asked about their various affects.

Mr. Dolan explained the details of the affects of the proposed actions.
He also explained why the proposed changes and accommodations made the revised plan better.

Councilmember Sunga commended the owner for his concessions. He expressed concerns related to fire safety. The Fire Department, however, approved the project.

Vice Mayor Pearsall said that it was a tough decision to make and commented on the condition of fences, different elevations, and units.

Discussion ensued related to the details of the proposed project.

Councilmember Gomes asked if the proposed rezoning was in compliance with the general plan, to which the answer was yes. She asked to know about the HDR and PDR.

Discussion ensued related to zoning and flexibility within development.

Councilmember Gomes expressed concerns related to individual open-space allotments, changes in zoning, disclosures, costs, proposed architecture, affordable housing and density. She said she didn't have enough information.

Councilmember Davis said that it was a good end-fill project and spoke about real estate market. He said that the Council should trust the Planning Commission on the design approvals.

RESOLUTION NO.06-36 N.C., offered by Councilmember Davis approving Zoning Map Amendment # 05-0004 as recommended by the Planning Commission, and holding the ordinance on first reading.

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Sunga.
NOES:	Gomes
ABSENT:	None
ABSTENTIONS:	None

RESOLUTION NO.06-37 N.C., offered by Mayor Intintoli upholding the applicant's appeal of the Planning Commission's failure to approve Tentative Map #05-0010 and approve Tentative Map #05-0010.

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Sunga.
NOES:	Gomes
ABSENT:	None
ABSTENTIONS:	None

RESOLUTION NO.06-38 N.C., offered by Vice Mayor Pearsall approving a Planned Development Unit Plan # 05-0020, as recommended by the Planning Commission, and holding the ordinance on the first reading.

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Sunga.
NOES:	Gomes
ABSENT:	None
ABSTENTIONS:	None

8. POLICY ITEMS

A. PRESENTATION BY DARRYL HALLS, EXECUTIVE DIRECTOR OF SOLANO TRANSPORTATION AUTHORITY AND CONSIDERATION OF APPROVAL OF A RESOLUTION ADOPTING THE COUNTY TRANSPORTATION EXPENDITURE PLAN FOR THE "TRAFFIC RELIEF AND SAFETY PLAN FOR SOLANO COUNTY"

The "Traffic Relief and Safety Plan for Solano County" requires the passage of a half cent sales tax to generate $1.57 billion over thirty years to support the County Transportation Expenditure Plan, a comprehensive list of critical projects and transit services which will provide congestion relief along major travel corridors in Solano County as well as providing funding for local transportation projects and road maintenance within the City of Vallejo.

Solano County faces a significant funding shortfall for transportation improvements and without new resources will be unable to fund the transportation improvements needed to relieve growing congestion. There is also a deficiency in availability of operating funds to expand express bus service, initiate new commuter rail and ferry service, and expand critical transit services for seniors and the disabled. Solano County cities and the County also lack the necessary resources to respond to safety issues, local transportation needs and maintenance of their local streets and roads.

If approved by 2/3 of Solano County's voters in June of 2006, the half cent sales tax will generate $1.57 billion over a 30 years period. This funding will more than double the amount of transportation funding available to Solano County which will allow the County to successfully compete for federal and state funds needed to complete the County's priority transportation projects. It is estimated that Vallejo's share of this money could be about $300M over the 30 year period or approximately $10M per year.

Darrel Halls, Executive Director of the Solano Transportation Agency, gave a presentation highlighting the development of the plan. He gave a detailed overview of the draft Traffic Relief and Safety Plan.

Councilmember Bartee asked about tying in the Commuter Rail with the Ferry and asked why there wasn't an application for a feasibility study.

Mr. Halls spoke about the Capital Corridor, among other plans, and pointed out several sections in the Staff Report.

Councilmember Cloutier spoke about whether the measure going to the voters should be linked to imposing urban growth to communities outside of Vallejo. He expressed concerns related to sprawl.

Mayor Intintoli talked about the proposal's support and interest in transit monies.

Councilmember Sunga asked if the proposed measure had passed with the Board of Supervisors, to which the answer was yes. He also talked about a possible rerouting of various bus lines to accommodate citizens.

Councilmember Gomes commented on negotiations.

Mayor Intintoli noted a letter against the measure from Joe Athey.

The following people spoke in support of the plan: Verna Mustico, 3469 Tennessee, Vallejo Chamber of Commerce, Michael Wilson, 616 Marin Street, Vallejo Chamber of Commerce, Steve Lessler, 1119 Park Lane, Bruce P. Gourley, 117 Spencer Street, IBEW, Jon D. Riley, 206 Benson Avenue.

Joe Athey, 118 Cima Drive, spoke against the measure.

RESOLUTION NO.06-39 N.C., offered by Mayor Intintoli adopting the County Transportation Expenditure Plan for the "Traffic Relief and Safety Plan for Solano County."

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier , Davis, Bartee, Gomes, Sunga.
NOES:	None
ABSENT:	None
ABSTENTIONS:	None

9. ADMINISTRATIVE ITEMS

A. CONSIDERATION OF A RESOLUTION TO AMEND THE FY 05/06 WATER ENTERPRISE FUND BUDGET BY: 1) INCREASING APPROPRIATIONS BY TWO HUNDRED AND FIVE THOUSAND AND EIGHT HUNDRED DOLLARS ($205,800) FOR WATERLINE REPAIRS IN WILSON AVENUE, OUTSIDE LEGAL FEES, AND PERSONNEL COSTS; AND 2) BY ADDING A WATER SUPERINTENDENT AND SENIOR PIPE MECHANIC POSITION AND

REVISING THE PIPE MECHANIC LISTING TO REFLECT FLEXIBLE STAFFING

Four different issues have been combined in this mid-year budget adjustment request. The Water Enterprise Fund's portion of the Public Works Department's Wilson Avenue Improvement Project Phase 2, already part of the approved FY2005-2006 budget at $400,000, must be increased by $168,000 due to the escalation of construction costs. Projected outside legal fees for resolution of a watershed access issue in the Vallejo Lakes System will exceed available appropriations by $25,000. The Water Superintendent position has been frozen for over two years due to a golden handshake retirement; the incremental cost associated with adding back the position and filling it through promotion is covered by other salary savings in Water Administration. Water Distribution is requesting a small increase in personnel cost appropriations and a revision to its approved positions in order to promote Pipe Mechanic I positions to Pipe Mechanic II positions and to add a Sr. Pipe Mechanic position to be filled from existing ranks, for no net increase in staffing. On January 24, 2006 the Vallejo City Council adopted a Resolution of Intention to amend the Fiscal Year 2005-2006 Water Enterprise Fund budget by $205,800 for waterline repairs in Wilson Avenue, outside legal fees, and personnel costs; and add a Water Superintendent and a Sr. Pipe Mechanic Position, and revise the Pipe Mechanic listing to reflect flexible staffing (6-1, Councilmember Gomes voting no).

Mark Akaba gave the staff presentation on the proposed amendments to the FY 2005-2006 Water Enterprise Budget.

Councilmember Gomes asked about Lake Madigan access issues and whether or not outside attorneys were being used for the issue.

Mr. Akaba reported it was because of the specialized nature of the issue.

Councilmember Gomes asked if the water repairs were necessary on their own or if they were needed for the Wilson Ave. project.

Mr. Akaba said that the water line at Wilson Ave. was in old condition. He said that the biggest issue was that if the Wilson Ave. project was approved then they would need new water lines.

Councilmember Gomes said that she would like to separate the Wilson Avenue portion ("Section #1") and vote on it separately.

Councilmember Gomes said that she thought they were "putting the cart before the horse."

RESOLUTION NO.06-40 N.C., offered by Mayor Intintoli adopting the resolution to amend the Fiscal Year 2005-2006 Water Enterprise Budget, increasing appropriations by a total of $168,000 for the Wilson Avenue Improvement Project

The above resolution was adopted with the following vote:

AYES: Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Sunga.

NOES:	Gomes
ABSENT:	None
ABSTENTIONS:	None

RESOLUTION NO.06-41N.C., offered by Mayor Intintoli adopting the resolution to amend the Fiscal Year 2005-2006 Water Enterprise Budget, increasing appropriations by a total of $25,000 for outside legal fees, $7500 and personnel costs and $5300 adding a Water Superintendent and a Sr. Pipe Mechanic Position, and revising the Pipe Mechanic listing to reflect flexible staffing.

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Gomes, Sunga.
NOES:	None
ABSENT:	None
ABSTENTIONS:	None

10. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMMITTEES

A. APPROVAL OF RESOLUTION APPOINTING MEMBERS TO THE ECONOMIC DEVELOPMENT COMMISSION

Applicant interviews for this commission were held earlier this evening. Mayor Intintoli called for nominations. Nominations were accepted and the following individuals received the majority of votes: Donald Demmon, Patrice Hall, Surry Poole, Gregoria Torres and Mr. Walker.

RESOLUTION NO.06-42 N.C., offered by Councilmember Bartee appointing Donald Demmon, Patrice Hall, Surry Poole, to the Economic Development Commission for a term ending December 31, 2009; and Gregoria Torres and Mr. Walker to the Economic Development Commission for terms ending December 31, 2008.

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Gomes, Sunga.
NOES:	None
ABSENT:	None
ABSTENTIONS:	None

B. APPROVAL OF RESOLUTION APPOINTING MEMBERS TO THE HOUSING & REDEVELOPMENT COMMISSION

Applicant interviews for this commission were held earlier this evening. Mayor Intintoli called for nominations. Nominations were accepted and the following individuals received the majority of votes: Charles Brown III, Chris Platzer, Carmen Vance, and Rozanna Verder-Aliga to the Housing and Redevelopment Commission.

RESOLUTION NO.06-43, offered by Councilmember Cloutier appointing Carmen Vance to the Housing and Redevelopment Commission for a term ending December 31, 2008;

Charles Brown III, Chris Platzer, and Rozanna Verder-Aliga to the Housing & Redevelopment Commission for terms ending December 31, 2009.

The above resolutions were adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Gomes, Sunga.
NOES:	None
ABSENT:	None
ABSTENTIONS:	None

C. APPROVAL OF RESOLUTION APPOINTING MEMBERS TO THE GREATER VALLEJO RECREATION DISTICT BOARD OF DIRECTORS

Applicant interviews for this commission were held earlier this evening.

The following people spoke in opposition to the appointment of Janet Laine: Foster Hicks, 431 Robles Drive, Wounded Knee, 400 Keats Drive, VIC, Roger Straw, 766 West J, Benicia, VIC, Darrell W. Edwards, 228 Louisiana Street, Stephanie Manning, 210 7-5th Street, Berkeley,

Jim Fisher, 133 Camino del Sol spoke in support of Janet Laine. Jaja Jackson, 130 Shoal Drive West, recommended Bill Pendergast and Janet Laine.

Pendergast was nominated for the 2-year term.

RESOLUTION NO.06-44 N.C., offered by Mayor Intintoli appointing Bill Pendergast to the Greater Vallejo Recreation District Board Of Directors for a two-year term.

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Gomes, Sunga.
NOES:	None
ABSENT:	None
ABSTENTIONS:	None

RESOLUTION NO.06-45 N.C., offered by Mayor Intintoli appointing Janet Laine to the Greater Vallejo Recreation District Board Of Directors for a four-year term.

The above resolution was adopted with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Gomes, Sunga.
NOES:	Bartee
ABSENT:	None
ABSTENTIONS:	None

11. WRITTEN COMMUNICATIONS - NONE

12. CITY MANAGER'S REPORT- NONE

13. CITY ATTORNEY'S REPORT- NONE

14. COMMUNITY FORUM- NONE

15. REPORT OF THE PRESIDING OFFICER AND MEMBERS OF THE CITY COUNCIL

16. CLOSED SESSION - NONE

17. ADJOURNMENT

Mayor Intintoli asked that the meeting be adjourned in memory of Dick Bas.

The meeting was adjourned at 9:49 P.M.

_____
ANTHONY J. INTINTOLI, JR., MAYOR

ATTEST: _____
ALLISON VILLARANTE, CITY CLERK

VALLEJO CITY COUNCIL
MINUTES
FEBRUARY 6, 2007

The City Council met in closed session concerning Conference with Real Property Negotiators Pursuant to Government Code Section 54956.8. *Property*: Vallejo Yacht Club, 485 Mare Island Way, Vallejo, CA, *Agency Negotiators:* Joseph M. Tanner, City Manager; Craig Whittom, Assistant City Manager/Community Development; Susan McCue, Economic Development Program Manager; Steve England, Real Estate and Asset Manager. *Negotiating Parties:* Redevelopment Agency of the City of Vallejo and Vallejo Yacht Club, Inc. *Under Negotiation:* Price and Terms of Payment. The meeting was called to order at 5:30 p.m. by Mayor Anthony J. Intintoli, Jr. All Councilmembers were present.

The City Council met in a special meeting to interview applicants for the Beautification Advisory Commission and the Commission on Cultural and the Arts. The meeting was called to order at 6:10 p.m. by Mayor Anthony J. Intintoli, Jr. All Councilmembers were present.

1. CALL TO ORDER

A regular meeting of the Vallejo City Council was held on the above date in the Council Chambers of the Vallejo City Hall. The meeting was called to order at 7:00 p.m. by Mayor Anthony J. Intintoli, Jr.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Present: Mayor Intintoli, Vice Mayor Pearsall, Councilmembers Cloutier, Davis, Bartee, Sunga, Gomes

Absent: None

Staff: City Manager Joseph Tanner
City Attorney Fred Soley
Acting City Clerk Mary Ellsworth

4. PRESENTATIONS AND COMMENDATIONS - None

5. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS

Robert Rowe, 1825 Sonoma Boulevard, referred to Consent Calendar Item 6.B concerning a contract with Public Resources Management Group, LLC for a user fee study. He asked for clarification on where the funds would be coming from and why the study is needed.

John Osborne, 11 Howard Avenue, questioned why the approval of payment of the claims is no longer a part of the agenda; and why it takes so long for the minutes to be submitted for approval.

6. CONSENT CALENDAR AND APPROVAL OF AGENDA

At the request of staff, Mayor Intintoli announced that Consent Item 6.C concerning the lease for 250 Georgia Street (Police Central Station) with Amidi Partnership and the McSwiggin Family Trust, would be removed from the Agenda. He requested that Consent Item 6.D concerning a third amendment to the Consultant Service Agreement between the City of Vallejo and BKF

Engineers for the Wilson Avenue Improvement Project Phase 2, be removed from the Consent Calendar and added to the regular agenda as 6.1; Item 6.B was removed and added to the regular agenda as 6.2.

Hearing no further additions, corrections or deletions, the agenda was approved as amended and the following minutes were offered by Vice Mayor Cloutier:

A. APPROVAL OF MINUTES FOR THE MEETING OF JANUARY 23, 2007

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO A CONTRACT WITH PUBLIC RESOURCES MANAGEMENT GROUP, LLC FOR A USER FEE STUDY (This item was moved to be heard as 6.1).

C. APPROVAL OF A RESOLUTION AUTHORIZING AN AMENDMENT TO THE LEASE FOR 250 GEORGIA STREET (POLICE CENTRAL STATION) WITH AMIDI PARTNERSHIP AND THE MCSWIGGIN FAMILY TRUST

This item was removed from the agenda.

D. APPROVAL OF A RESOLUTION APPROVING A THIRD AMENDMENT TO THE CONSULTANT SERVICE AGREEMENT BETWEEN CITY OF VALLEJO AND BKF ENGINEERS FOR THE WILSON AVENUE IMPROVEMENT PROJECT PHASE 2 (This item was moved to be heard as 6.2.)

The minutes were approved by the following vote:

AYES:	Mayor Intintoli, Vice Mayor Cloutier, Councilmembers Bartee, Davis, Gomes, Pearsall and Sunga
NOES:	None
ABSENT:	None
ABSTAINING:	None

6.1 APPROVAL OF A RESOLUTION APPROVING A THIRD AMENDMENT TO THE CONSULTANT SERVICE AGREEMENT BETWEEN CITY OF VALLEJO AND BKF ENGINEERS FOR THE WILSON AVENUE IMPROVEMENT PROJECT PHASE 2

David Kleinschmidt, City Engineer, explained the action recommended for the design portion of the Wilson Avenue Improvement project.

Councilmember Gomes stated she believes this is a public works project that could have been smaller in scope and the funds used to beautify Wilson Avenue and keep its historic character; and to improve roads throughout the entire city.

RESOLUTION NO. 07-19 N.C. offered by Mayor Intintoli, approving the Third Amendment with BKF Engineers for the Wilson Avenue Improvement Project Phase 2.

The above resolution was adopted by the following vote:

AYES:	Mayor Intintoli, Councilmembers Bartee, Davis, Pearsall and Sunga
NOES:	Vice Mayor Cloutier, Councilmember Gomes
ABSENT:	None

ABSTAINING: None

6.2 RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO A CONTRACT WITH PUBLIC RESOURCES MANAGEMENT GROUP, LLC FOR A USER FEE STUDY

John Osborne, 11 Howard Avenue, expressed concerned about the cost and asked if there had been an internal review of the City's cost with other surrounding cities; and expressed concern about the postponement of development fees and the impact of that on the public. He stated that there should be an identification of what fees have been deferred and what the impact is.

RESOLUTION NO. 07-18 N.C. offered by Mayor Intintoli authorizing the City Manager to amend the City's contract with Public Resource Management Group, LLC to work with staff to update fees charged to the public for development services.

The resolution was adopted by the following vote:

AYES:	Mayor Intintoli, Councilmembers Bartee, Davis, Pearsall and Sunga
NOES:	Vice Mayor Cloutier, Councilmember Gomes
ABSENT:	None
ABSTAINING:	None

7. PUBLIC HEARINGS - None

8. POLICY ITEMS

A. APPROVAL OF A RESOLUTION ADOPTING A POLICY AND PROCEDURE FOR NAMING CITY OF VALLEJO PUBLIC FACILITIES IN HONOR OF INDIVIDUALS

On March 28, 2006 the City Council rescinded Resolution No. 96-266, the City's previous policy for naming significant city structures, places and vessels. The previous policy was cumbersome and did not allow sufficient flexibility in dealing with particular requests. The Council's Ad Hoc Committee on the Naming of Public Structures is recommending a new policy to guide City staff and the City Council in processing requests to name public facilities in honor of individuals.

Mayor Intintoli recused himself from participating in this matter due to a personal history with the item and to avoid any appearance of bias in the matter. He turned the gavel over to Vice Mayor Cloutier and left the dais 7:12 p.m.

Councilmember Gomes stated that this is a very important matter and she believes more work needs to be done by the Ad Hoc Committee to assure that the policy is well clarified.

Vice Mayor Cloutier suggested that the Council appoint Councilmember Gomes to the Ad Hoc Committee, that the Committee address her concerns, after which the Committee will bring the matter back to the Council for consideration.

Councilmember Davis questioned who would be on the committee, noting that it can only be a three-member committee in order to be in compliance with the Brown Act. He offered his place on the Committee to Councilmember Gomes. There was some discussion between Councilmember Davis, Vice Mayor Cloutier and Councilmember Gomes concerning who would be on the Committee.

Darrell Edwards, 228 Louisiana Street, questioned why an ad hoc committee needed to be formed. He stated that he believes it is the Human Relations Commission's responsibility and asked that Council consider asking the Commission to provide input.

Councilmember Davis explained the reason for the forming of the ad hoc committee comprised of Councilmembers and not including commission input.

In answer to a question of Councilmember Sunga, Vice Mayor Cloutier clarified that the committee can be comprised of two Councilmembers. There cannot be a quorum

After some discussion and clarification from the City Attorney, it was agreed that Vice Mayor Cloutier, Councilmembers Davis and Gomes will serve on the Ad Hoc Committee. They will meet to discuss Councilmember Gomes concerns. When those concerns are finalized, the matter will be brought back to the full Council. A vote with six ayes and one abstention (Mayor Intintoli abstaining) was taken approving this action.

Mayor Intintoli returned to the dais at 7:21 p.m.

9. ADMINISTRATIVE ITEMS

A. INITIATION OF PUBLIC PROCESS REGARDING CONSIDERATION OF THE FORMATION OF A NEW LANDSCAPE MAINTENANCE DISTRICT IN THE WATERFRONT, DOWNTOWN AND SURROUNDING NEIGHBORHOOD AREAS AND CONSIDERATION OF AMENDING THE GENERAL FUND BUDGET FOR CONSULTANT SERVICES RELATED TO THIS FORMATION PROCESS

Staff plans to initiate a public process regarding formation of a new Landscape Maintenance District (LMD) for the Waterfront, Downtown and surrounding neighborhood areas. Staff will present an overview of the process and issues to be discussed with the public during the formation of this new LMD. The purpose of tonight's agenda item is to inform the City Council of staff's intentions and to obtain approval of a resolution of intention to amend the General Fund Budget for consultant services related to the district formation process.

Mayor Intintoli announced that he, Councilmembers Bartee, Davis and Gomes have a conflict of interest and cannot participate. Since this will leave the Council with less than a quorum, straws will have to be drawn to determine which of the four Councilmembers will be allowed to participate.

City Attorney Soley cited that Mayor Intintoli, Councilmembers Bartee, Davis and Gomes have a conflict of interest. Councilmembers Bartee and Davis own property located within the boundaries of the proposed landscape maintenance district as defined in the staff report. Mayor Intintoli's and Councilmember Gomes' residences are within the boundaries of the proposed landscape maintenance district. Mr. Soley placed the names in a bowl. The City Manager verified that there was one name each. The City Clerk was asked to draw one name from the bowl. The name drawn was that of Mayor Anthony J. Intintoli, Jr. Mayor Intintoli will serve on the Council for tonight's item and any future items with respect to this subject.

Councilmembers Bartee, Davis and Gomes left the dais at 7:24 p.m.

Public Works Director Gary Leach introduced staff members involved with the project, Sam Gonzalez, Assistant Maintenance Superintendent, Craig Whittom Assistant City Manager, Jim McGuire, MuniFinancial, Consultant, Susan McCue, Economic Development Manager. Mr. Leach make a power point presentation describing the proposed district, detailing the objectives, the boundaries and the amenities that are proposed for the areas.

Speakers: Robert Rowe, 1825 Sonoma Boulevard, suggested that the matter be presented to the public before expending funds on consultants. David Fisher, 312 Georgia Street, #245, owner of three buildings in the downtown area, expressed concern that this could be a double assessment because of the property based improvement district (PBID) and recommended that the downtown be eliminated from the district and let the property owners assess themselves, or create a sub-district for the downtown to assure that the assessments stay with the downtown.

John Osborne, 11 Howard Avenue, expressed concern that the assessments are a burden on the taxpayers. He stated that the public needs an "upfront" figure of what the administration cost will be and what the effect will be on the people who pay for it.

Darrell Edwards, 228 Louisiana Street, agreeed with the previous speakers. He stated that some of the money should be spent on signs advertising the downtown. The property owners should be part of the process before spending any money.

Vice Mayor Cloutier stated that he is happy to see this finally happen. For a very nominal amount for each parcel, the benefit is great. He suggested that the consultants make use of the historical neighborhood associations already in place. He questioned the method used by the consultants to get the majority of the people to support the project.

Mr. McGuire, MuniFinancial, stated that they will be getting input from the property owners as to what they are willing to support. He explained how the district is formed.

Vice Mayor Cloutier asked if there was information available on cities that have done this in historic neighborhoods in which property values increased. He stated that this information would be helpful in convincing people that there is a tangible benefit to people pooling their resources to improve the neighborhoods. Mr. McGuire responded.

Councilmember Sunga asked if there is a procedure to avoid overlapping of fees and benefits. Mr. Leach stated that staff will be reviewing this to be sure there is no overlapping.

Craig Whittom, Assistant City Manager, Development Services, stated that staff will be working closely with the Downtown property owners, to be sure there is no overlap in services provided. The key element will be getting public input in terms of what the services are, quantifying that and being able to translate that into what the impact is on the property owner on a yearly basis.

Councilmember Sunga asked if expending funds on consultants before getting public input was the normal procedure. Mr. Leach stated that the consultants help prepare the information needed to present the district to the public and the impacts it will have. Councilmember Sunga asked how we came up with the division between the General Fund and the Redevelopment

funds. Mr. Leach explained; and went on to say that 50 percent of the consultant fee is during the public input process, the other 50 percent is during the formation process.

Councilmember Sunga asked if it was manageable once it is formed. Mr. Leach replied yes.

Councilmember Pearsall noted the success the other 25 landscape maintenance districts have had. He stated that improving the City's image is what we are concerned about. We have to develop a partnership between City staff, Council and the citizens. We need to show what the exact benefits will be as a result of this.

RESOLUTION NO. 07-20 N.C. offered by Mayor Intintoli to amend the General Fund Budget to appropriate $35,000 for consultant services related to the formation of a new landscape maintenance district in the waterfront, downtown and surrounding neighborhood areas.

The resolution was adopted by the following vote:

AYES:	Mayor Intintoli, Vice Mayor Cloutier, Councilmembers Pearsall and Sunga
NOES:	None
ABSENT:	None
ABSTAINING:	Councilmembers Bartee, Davis and Gomes

The Council recessed to the Redevelopment Agency at 8:20 p.m. The Council reconvened at 8:21 p.m.

10. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

A. APPOINT MEMBERS TO THE BEAUTIFICATION ADVISORY COMMISSION

Applicants for the Beautification Advisory Commission were interviewed earlier this evening.

Mayor Intintoli called for nominations. The following individuals were nominated: Nenette Enrile, Tiffany Johnson, Ann C. Meeter, Craig Tom.

RESOLUTION NO. 07-22 N.C. offered by Councilmember Pearsall appointing Nenette Enrile, Tiffany Johnson, Ann C. Meeter, Craig Tom to the Beautification Advisory Commission for terms ending December 31, 2010.

The resolution was adopted by the following vote:

AYES:	Mayor Intintoli, Vice Mayor Cloutier, Councilmembers Bartee, Davis, Gomes, Pearsall and Sunga
NOES:	None
ABSENT:	None
ATSTAINING:	None

B. APPOINT MEMBERS TO THE COMMISSION ON CULTURAL AND THE ARTS

Applicants for the Commission on Cultural and the Arts were interviewed earlier this evening. There are three vacancies on the Commission.

The following individuals were nominated for appointment to the Commission on Cultural and the Arts: Shaaron Lee Fox, Julie Brand and Joyce Scharf.

RESOLUTION NO. 07-23 N.C. offered by Councilmember Gomes appointing Shaaron Lee Fox, Julie Brand and Joyce Sharf to the Commission on Cultural and the Arts.

The resolution was adopted by the following vote:

AYES:	Mayor Intintoli, Vice Mayor Cloutier, Councilmembers Bartee, Davis, Gomes, Pearsall and Sunga
NOES:	None
ABSENT:	None
ATSTAINING:	None

C. APPOINT MEMBERS TO THE ECONOMIC DEVELOPMENT COMMISSION

Applicants for the Economic Development Commission were interviewed on January 30 for three vacancies.

The following individuals were nominated for appointment to the Economic Development Commission: Maria Bitagon, Memuna Lee, Kay Woodson.

RESOLUTION NO. 07-24 N.C. appointing Maria Bitagon, Memuna Lee, and Kay Woodson to the Economic Development Commission. for terms ending December 31, 2010.

The resolution was adopted by the following vote:

AYES:	Mayor Intintoli, Vice Mayor Cloutier, Councilmembers Bartee, Davis, Gomes, Pearsall and Sunga
NOES:	None
ABSENT:	None
ATSTAINING:	None

11. WRITTEN COMMUNICATIONS - None

12. CITY MANAGER'S REPORT - None

13. CITY ATTORNEY'S REPORT - None

14. COMMUNITY FORUM

Speakers: Robert Rowe, 1825 Sonoma Boulevard, addressed a written request he submitted to the City concerning the reason for widening Wilson Avenue, and when he would receive a response. Burky Worel addressed the false alarm ordinance and asked when he would get a response to his request concerning how many of the false alarms that the Police Department receives, are residential and how many are businesses. John Osborne, 11 Howard Avenue, addressed the payment of claims was removed from the agenda; renaming Marine World; agendizing certain Councilmember reports; and team building sessions.

15. REPORT OF THE PRESIDING OFFICER AND MEMBERS OF THE CITY COUNCIL

Councilmember Gomes reported that she, Vice Mayor Cloutier and Councilmember Pearsall met with the City Attorney and Lt. Reggie Garcia of the Police Department to talk about quality of life issues such as illegal dumping, convenience store littering, loud music, etc. At the conclusion of the meeting they agreed that a team that can address the code enforcement/public nuisance issues. The team would include representation from the Solano County District Attorney's office, the Police Department, City Attorney's office and Code Enforcement. She proposed a study session to discuss the issues with the rest of the Council and the community.

Councilmember Pearsall stated that some of the issues addressed at the meeting that could be looked at as a team approach was a moratorium on smoke shops, (possibly expanding the Deemed Approved Ordinance dealing with alcohol outlets to smoke shops), illegal dumping and graffiti. He addressed the cost and man power associated with the illegal dumping issue and asked that this, as well as graffiti, be included at the study session.

Councilmember Pearsall reported that he attended the Flyway Festival at Mare Island and it was very good. It is important to market programs such as this in an attempt to get people to Vallejo.

Councilmember Sunga requested that a study session be held in the near future for a presentation of the disaster preparedness program.

Vice Mayor Cloutier suggested that Mr. Paulsen from the District Attorney's office be invited to the study session on the quality of life issues.

16. CLOSED SESSION - None

17. ADJOURNMENT

The meeting adjourned at 8:30 p.m.

_____
ANTHONY J. INTINTOLI, JR., MAYOR

ATTEST: _____
MARY ELLSWORTH, ACTING CITY CLERK

CONSENT B

CITY OF VALLEJO **Agenda Item No.**

COUNCIL COMMUNICATION

Date: February 27, 2007

TO: Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager / Community Development
Robert V. Stout, Finance Director
Laura J. Simpson, Housing and Community Development Manager

SUBJECT: Approval of a Resolution to Amend the Fiscal Year (FY) 2006/2007 Federal Community Development Block Grant (CDBG) Program Budget

BACKGROUND AND DISCUSSION

There are two approved projects that need a combined total of over $1 million in additional funds in order to be completed: the Reynaissance Family Center (RFC) Facility Rehabilitation Project, which will provide sixteen beds of transitional housing at 2160 Sacramento Street, and the 100 Block of Benson Avenue in the Vallejo Heights Target Area.

Because sufficient funds are not available to complete both projects, on February 13, 2007 the City Council considered whether and how to proceed with these projects, and adopted a resolution of intention to amend the FY 2006/2007 CDBG Program Budget, as follows: (1) loan an additional $450,000 to the Reynaissance Family Center for the rehabilitation of its transitional housing facility, and (2) delay consideration of the Benson Avenue Project not later than April 30, 2007 To accomplish this, the City Council may use the City's unallocated CDBG funds. There is currently $722,447 available.

The Community Development Commission also considered this item at a special meeting on February 1, 2007, and voted unanimously, 8-0-0, in favor of the above actions.

RECOMMENDATION

Amend the CDBG Budget, allocating $450,000 in additional funds, in the form of a loan, to the RFC project, and delaying consideration of the Benson Avenue project until not later than April 30, 2007, by which time additional funding may be identified to complete the project.

Fiscal Impact

If the recommendation is approved, $450,000 of the $722,447 in CDBG unallocated funds would be used in order to complete the RFC project, leaving an available balance of $272,447. If the RFC project is not completed this year, it is likely that $286,138 in other HUD (SHP) funds allocated to the RFC directly will be recaptured.

However, funding the RFC would impact the Benson Avenue project, which also needs additional funds at this time. Benson Avenue would be delayed until FY 2007/2008, or possibly not completed, if sufficient carry over funds are not expected to be available for this project.

ALTERNATIVES CONSIDERED

The City must expend CDBG funds in a timely manner, or they may be recaptured by HUD. A responsive bid has been received for the RFC project, and pending available funds, this project may be completed by July 2007. The RFC project will be a benefit to the community. There is a chance that sufficient unspent CDBG funds may become available at June 30, 2007 (the end of this fiscal year) to enable the City to complete the Benson Avenue project. For these reasons, the CDC and staff believe it is advisable to allocate unallocated funds to the RFC project, rather than Benson Avenue, at this time. Therefore, no other alternatives were considered.

ENVIRONMENTAL REVIEW

An environmental review is not required for this action.

PROPOSED ACTION

Adopt the enclosed resolution amending the Fiscal Year (FY) 2006/2007 Community Development Block Grant (CDBG) Program Budget, allocating additional CDBG funds to the Reynaissance Family Center project, and delaying the consideration of the Benson Avenue project not later than April 30, 2007.

DOCUMENTS ATTACHED

Attachment "A" – Resolution

CONTACT:

Craig Whittom, Assistant City Manager/Community Development, (707) 648-4579, or cwhittom@ci.vallejo.ca.us.

Laura Simpson, Housing and Community Development Manager, (707) 648-4393, or lsimpson@ci.vallejo.ca.us.

Guy L. Ricca, Senior Community Development Analyst, (707) 648-4395, or gricca@ci.vallejo.ca.us.

RESOLUTION NO. _____ N.C.

BE IT RESOLVED by the City of Vallejo as follows:

THAT WHEREAS, there are currently two approved Fiscal Year (FY) 2006/2007 Federal Community Development Block Grant (CDBG) Program projects that need a combined total of over $1 million in additional funds in order to be completed: the Reynaissance Family Center (RFC) Facility Rehabilitation Project, which will provide sixteen beds of transitional housing at 2160 Sacramento Street, and the 100 Block of Benson Avenue in the Vallejo Heights Target Area.

WHEREAS, because sufficient funds are not available to complete both of these projects, it is appropriate for the City to decide whether and how to proceed with these projects.

WHEREAS, the City Council may wish to use the City's unallocated CDBG funds, and there is currently $722,447 available.

WHEREAS, the Community Development Commission of the City of Vallejo considered this item at a special meeting on February 1, 2007 and voted unanimously, 8-0-0, to recommend that the City Council: (1) allocate additional funds to the RFC Project, and (2) delay consideration of the Benson Avenue Project, as described in the attached staff report dated February 13, 2007.

NOW THEREFORE BE IT RESOLVED that the City Council hereby declares amends the FY 2006/2007 CDBG Program Budget as delineated in the February 27, 2007 staff report; and

BE IT FURTHER RESOLVED that the Vallejo City Council hereby directs the City Manager, or his designee, the Finance Director, to amend the Fiscal Year 2006/2007 CDBG Program Budget as described in the February 27, 2007 staff report.

ADOPTED by the Council of the City of Vallejo at a regular meeting held on February 27, 2007 with the following vote:

CONSENT C

Agenda Item No.

COUNCIL COMMUNICATION **Date:** February 27, 2007

TO: Honorable Mayor and Members of the City Council

FROM: Gary A. Leach, Public Works Director

SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING THE STREET NAME CHANGE FOR A PORTION OF KENTUCKY STREET BETWEEN TUOLUMNE STREET AND SOLANO AVENUE TO LEE V. ELLENBURG STREET

BACKGROUND & DISCUSSION

Lee V. Ellenburg founded and established the VallejoTemple Church of God In Christ in 1948. The church began in Reverand Ellenburg's home and later relocated to it's current location at 823 Springs Road, a building he personally constructed. He served as one of Vallejo's first African American Pentecostal pastors until 1985, when he retired due to health complications. The Vallejo Temple Church of God In Christ is deemed the oldest existing African American Pentecostal assembly in the City of Vallejo.

Jeffrey Pouncey, grandson of the late Reverend Ellenburg, desires to honor the memory of his grandfather by renaming a four block portion of Kentucky Street to Lee V. Ellenburg Street. Mr. Pouncey has prepared a petition and obtained the signatures of fifty percent (50%) of the residents on Kentucky Street.

The 18 residents/owners of properties fronting Kentucky Street affected by this street name change have been informed by a letter regarding the proposed street name change.

Public Works Department has been informed that the Fire and Police Departments have no objection to this proposed street name change.

Fiscal Impact

There is no fiscal impact. The applicant has paid the City of Vallejo $515.00 for the processing fee and will pay $1,056.00 after Council approval, to cover the cost of changing the street name signs.

RECOMMENDATION

Staff recommends adoption of a resolution approving the street name change for a portion of Kentucky Street between Tuolumne Street and Solano Avenue to Lee V. Ellenburg Street.

ENVIRONMENTAL REVIEW

The street name change has no impact on the environment.

PROPOSED ACTION

Consideration of a resolution approving the street name change for a portion of Kentucky Street between Tuolumne Street and Solano Avenue to Lee V. Ellenburg Street.

DOCUMENTS AVAILABLE FOR REVIEW

a. A resolution approving street name change for a portion of Kentucky Street between Tuolumne Street and Solano Avenue to Lee V. Ellenburg Street.
b. Petition to Change Street Name and related correspondences.
c. Copy of letter to homeowners regarding this action.
d. Project Location Map.

CONTACT PERSON

David A. Kleinschmidt
City Engineer
(707) 648-4301
david@ci.vallejo.ca.us

Enayat Haidari
Senior Civil Engineer
(707) 648-4317
Enayat@ci.vallejo.ca.us

FEBRUARY 27, 2007
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RESOLUTION NO. 07-____ N.C.

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

WHEREAS, City staff has received a request to change the street name for a portion of Kentucky Street between Tuolumne Street and Solano Avenue to the new name of Lee V. Ellenburg Street from Jeffrey Pouncey, grandson of Lee V. Ellenburg; and

WHEREAS, a petition in favor of the street name change has been signed by fifty percent (50%) of the owners/residents of the affected properties fronting this segment of Kentucky Street; and

WHEREAS, City staff has mailed a letter of street name change via US mail to all affected property owners/residences fronting this segment of Kentucky Street informing them of the proposed street name change; and

WHEREAS, Police and Fire Departments reviewed the proposed street name change request and did not have objection to the street name change; and

NOW, THEREFORE, BE IT RESOLVED that the name of a portion of Kentucky Street between Tuolumne Street and Solano Avenue shall be changed to Lee V. Ellenburg Street; and.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to record said name change in the office of the Solano County Recorder.

FEBRUARY 27, 2007
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Attachment b.

February 27, 2006

Dr. Jeffrey Pouncey
173 Nautilus Drive
Vallejo, California 94591

CITY OF VALLEJO
PUBLIC WORKS DEPT
MAR 0 2 2006

Mr. Mark K. Akaba
Public Works Director
555 Santa Clara Street
Vallejo, California 94590

cc Ghaffar A. Sharifie
Associate Engineer

Re: Street Renaming Proposal

Mr. Akaba,

Greetings. On Monday, February 27 at 3:00PM, Mrs. Deloris (Ellenburg) Pouncey and I met with Mayor Intintoli to discuss the possibility of renaming a street for Reverend Lee V. Ellenburg, who was a long-time resident of Vallejo and pastor of the Vallejo Temple Church of God in Christ, before his death in 1995. As per my brief conversation with Mr. Sharifie, I would like to commence the process by providing you the following information for Police and Fire Department approval/clearance:

Proposed Street Name: Reverend Lee V. Ellenburg (Currently Kentucky Street)
D.O.B.: 2/12/1911
D.O.D.: 6/7/1995
Residence: 1933 Florida Street (16 years); 230 Shasta Street (39 years)

We have been advised that fifty percent (50%) or more of the effected residents (homeowners) must approve the change to continue the process; hence, we are prepared to communicate with these individuals once police and fire department officials give their approval.

Thank you for your assistance in our efforts.

Respectfully,

Jeffrey Pouncey, PsyD

Attachment c.

CITY OF VALLEJO

DEPARTMENT OF PUBLIC WORKS
Engineering Division

555 SANTA CLARA STREET • P.O. BOX 3068 • VALLEJO • CALIFORNIA • 94590-5934 • (707) 648-4315
FAX (707) 648-4691

December 13, 2006

TO: Property Owner/Resident

SUBJECT: Street Name Change – portion of Kentucky Street between Tuolumne Street and Solano Avenue to Lee V. Ellenburg Street (File: House Numbering – Lee V. Ellenburg Street)

Please be advised that Jeffrey Pouncey, grandson of Lee V. Ellenburg has requested, by letter dated February 27, 2006 (copy attached), that the City of Vallejo change the street name fronting the properties on a portion of Kentucky Street between Tuolumne Street and Solano Avenue to Lee V. Ellenburg Street.

This request has been placed on the City Council agenda for approval on January 30, 2007. The City Council meeting starts at 7:00 p.m. in the Council Chambers of City Hall located at 555 Santa Clara Street in Vallejo.

Should you have any questions or concerns, please contact me at (707)648-4315 or by email to gleach@ci.vallejo.ca.us.

Sincerely,

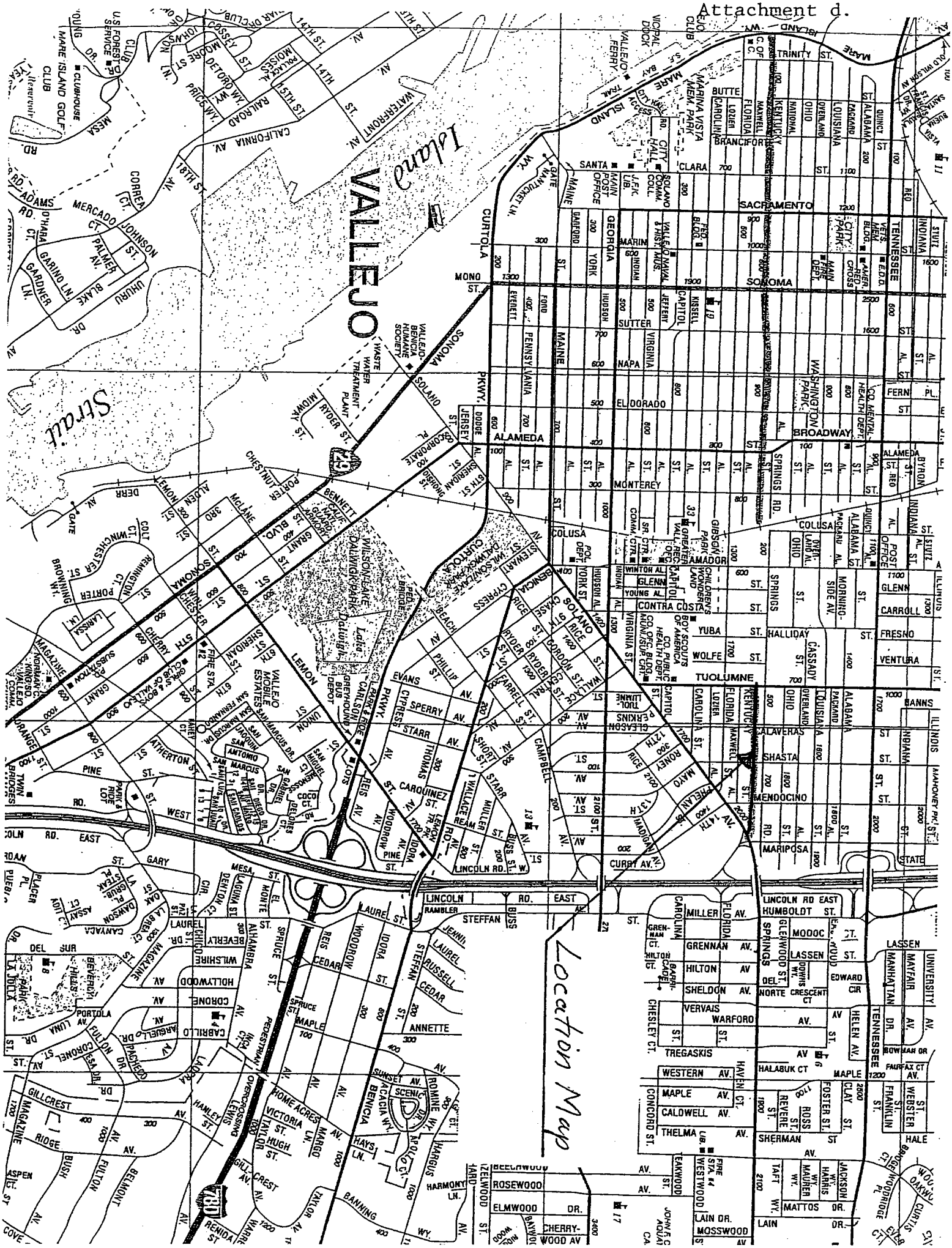
GARY A. LEACH
Public Works Director

Enclosure

cc: Enayat Haidari, Senior Civil Engineer
Ghaffar Sharifie, Associate Engineer
Jeffrey Pouncey, 173 Nautilus Drive, Vallejo, CA 94591
Chron File

H:\PRIVATE PROJECTS\STREET NAME CHANGE\kentucky Street-owners.doc

Attachment d.



CONSENT D

Agenda Item No.

COUNCIL COMMUNICATION

Date: February 27, 2007

TO: Honorable Mayor and Members of the City Council

FROM: Gary A. Leach, Public Works Director

SUBJECT: Annual Sidewalk Repair Policy

BACKGROUND AND DISCUSSION

During its March 28, 2006 meeting, the City Council reconfirmed the City's Annual Sidewalk Repair Policy as stated in Resolution # 98-400 N.C., which was adopted by the City Council at its regular meeting held on October 27, 1998. The current policy states in part, that the costs of the total repair of sidewalk, curb and gutter would be shared by the City and all adjacent property owners. The affected property owners are responsible for the repair of all sidewalk defects, while the City assumes responsibility for the costs of any "street tree" root pruning, as well as the costs associated with the repair of the curb and gutter. In addition, the City Council expressed their concern regarding how the process of billing property owners for their portion of the repairs would be handled. Staff was directed to bring back to Council a billing procedure for their consideration and approval. The attached Annual Sidewalk Repair Policy (Attachment B) incorporates the revisions requested by City Council.

Sidewalk Repair Collection Process

On behalf of Public Works the Finance Department contacted Access Capital Services, Inc. (ACS), with whom the City already does business, and requested a quote for setting up a process for billing and handling the invoices. The information sent to ACS, via electronic file, would include the property owner's name, home address, repair site address and the cost of the property owner's share of the sidewalk repair plus a 5% administration charge. ACS would handle all billing and post all payments. Owners who fail to pay after the first notice will receive a second notice after 60 days. Accounts that remain unpaid after 180 days will be referred back to the city for tax lien purposes. ACS will forward a monthly accounting of all payments and a remittance check to the City's Finance Department minus a flat fee of $4.00 for each account submitted. Accounts that pay in full after just one notice will have no other fees incurred. If necessary, installment payments would be available for property owners for a term not to exceed 12 months.

Property owners that request a payment schedule will be assessed a fee by ACS of 9% of the installment amount for each payment invoiced. ACS will create a series of follow up payment reminder notices to be sent to parties approved by the City for payment plans. Staff has determined that outsourcing of the billing and collection for the Annual Sidewalk Repair Program will be most beneficial and cost effective to the City given our current available resources.

Recognizing that the cost of repairs may be a financial hardship to some affected property owners, Council requested that staff develop a program that would assist low and fixed-income homeowners in paying assessments in conjunction with sidewalk repair or replacement. Staff contacted several cities within Solano, Napa and Contra Costa counties requesting information about their Sidewalk repair programs. While many cities provided assistance to property owners by taking full financial responsibility for the repair of curbs and gutters, the City of Vacaville was the only city contacted that provides financial assistance to low and fixed income property owners. After researching several options, staff is proposing an assistance program similar to the Pacific Gas & Electric Company's C.A.R.E. (California Alternate Rates for Energy) Program. The program would provide financial assistance to low and fixed income property owners. Qualifications are based on the number of people living in the residence and their total annual household income. Property owners who qualify for assistance would have their damaged sidewalks replaced at no charge. To qualify for assistance, the annual income limits for the number of people within the household must be less than the figures shown below:

Family Size:	**1 or 2**	**3**	**4**	**5**	**6**
	$28,600	$33,600	$40,500	$47,400	$54,300

The income limit will be increased by $6,900.00 for each additional household member.

The income limits will be reviewed annually and adjusted as necessary to correspond with the Pacific Gas & Electric C.A.R.E. Program.

Proof of all sources of income will be required. Examples of income verification could include copies of:

a) Proof of eligibility in the P.G. & E. C.A.R.E. Program
b) current check stubs, or
c) recent W-2 form(s), or
d) recent 1040's (income tax return), or
e) benefit statement, or
f) Social Security statement, etc.

Protest of Assessments/Liens

Title 10 of the Vallejo Municipal Code provides property owners the opportunity to protest assessments for sidewalk repair. The City Council shall fix a time for hearing protests against the assessment for the cost of such repair. Upon the date and hour set for the hearing of protests or objections, the city council shall hear and consider all protests and objections, if there are any, and then proceed to affirm, modify or reject the assessment of the costs for such repair work upon said real property. The decision of the City Council on all protests or objections which may be made shall be final and conclusive. If the cost of such repair is not paid within five days after its confirmation by the council, the cost of such repair shall become a lien upon the property fronting upon the sidewalk so repaired. (VMC 10.04.040, 10.04.050, 10.04.060)

Fiscal Impact

Sidewalk repairs are budgeted and are fully funded from Gas Tax funds received from the State of California. Reimbursement revenues from property owners would allow the City to either expand the sidewalk program or fund additional street maintenance, such as potholing and crack sealing. The administrative charge of either $5.00 or 5% of construction costs, whichever is greater, that property owners are assessed under Vallejo Municipal Code section 10.04.040, is sufficient to generate the funds necessary to pay ACS, an estimated $2,000.00 to $5,000.00 per year.

Sidewalk Repair Contract Update

Approximately 400 notices to repair hazardous sidewalks have been mailed to Vallejo property owners. Under the current sidewalk contract, an estimated 22,000 square feet of hazardous sidewalk and 2,500 linear feet of curb and gutter will be replaced. The average costs per parcel for the identified repairs will be approximately $450.00 for the property owner and $200.00 for the City. The Sidewalk Repair Contract should be completed within 6 to 8 weeks depending on weather conditions. Billing of property owners will commence once the City Council has approved the Annual Sidewalk Repair Policy.

RECOMMENDATION

Staff recommends that the Council authorize the City Manager, or his designee to execute an agreement with Access Capital Services, Inc. to handle the processing of invoices for the repair of hazardous sidewalks and approve the Annual Sidewalk Repair Policy attached to this staff report.

ENVIRONMENTAL REVIEW

Adoption of this resolution is not a project under the California Environmental Quality Act ("CEQA") pursuant to section 15378 (b)(2) of Title 14 of the California Code of Regulations as the Council is adopting a general policy regarding assessing property owners for their share of the cost to repair hazardous sidewalks abutting their property and to approve an agreement outsourcing the processing of the associated invoices. No environmental review is required for this action.

Generally, the repair of sidewalks is exempt from CEQA under section 15301 of Title 14 of the California Code of Regulations (Existing Facilities); however City Council will make the appropriate CEQA determination at the time it awards the sidewalk repair contract,

ALTERNATIVES CONSIDERED

Handling of the billing by City staff was considered, however outsourcing of the invoices to Access Capital Services, Inc. was determined to be more cost effective.

PROPOSED ACTION

Adopt the attached resolution approving the Annual Sidewalk Repair Policy and authorizing the City Manager or his designee to execute an agreement with Access Capital Services, Inc. to handle the processing of invoices to property owners that have been assessed their share of the cost to repair hazardous sidewalk abutting their property.

DOCUMENTS AVAILABLE FOR REVIEW

A. A resolution approving the Annual Sidewalk Repair Policy and authorizing the City Manager or his designee to enter into an agreement with Access Capital Services, Inc.

B. City of Vallejo Annual Sidewalk Repair Policy, dated February 27, 2007.

C. Copy of Sidewalk Repair Notice

CONTACT PERSON

James Gajkowski
Assistant Maintenance Supt./Streets
(707) 648-4319
JamesG@ci.vallejo.ca.us

FEBRUARY 27, 2007
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RESOLUTION NO. 07-___ N.C.

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

WHEREAS, the City Council has identified the need for a revised Annual Sidewalk Repair Policy; and

WHEREAS, the City's Finance Department has contacted Access Capital Services, Inc. to handle the processing of invoices to City of Vallejo property owners that have been assessed their share of the cost to repair hazardous sidewalk abutting their property; and

WHEREAS, the City Council finds that it is in the best interest of the City to permit Access Capital Services, Inc. to invoice City of Vallejo property owners for repair of hazardous sidewalk for which they are responsible pursuant to Chapter 10.04 of the Vallejo Municipal Code; and

WHEREAS, the City Council recognizes that the cost of repairs may be a financial hardship to some low and fixed-income City of Vallejo property owners; and

WHEREAS, the City Council finds that an assistance program is necessary and that qualifying City of Vallejo property owners would have their damaged sidewalk replaced at no charge.

NOW, THEREFORE, BE IT RESOLVED that the Vallejo City Council hereby approves and adopts the Annual Sidewalk Repair Policy, dated February 27, 2007.

BE IT FURTHER RESOLVED that all previous Annual Sidewalk Repair Policies and all associated resolutions are hereby rescinded.

BE IT FURTHER RESOLVED that the City Manager or his designee is authorized to execute an agreement, in a form approved by the City Attorney and Risk Manager, with Access Capital Services, Inc. for processing of the Annual Sidewalk Repair invoices.

FEBRUARY 27, 2007
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Annual Sidewalk Repair Policy

City of Vallejo

Public Works Department

February 27, 2007

Approved by the
Vallejo City Council;
Resolution No. _____ N.C.
Adopted February 27, 2007

TABLE OF CONTENTS

Annual Sidewalk Repair Policy

1. Purpose

The purpose of the Annual Sidewalk Repair Policy is to have a planned and comprehensive program for the maintenance and repair of the City's sidewalks, curbs and gutters. The Annual Sidewalk Repair Policy is designed to repair defective sidewalks to eliminate tripping hazards and to provide a safer and more accessible transit surface for pedestrians.

2. Responsibility of Property Owner and City

Chapter 10.04 of the Vallejo Municipal Code imposes the financial responsibility for sidewalk, curb and gutter repairs on the abutting property owner.

Under this Policy, property owners will be financially responsible for the repair of all sidewalk defects and the City will be financially responsibility for repair costs related to "street tree" root pruning and the repair of curbs and gutters.

3. Financial Assistance Program

The program would provide financial assistance to low and fixed income property owners. Qualifications are based on the number of people living in the residence and their total annual household income. Property owners who qualify for assistance would have their damaged sidewalks replaced at no charge. To qualify for assistance, the annual income limits for the number of people within the household must be less than the figures shown below:

Family Size:	**1 or 2**	**3**	**4**	**5**	**6**
	$28,000	$33,600	$40,500	$47,400	$54,300

The income limit will be increased by $6,900 for each additional household member.

The income limits will be reviewed annually and adjusted as necessary to correspond with the Pacific Gas & Electric C.A.R.E. Program.

Proof of all sources of income will be required. Examples of income verification could include copies of:

a) Proof of eligibility in the P.G.&E. C.A.R.E. Program
b) current check stubs, or
c) recent W-2 form(s), or
d) recent 1040's (income tax return), or
e) benefit statement, or
f) Social Security statement, etc.

4. Property Owners Billing and Collection Process

Property owners will be billed for their share of the sidewalk repair, plus a 5% administration charge. Owners who fail to pay after the first notice will receive a second notice after 60 days. Property owners that request a payment schedule will be assessed a 9% fee by the billing agent for each payment received resulting from this payment arrangement. Accounts that remain unpaid after 180 days will be scheduled for hearings in front of Council for tax lien purposes.

Title 10 of the Vallejo Municipal Code provides property owners the opportunity to protest assessments for sidewalk repair. The City Council shall fix a time for hearing protests against the assessment for the cost of such repair. Upon the date and hour set for the hearing of protests or objections, the City Council shall hear and consider all protests and objections, if there are any, and then proceed to affirm, modify or reject the assessment of the cost for such repair work upon said real property. The decision of the City Council on all protests or objections which may be made shall be final and conclusive. If the cost of such repair is not paid within five days after its confirmation by the City Council, the cost of such repair shall become a lien upon the property fronting upon the sidewalk so repaired.

5. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Policy is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Policy. The City Council hereby declares that it would have adopted this policy and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

CERTIFIED MAIL/RETURN RECIEPT

DATE

PROPERTY OWNER
ADDRESS
Vallejo, CA 945XX

SUBJECT: Notice to Repair Sidewalk – XXX XXXXX Street
APN: XXXX-XXX-XXX

Notice No.: 1 Hansen Work Order # XXXXX

Property Owner:

It has been brought to the attention of the City of Vallejo Public Works Department that the sidewalk in front of or abutting the subject property is currently in an unsafe condition. This condition has been verified by a site visit and has been determined to constitute a tripping hazard to pedestrian traffic traversing along Street Name.

Accordingly, pursuant to Chapter 10.04 of the Vallejo Municipal Code, you are hereby notified to have the following work completed:

Remove and replace the defective section(s) of sidewalk along STREET NAME in front of or abutting the subject property. For your convenience, these defective areas have been outlined in white paint with a "P" inside of the markings.

As a service to Vallejo residents, the City offers you three alternatives for making the necessary repairs as follows:

You, as the property owner, may elect to do the work yourself. In this case, you must obtain a sidewalk permit from the Maintenance Division, 111 Amador Street, prior to starting any work and within two (2) weeks following receipt of this notice. There is a forty dollar ($40) charge for this permit, which includes the cost of the mandatory inspections. The materials and work must conform to the applicable portions of the City of Vallejo specifications for repair and construction of sidewalks and driveways. A copy of these specifications is attached for your use. Please note that you must also call 648-4556 to arrange for an inspection. Two (2) inspections are required, one after the work has been formed and prior to pouring the new concrete, and a final inspection after completion of the work.

You, as the property owner, may arrange to have the work performed by a private contractor of your choice. In this case, you pay for the contractor's services directly. The contractor must be licensed by the State of California and possess a City of Vallejo business license. All other

provisions of option #1, above, must be followed, including the requirement to obtain a sidewalk permit prior to starting any work and within two (2) weeks following receipt of this notice.

You, as the property owner, can do nothing and the City will schedule the repair as a part of our annual Sidewalk Repair Contract. The City goes out to bid and receives prices for sidewalk repair throughout the City each year. By doing this, the City gets a fixed and guaranteed rate for sidewalk repair which is often lower than what you would pay to have an independent contractor provide these same services. Based on last year's contract prices, plus expected price increases, and the extent of the repair required at the subject property, we estimate your repair will cost approximately **$150.00**. This estimate **includes a five percent (5%) administrative fee** that covers the cost of inspections and sidewalk repair contract administration. You will be billed for the actual cost of the repair, plus the five percent (5%) administrative charge once the repair has been completed. **Please call (707) 648-4319** to confirm that you would like to have the City of Vallejo schedule the repairs as a part of our annual Sidewalk Repair Contract.

You may respond to this notice by the method most convenient to you. Please note that Chapter 10.04 of the Vallejo Municipal Code requires this work to be initiated within two (2) weeks after this notice and diligently and without interruption prosecuted to completion. If no permit has been issued within two (2) weeks from receipt of this notice, the City will include this location on our annual sidewalk contract and schedule the repair of subject sidewalk. As mentioned in option #3, above, an administrative fee of five percent (5%) shall be added to the cost of the repair and billed to you upon completion. Please be advised that if this bill is not paid within thirty (30) days, the cost of same will be placed as a lien on your property following a public hearing by the City Council. Provided this occurs, you will be notified of the date of this hearing and be given an opportunity to protest this action.

If you believe the work listed above is not necessary, you may file an appeal with the Director of Public Works within ten (10) calendar days of receipt of this notice.

Sidewalk maintenance is not only important to the appearance value of your property, but also protects you from liability from public injuries occurring on sidewalks adjacent to your property. If you have any questions or want further information, please feel free to call James Gajkowski, AMS/Streets at (707) 648-4319.

Sincerely,

For Gary A. Leach
Public Works Director
City of Vallejo

cc: Gary A. Leach, Public Works Director
John Cerini, Maintenance Superintendent
Suspense File

CONSENT E

Agenda Item No.

COUNCIL COMMUNICATION **Date:** February 27, 2007

TO: Honorable Mayor and Members of the City Council

FROM: Gary A. Leach, Public Works Director

SUBJECT: APPROVAL OF A RESOLUTION OF SUPPORT FOR THE SAN FRANCISCO BAY TRAIL AND BAY AREA RIDGE TRAIL FEASIBILITY STUDY TO IDENTIFY AND RECOMMEND A PREFERRED TRAIL ALIGNMENT

BACKGROUND AND DISCUSSION

The San Francisco Bay Trail is a planned 500-mile recreational pathway encircling the San Francisco Bay, and the Bay Area Ridge Trail is a 500-mile recreational pathway encircling the San Francisco Bay Area Ridges, both trails are proposed to pass through the City of Vallejo. The City of Vallejo has supported through staff involvement, the Association of Bay Area Governments (ABAG) and Consultant LandPeople in the planning phase for the completion of trail system in Vallejo. Currently a grant has been awarded to Consultant, LandPeople to conduct a feasibility study to identify and recommend a preferred trail alignment. Before moving forward the San Francisco Bay Trail and Bay Area Ridge Trail boards have requested a resolution of support from the City of Vallejo.

Fiscal Impact

There will be no direct fiscal impact to the City, except for a limited amount of staff time to assist in the study review and development. Study will be fully grant funded and the work performed by an outside source, LandPeople.

RECOMMENDATION

Staff recommends supporting the San Francisco Bay Trail and Bay Area Ridge Trail feasibility study to identify a preferred trail alignment.

ENVIRONMENTAL REVIEW

No environmental review under CEQA is required for this feasibility study.

PROPOSED ACTION

Approve the resolution of support for the San Francisco Bay Trail and Bay Area Ridge Trail Feasibility Study to identify a preferred trail alignment.

CONTACT PERSONS

Gary A. Leach, Public Works Director
648-4315
gleach@ci.vallejo.ca.us

Taner H. Aksu, Senior Civil Engineer
(707) 648-4300
taksu@ci.vallejo.ca.us

DOCUMENTS AVAILABLE FOR REVIEW

a. A resolution of support for the San Francisco Bay Trail and Bay Area Ridge Trail Feasibility Study to identify a preferred trail alignment.

b. A location map.

FEBRUARY 27, 2007
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RESOLUTION NO. 07-___ N.C.

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

WHEREAS, the San Francisco Bay Trail is a planned 500-mile recreational pathway encircling the San Francisco Bay, and the Bay Area Ridge Trail is a 500-mile recreational pathway encircling the San Francisco Bay Area Ridges; and

WHEREAS, the Bay Trail and Ridge Trail share a common multi-use alignment between the Benicia State Recreation Area and the Alfred P. Zampa Memorial Bridge providing alternative transportation links to transit, parks, businesses, residential areas, etc.; and

WHEREAS, a feasibility study to identify a preferred alignment will be jointly funded by the San Francisco Bay Trail Project and the Bay Area Ridge Trail Council, and performed by LandPeople of Benicia (consultants);

NOW, THEREFORE, BE IT RESOLVED, that the City of Vallejo officially supports the efforts of the Bay Trail and the Ridge Trail to identify and recommend a preferred trail alignment and will participate with a limited amount of staff time to provide background information, review of proposed alignments, and assistance with public outreach.

FURTHERMORE, the City of Vallejo will incorporate the resulting City approved alignment into the relevant City plan, and attempt to seek outside funding in order to implement the trails as staff time and funding permit.

FEBRUARY 27, 2007
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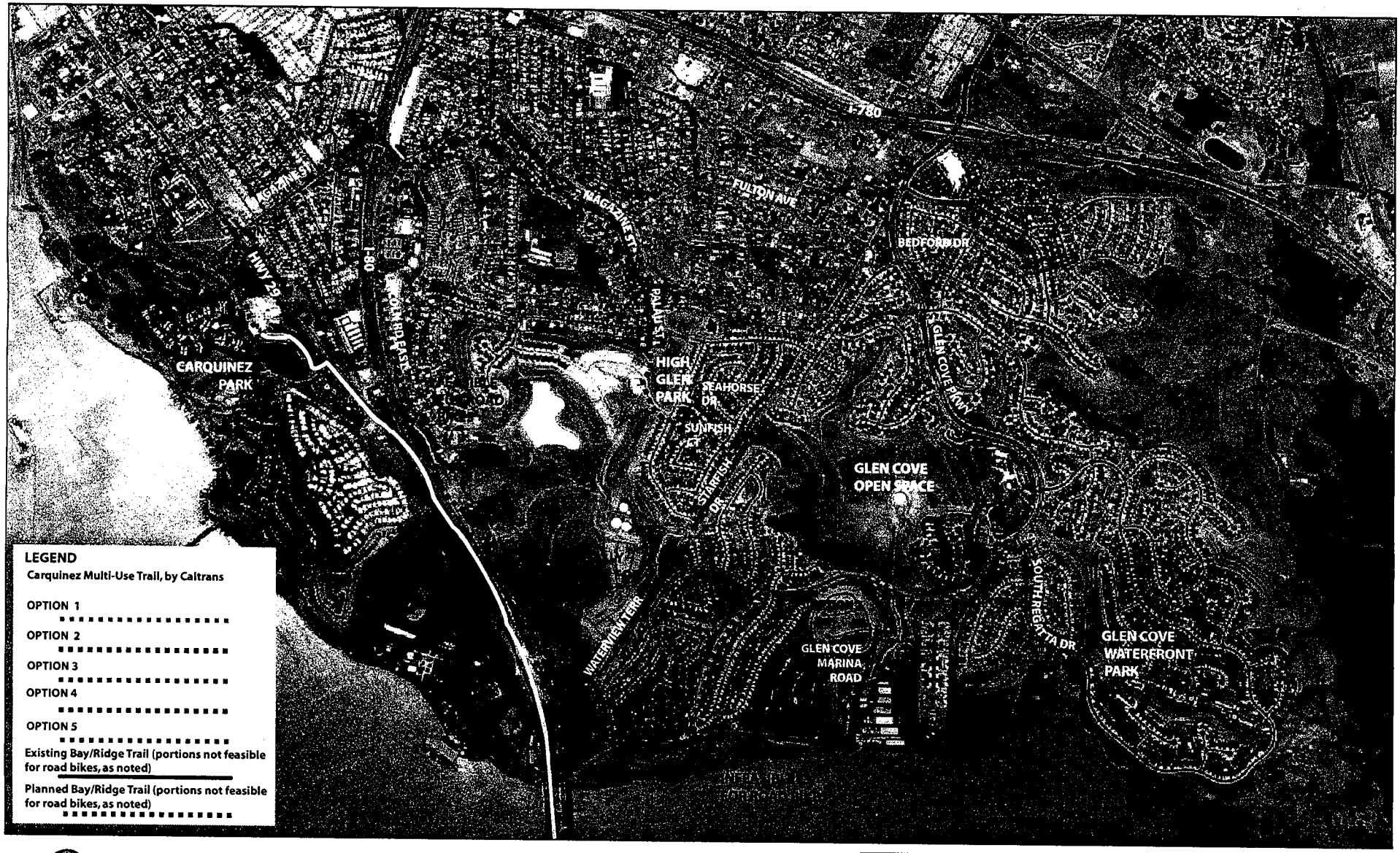
Attachment B



LandPeople

FIGURE 1: VALLEJO BAY TRAIL & RIDGE TRAIL ROUTE OPTIONS

LandPeople, landscape architects & planners

CONSENT F

Agenda Item No.

COUNCIL COMMUNICATION **Date:** February 27, 2007

TO: Honorable Mayor and Members of the City Council

FROM: Gary A. Leach, Public Works Director

SUBJECT: APPROVAL OF A RESOLUTION OF SUPPORT FOR ASSEMBLY BILL 112, HIGHWAY SAFETY ENHANCEMENT – DOUBLE FINE ZONE ON STATE ROUTE 12

BACKGROUND

The Solano Transportation Authority (STA) Board is working with the Office of Traffic Safety (OTS), the California Department of Transportation (Caltrans), the California Highway Patrol (CHP) departments of Solano, Sacramento and San Joaquin counties, the Solano County Sheriff's Department, and the local traffic and safety personnel from the County of Solano and the cities of Fairfield, Rio Vista and Suisun City to improve safety on State Route (SR) 12. Our collective goal is to reduce traffic accidents, injuries and fatalities by enforcing speed violations/unsafe driving practices, increasing education, DUI patrols and checkpoints to make the SR 12 corridor safer to travel.

Safety on SR 12 has been a priority for the STA Board for a number of years, but recent accidents and fatalities have increased the urgency to take immediate action. Several facts speak to the gravity of this matter:

- The accident rate has gone from 60% of the statewide average for similar routes to 80% to over 100% in the last 10 years.
- 2001-2005 SWITRS & TASAS accident data on SR 12 from western Solano County Line to Rio Vista Bridge indicates the following:
  - 799 Collisions
  - 492 Injuries
  - 18 Fatalities
- Peak period traffic is expected to double on SR 12 before 2030.
- Three fatal accidents occurred in 2006 between Walters Road and Drouin Drive, an 18-mile stretch of SR 12.
- There is lack of public safety resources to heighten enforcement on SR 12.

The following positive steps have been taken in the last 10 years:

- In October 2006, the California Transportation Commission allocated $560,000 for a soft median barrier/rumble strips from Currie Road to Drouin Drive. Caltrans is scheduled to begin construction in the Spring 2007.

- $46.6 M was designated for two rehabilitation projects (PM 7.9 to 20.6). The projects were delayed from 2005-06 to 2009-10. Due to negotiations undertaken by you and the Solano Transportation Authority, Caltrans has moved the date up and is now scheduled to go to construction as early as the summer of 2008.

- The California Highway Patrol has prioritized SR 12 as one of its top requests for Safety Corridor project funding for 2007-08, which would translate to increased enforcement and public education on the increased manpower and hours of enforcement.

The Solano Transportation Authority strongly supports these efforts to improve traffic safety on the SR 12 corridor. Even one life is too many to lose, and the recent steady increase in fatalities cries out for action to be taken. The passage of AB 112 is one way we can send a message to drivers that will hopefully contribute to a decrease in the number of serious accidents on this busy corridor.

Fiscal Impact

None.

RECOMMENDATION

Staff recommends supporting the proposed legislation AB 112 to re-establish a double fine zone for Highway 12, between its intersection with Interstate 80 in Solano County and Interstate 5 in San Joaquin County as a "Safety Enhancement-Double Fine Zone" between 2007 and 2012.

DOCUMENTS AVAILABLE FOR REVIEW

a. A resolution of support for proposed legislation AB 112 (Lois Wolk).

CONTACT PERSON

Gary A. Leach, Public Works Director
648-4315
gleach@ci.vallejo.ca.us

FEBRUARY 27, 2007
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RESOLUTION NO. 07-____ N.C.

WHEREAS, State Route 12 from Interstate Highway 5 through Solano County to Interstate 80 is one of the most dangerous sections of state highway in California and there have been a great number of vehicle collisions resulting in injury and death; and

WHEREAS, State-wide statistics show that vehicular collision injuries and deaths on SR12 in Solano County exceed the State averages for roads of similar configurations; and

WHEREAS, studies have shown that doubling traffic violation fines in particularly dangerous sections of state highways has resulted in reduced injuries and deaths from vehicle collisions; and

WHEREAS, Assemblywoman Lois Wolk has introduced AB112 in order to legislatively impose double fines in the above mentioned areas of SR12; and

WHEREAS, the legislative digest for AB112 reads as follows: Existing law establishes standards for the designation of a highway or road segment as a Safety Enhancement-Double Fine Zone and requires the Department of Transportation to conduct an evaluation of the zones that will terminate the same calendar year. This bill would, upon approval of specified county resolutions and until January 1, 2012, designate the segment of State Highway Route 12 between the State Highway Route 80 junction in Solano County and the State Highway Route 5 junction in San Joaquin County as a Safety Enhancement-Double Fine Zone; and

WHEREAS, the Solano Transportation Authority, in conjunction with the County of Solano, the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun City, Vacaville and Vallejo and the law enforcement agencies for each of those agencies as well as the local California Highway Patrol have joined together to implement a series of actions designed to significantly improve safety on SR12 through a variety of means including the creation of a double fine zone as proposed in AB112, increased traffic law enforcement in the area and other steps to improve traffic safety.

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Solano Transportation Authority hereby:

1. Supports passage of AB112 (Wolk) and urges the State Legislature to quickly pass this important bill and asks Governor Schwarzenegger to sign the bill; and
2. Expresses its appreciation to Assemblywoman Lois Wolk for her leadership and support of this important endeavor.

FEBRUARY 27, 2007
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cc Consent G

RDA Consent A

Agenda Item No.

VALLEJO REDEVELOPMENT AGENCY
COUNCIL COMMUNICATION **Date: February 27, 2007**

TO: Honorable Chairperson and Members of the Redevelopment Agency
Honorable Mayor and Members of the City Council

FROM: Robert V. Stout, Finance Director

SUBJECT: APPROVAL OF RESOLUTIONS ADOPTING 1) THE CITY'S STATEMENT OF INVESTMENT POLICY PURSUANT TO STATE OF CALIFORNIA GOVERNMENT CODE SECTION 53646 AND 2) DELEGATION OF INVESTMENT AUTHORITY TO CITY FINANCE DIRECTOR/TREASURER.

BACKGROUND & DISCUSSION:

The City's Statement of Investment Policy requires that it be reviewed annually to ensure consistency with respect to the objectives of safety, liquidity, yield and relevance to current laws and financial and economic trends. California Government Code Section 53646 provides that the City's Investment Policy may be rendered annually to the City Council for consideration.

The City's Statement of Investment Policy has been revised (Attachment 3), based upon the written Investment Policy guidelines of the Association of Public Treasurers' of the United States and Canada. In addition, the City's outside professional investment managers, Wells Capital Management and Chandler Asset Management, also reviewed the proposed policy and provided recommendations as to how the City could improve portfolio management. The proposed changes in the Investment Policy are a result of this review process. The prior Council approved Investment Policy dated February 28, 2006, showing all proposed additions and deletions is also attached (Attachment 4).

In 2001, the City's investment policy was awarded the Association of Public Treasurers' of the United States and Canada (APT) Certification of Excellence Award. The revised Investment Policy continues to adhere to these standards.

California Government Code Section 53646 requires that the City's Statement of Investment Policy and any material changes in the Policy may be approved by Council annually at a public meeting. California Government Code Section 53607 limits the authorization of the legislative body to delegate investment authority to a one-year period, renewable annually.

The City Council last approved the Statement of Investment Policy and continued delegation of investment authority to the City Finance Director/Treasurer on February 28, 2006. This policy has routinely been updated on an annual basis.

The Finance Director/Treasurer has the responsibility for ensuring that any investment decision complies with the investment policy. The Treasurer is required to file a quarterly investment report with the City Council within 30 days following the end of the quarter covered by the report to ensure that the City Council has timely information. This requirement was met throughout Fiscal Year 2005-06.

The key provisions of the existing policy are as follows:

Safety of principal is the foremost objective of the investment policy. Diversification and maturity limitations are required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.

Liquidity. The portfolio will remain sufficiently liquid to enable the City to meet all cash flow requirements that might be reasonably anticipated for the next six months.

Return on Investment. The portfolio will be maintained with the objectives of safety and liquidity first, and then the objective of obtaining a market-average rate of return.

This year, staff proposes making minor changes to the policy in order to incorporate new language for clarification purposes.

There is no budget or financial impacts resulting from this staff report. Although the State of California suspended the mandate requiring investment reporting set forth by Government Code Section 53646, the City Treasurer will continue to provide investment reporting and an annual update of the Investment Policy.

PROPOSED ACTION:

1. Adopt a Resolution of the City Council of the City of Vallejo ("City") approving the revised Statement of Investment Policy (Attachment 3), and continue delegation of investment authority to the City Finance Director/Treasurer for the period March 1, 2007, through February 28, 2008.

2. Adopt a Resolution of the Redevelopment Agency of the City of Vallejo ("Agency") approving the revised Statement of Investment Policy (Attachment 3), and continue delegation of investment authority to the City Finance Director/Treasurer for the period March 1, 2007, through February 28, 2008.

DOCUMENTS ATTACHED:

1. Resolution of the City Council of the City of Vallejo ("City") approving the revised Statement of Investment Policy (Attachment 3), and continue delegation of investment authority to the City Finance Director/Treasurer for the period March 1, 2007, through February 28, 2008.

2. Resolution of the Vallejo Redevelopment Agency ("Agency") approving the revised Statement of Investment Policy (Attachment 3), and continue delegation of investment authority to the City Finance Director/Treasurer for the period March 1, 2007, through February 28, 2008.

3. Attachment 3. Revised City of Vallejo, and Redevelopment Agency of the City of Vallejo Statement of Investment Policy Dated February 27, 2007.

4. Attachment 4. Prior Year City of Vallejo Statement of Investment Policy Dated February 28, 2006, Showing All Proposed Additions And Deletions.

PREPARED BY:

Jon R. Oiler, Auditor Controller
(707) 648-4593

CONTACT:

Robert V. Stout, Finance Director
(707) 648-4592.

ATTACHMENT 1

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL APPROVING THE STATEMENT OF INVESTMENT POLICY PURSUANT TO STATE OF CALIFORNIA GOVERNMENT CODE SECTION 53646 AND DELEGATING INVESTMENT AUTHORITY TO THE CITY FINANCE DIRECTOR/TREASURER FOR THE PERIOD MARCH 1, 2007, THROUGH FEBRUARY 28, 2008

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

WHEREAS, Section 53646 of the Government Code requires that "...the treasurer or chief fiscal officer may annually render to the legislative body of the local agency and any oversight committee a Statement of Investment Policy..."; and

WHEREAS, Section 53607 of the Government Code provides that the legislative body may delegate the authority to invest to the treasurer on an annual basis; and

WHEREAS, the legislative body of a local agency may invest surplus monies not required for the immediate necessities of the local agency in accordance with the provisions of California Government Code Section 53601 et seq.; and

WHEREAS, Section 53646 (a) of the Government Code requires that the treasurer may annually prepare and submit a Statement of Investment Policy and such policy, and any changes thereto, shall be considered by the legislative body at a public meeting; and

WHEREAS, the Annual Statement of Investment Policy was last reviewed and adopted on February 28, 2006; now, therefore:

IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF VALLEJO, CALIFORNIA, AS FOLLOWS:

Section 1. The Statement of Investment Policy for the City of Vallejo, as amended and set forth in the attached "Attachment 3", is hereby approved and ratified.

Section 2. The Vallejo City Council delegates investment authority to the Finance Director/Treasurer for a period of one year, from March 1, 2007, through February 28, 2008, in accordance with the Policy.

Section 3. This Resolution shall be in full force and effect from and after its passage and signature as provided by law.

ATTACHMENT 2

RESOLUTION NO. _____

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO APPROVING THE STATEMENT OF INVESTMENT POLICY PURSUANT TO STATE OF CALIFORNIA GOVERNMENT CODE SECTION 53646 AND DELEGATING INVESTMENT AUTHORITY TO THE CITY FINANCE DIRECTOR/TREASURER FOR THE PERIOD MARCH 1, 2007 THROUGH FEBRUARY 28, 2008

BE IT RESOLVED by the Redevelopment Agency of the City of Vallejo ("Agency"), as follows:

WHEREAS, Section 53646 of the Government Code requires that "...the treasurer or chief fiscal officer may annually render to the legislative body of the local agency and any oversight committee a Statement of Investment Policy..."; and

WHEREAS, Section 53607 of the Government Code provides that the legislative body may delegate the authority to invest to the treasurer on an annual basis; and

WHEREAS, the legislative body of a local agency may invest surplus monies not required for the immediate necessities of the local agency in accordance with the provisions of California Government Code Section 53601 et seq.; and

WHEREAS, Section 53646 (a) of the Government Code requires that the treasurer may annually prepare and submit a Statement of Investment Policy and such policy, and any changes thereto, shall be considered by the legislative body at a public meeting; and

WHEREAS, the Annual Statement of Investment Policy was last reviewed and adopted on February 28, 2006; now, therefore:

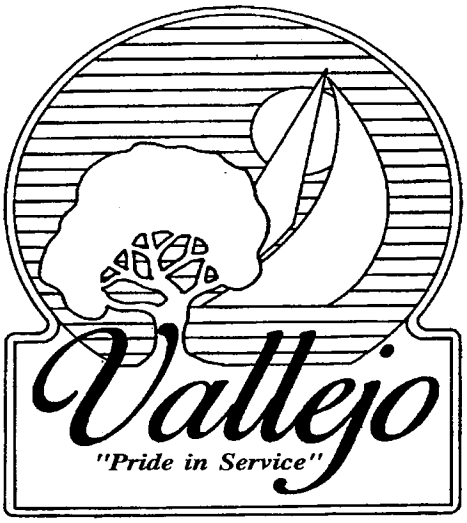
IT IS HEREBY RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO ("AGENCY"), AS FOLLOWS:

Section 1. The Statement of Investment Policy for the Redevelopment Agency of the City of Vallejo, as amended and set forth in the attached "Attachment 3", is hereby approved and ratified.

Section 2. The Redevelopment Agency of the City of Vallejo delegates investment authority to the City Finance Director/Treasurer for a period of one year, from March 1, 2007, through February 28, 2008, in accordance with the Policy.

Section 3. This Resolution shall be in full force and effect from and after its passage and signature as provided by law.

ATTACHMENT 3



CITY OF VALLEJO, CALIFORNIA
REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO

STATEMENT OF INVESTMENT POLICY

Adopted by the City Council and Redevelopment Agency of the City of Vallejo
On February 27, 2007

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CITY OF VALLEJO
REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO
INVESTMENT POLICY

1.0 POLICY

It is the policy of the City of Vallejo and the Redevelopment Agency of the City of Vallejo (hereinafter collectively "City") to invest public funds of the City in a prudent manner which will provide security of principal and achieve a reasonable rate of return on public funds while maintaining sufficient liquidity to insure that the City is able to meet daily cash flow requirements, and conforming to all state and local statutes governing the investment of public funds.

2.0 SCOPE

Pursuant to California Government Code Section 53600 et. seq., the City Council as the legislative body of the City has primary responsibility for investment of money in the City Treasury not required for the immediate needs of the City. In accordance with the Charter of the City, the City Council has assigned the responsibility of investing the unexpended cash of the City Treasury to the City Manager. Furthermore, daily management responsibility for unexpended cash and the investment portfolio has been further delegated by the City Manager to the City Finance Director/Treasurer. This Investment Policy applies equally to both the City of Vallejo and the Redevelopment Agency of the City of Vallejo.

Therefore, as authorized under California Government Code Section 53607, the City Council hereby delegates its authority to invest or reinvest the funds of the City, and to buy, sell or exchange securities so purchased, to the City Finance Director/Treasurer who shall assume full responsibility for all such transactions until such time as this delegation of authority may expire or be revoked by the City Council.

A. This investment policy shall apply to all financial assets and investment activities of the City of Vallejo and the Vallejo Redevelopment Agency including the following fund types:

    1. General Fund
    2. Special Revenue Funds
    3. Debt Service Funds
    4. Capital Project Funds
    5. Enterprise Funds
    6. Internal Service Funds
    7. Trust & Agency Funds

B. This policy does not cover funds held by the Public Employees Retirement System nor shall it apply to investments held by the administrators of the City's IRS Code Section 457 Deferred Compensation program.

C. Except for cash in certain restricted and special funds, the City will consolidate cash balances from all funds to maximize investment options.

D. The proceeds of City bond issues, notes or similar financings including, but not limited to reserve funds, project funds, debt service funds and capital trust funds derived from such financings, as well as funds set aside to defease City or RDA debt in conjunction with an advance refunding agreement, shall be invested pursuant to their respective bond or trust indentures or the State of California Government Code 53600 et. seq., as applicable and not necessarily in compliance with this policy.

3.0 INVESTMENT INCOME AND EXPENSE ALLOCATIONS

Investment income will be allocated to the various funds based on their respective participation based on the cash balance in each fund as a percentage of the entire pooled portfolio, or such other method as otherwise directed by the City Finance Director/Treasurer, and in accordance with generally accepted accounting principles.

The costs of managing the investment portfolio, including but not limited to: investment management fees; accounting for the investment activity; custody of the assets; oversight controls; are charged to the individual funds on an annual basis, based upon actual expenses incurred, or using such other method as otherwise directed by the City Finance Director/Treasurer.

4.0 PRUDENCE

The City will manage the investment portfolio under the Prudent Investor Standard, which as authorized under California Government Code Section 53600.3 states that:

> *"Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law."*

In determining whether an investment official has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds over which the official had responsibility rather than consideration as to the prudence of a single investment and, whether the investment decision was consistent with the City's Investment Policy and written investment procedures.

The City recognizes that in a diversified portfolio selected losses may occur when selected securities are sold to meet cash flow needs or to improve the overall portfolio performance and must be considered within the context of the overall portfolio's investment return.

This standard of prudence shall be applied in the context of managing the City and RDA's investment portfolios.

5.0 INVESTMENT OBJECTIVES

The objective of this policy is to provide guidance to invest City funds in accordance with California Government Code Section 53600 et. seq., using sound treasury management principles with the following objectives, in order of priority:

A. **Safety:** Safety of invested funds is the first and primary objective of the City's investment program. The highest priority must be accorded to the preservation and protection of capital.

B. **Liquidity:** Maintenance of sufficient liquidity to meet all cash flow requirements that might be reasonably anticipated for at least six (6) months.

C. **Return:** The City's investment portfolio shall be designed with the objective of attaining the best return, throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio, consistent with the higher priorities accorded to the safety and liquidity of principal.

Investments shall be selected in a manner that will attempt to ensure the safety of the City's capital. This will be accomplished through a program of investment instrument selection, diversification and maturity limitations. Investment transactions shall seek to keep capital losses at a minimum, whether they are from securities defaults or erosion of market value.

A. SAFETY

To protect the value of the principal and interest of the invested funds, the City will invest only in securities with acceptable credit quality as outlined in the California Government Code Section 53600 et. Seq. which include, but are not limited to, those backed by the U.S. Government or its agencies; those which have insurance on principal backed by FDIC or FSLIC; or those which have legally required collateral backing of the invested principal.

Investments shall be undertaken in a manner that seeks to ensure the preservation of principal in the overall portfolio. This statement refers to the overall portfolio as opposed to individual investments. The objective will be to minimize credit risk and market risk.

It is recognized that within a well-diversified portfolio, at any particular point in time, that security valuations are impacted by changes in interest rates and economic conditions. Accordingly, securities may at times be worth less than the original purchase price based on market fluctuations. It is further understood, that in the event of the need for a forced liquidation of investments to meet unplanned or unanticipated cash flow demands, a potential loss of investment principal might occur.

The City recognizes that investment risk can result from issuer defaults, market price changes or various technical complications leading to temporary illiquidity. Portfolio diversification is employed as a way to minimize and control these risks.

a. Credit Risk - Credit Risk is the risk of loss due to the failure of the security issuer or backer to fulfill its obligations. Credit risk will be mitigated by:

- Limiting investments to the acceptable credit quality as outlined in the California Government Code Section 53600 et. Seq.; and
- Pre-qualifying the financial institutions, broker/dealers and intermediaries with which the City will do business; and
- Diversifying the investment portfolio so that the failure of any one issuer would not unduly harm the City's cash flow.

b. Market Risk - Market risk is the risk that the market value of securities in the portfolio will fall due to market influence such as changes in general interest rates. Market risk may be minimized by:

- Structuring the investment portfolio to limit the average maturity of the City's portfolio to a maximum of three years and the maximum legal final maturity of any one security in the portfolio to five years, and by structuring the portfolio with an adequate mix of highly liquid securities and maturities to meet major cash outflow requirements.

B. LIQUIDITY

Maturity dates of investments will be timed to make available funds for payment obligations that may be reasonably anticipated. Liquidity refers to the ability to sell investments at any given moment while minimizing the chance of losing some portion of principal or interest. Since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets.

Furthermore, the City shall maintain short term investments which offer same day liquidity for short-term funds.

C. RETURN ON INVESTMENTS

The City of Vallejo's investment portfolio shall be designed with the objective of attaining a rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio. Return on investments is subordinate to the requirements of safety and liquidity. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

6.0 PERFORMANCE STANDARDS

The City's investment portfolio shall be designed to attain a market-average rate of return throughout budgetary and economic cycles, taking into account the city's investment risk constraints and cash flow. In order to assist in the evaluation of the portfolios' performance, the City will use a performance benchmark for the portfolio consistent with agreed-upon maturity targets that fall within the portfolio-established maturity parameters. Useful comparative benchmarks of the City's portfolio performance will be the quarter-to-date LAIF apportionment rate, and the two-year U.S. Treasury Note yield. This maturity range is an appropriate benchmark based on the objectives of the City. Whenever possible, and consistent with risk limitations as defined herein and prudent investment principles, the Treasurer shall seek to augment returns above the market-average rate of return.

7.0 DIVERSIFICATION

The City will diversify its investments to reduce credit risk or market risk losses to the portfolio as a whole, while still attaining a market-average rate of return. Diversification requires not just a mix of instrument types, but also a mix of maturities and issuers. No more than 5% of the portfolio is to be invested in any one issue (except the Local Agency Investment Fund). With the exception of U.S. Treasury securities and authorized pools, no more than 50% of the City's total investment portfolio will be invested in a single security type or with a single financial institution.

8.0 REPORTING

In accordance with California Government Code Section 53646, the Treasurer may submit an investment report to the City Council on a quarterly basis within 30 days of the end of the quarter, which provides a review of investments and summarizes total investment return as described in items A through E found below within this section.

The report shall include the following information:

A. Type of investment, issuer, date of maturity, par value and dollar amount invested in all securities, investments and money held by the City at the end of the reporting period; and

B. A listing of individual securities held at the end of the reporting period by authorized investment category and percentage of portfolio represented by each investment category; and

C. Average life and final maturity of all investments listed, and coupon, discount or earnings rate; and

D. Par Value, Fair Value and Cost Value; and

E. For all securities held by the City or under management by an outside party that is not a local agency pool or the State of California Local Agency Investment Fund, the current fair value as of the date of the report; and

F. Statement that the portfolio complies with the Investment Policy or the manner in which the portfolio is not in compliance; and

G. Statement that the City has the ability to meet its pooled expenditure requirements (cash flow) for the next six months or provide an explanation as to why sufficient money shall or may not be available.

If the City places all of its investments in the Local Agency Investment Fund, Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association (or any combination of these three), the Finance Director can simply submit, on at least a quarterly basis, the most recent statements from these institutions to meet the requirements of items A - D above, with a supplemental report addressing items E - H above, per California Government Code Section 53646(b)-(e).

Reports to California Debt and Investment Advisory Commission (CDIAC)

With the passage of AB 943, reporting to the California Debt and Investment Advisory Commission (CDIAC) commenced in January 2001. Cities and Counties are now required to forward copies of their second and fourth quarter calendar year investment portfolio reports and copies of their investment policies to the CDIAC. The City has 60 days following the close of the quarter to provide CDIAC with its investment portfolio report.

In addition, with the passage of SB 1326 in 2002, Cities and Counties are now required to submit copies of their investment policies to the CDIAC within 60 days after the close of the second quarter of each calendar year and within 60 days of any subsequent amendment. The City of Vallejo will comply with CDIAC oversight agency reporting requirements.

9.0 SAFEKEEPING AND CUSTODY

All security transactions of the City and RDA, including collateral on repurchase agreements, will be executed by delivery-versus-payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. A third party custodian, as designated by the Treasurer and as evidenced by safekeeping receipts, will hold securities of the City and RDA.

10.0 AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

If deemed necessary by the Finance Director/Treasurer, the Treasurer's office will maintain a list of financial institutions authorized to provide investment services, including approved security broker/dealers.

A. The City and Redevelopment Agency shall transact business only with banks, savings and loans, and with investment securities dealers as defined in Government Code Section 53601.5:

53601.5 – Designated entities from whom a local agency may purchase authorized investments:

"The purchase by a local agency of any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a federal or state association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary government dealer by the Federal Reserve Bank."

B. Before accepting funds or engaging in investment transactions with the City, the supervising officer at each depository and recognized securities broker/dealer shall submit a certification that the officer has reviewed the investment policies and objectives and agrees to disclose potential conflicts or risks to public funds that might arise out of business transactions between the firm/depository and the City of Vallejo.

11.0 COLLATERALIZATION

Collateralization will be required on two types of investments: certificates of deposit and repurchase agreements. In order to anticipate market changes and provide a level of security for all funds, the collateralization level for any amount exceeding FDIC coverage shall be in accordance with California Government Code Section 53652 and/or 53651 (m)(1).

The City chooses to limit acceptable collateral to the following: Cash, U.S. Treasury Bills, Notes and Bonds, and Federal Agency issues.

Collateral will always be held in the City's name by an independent third party with whom the City of Vallejo has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City.

The right of collateral substitution is reserved by the City.

12.0 DELEGATION OF AUTHORITY

In accordance with State law (SB 109), the City Council designates the Finance Director/Treasurer and/or those person(s), city employees, outside professional investment managers or fund managers assigned or designated by the Finance Director/Treasurer, to perform the needed investment transactions in accordance with this Policy. At times of absence of the Finance Director/Treasurer, the Assistant Finance Director, or other City Finance Director/Treasurer designee shall perform those functions of the investment of City or RDA Funds. In the absence of the Finance Director/Treasurer, the Assistant Finance Director, and other City Finance Director/Treasurer designees, the City Manager shall assume this

responsibility. The investment authority granted to the investing officers is effective until rescinded by the City Council or until termination of the person's employment by the City. No person may engage in an investment transaction except as provided for under the terms of this policy. Although the Finance Director/Treasurer may delegate these duties to another official in the Department of Finance, the Finance Director shall be responsible for all transactions undertaken and will establish a system of controls to regulate the activities of subordinate officials. Section 53607 of the State of California Government Code limits the authorization of the legislative body to delegate investment authority to a one-year period, renewable annually.

13.0 ETHICS AND CONFLICT OF INTEREST

In accordance with California Government Code Sections 1090 et seq. and 87100 et seq., officers and employees of the City will refrain from any activity that could conflict with the proper execution of the investment program or which could impair their ability to make impartial investment decisions for the City or RDA. All investment personnel shall comply with the reporting requirements of the Political Reform Act, to include the annual filing of Statements of Economic interest. No investments will be made with or through any family or blood-related relative or any firm that employs any family or blood-related relative of any City Elected Official, Appointed Official, or City employee.

14.0 INTERNAL CONTROL

The Treasurer shall establish an annual process of independent review by an external auditor. This review will provide internal control by assuring compliance with policies and procedures.

15.0 POLICY REVISION AND ADOPTION

This Investment Policy shall be reviewed and adopted at least annually by resolution of the City Council of Vallejo. Furthermore, it can be revised whenever necessary by the City Council or Finance Director with City Council approval, and any modifications made thereto must be approved by the City Council, as required by law.

16.0 PROHIBITED TRANSACTIONS

Certain investment practices and instruments may be inconsistent with the safety of invested funds, or prohibited by the State of California Government Code Section 53601.6 and are therefore prohibited transactions. Prohibited investments include securities not listed in Attachment A below, as well as but not limited to:

A. Investments Prohibited by State of California Government Code Section 53601.6:

1. Mortgage Derived Interest-Only Strips.

2. Any security that could result in zero interest accrual if held to maturity.

3. "Complex" derivative structures such as range notes or inverse floaters.

B. Additional Investments Prohibited by the City of Vallejo:

1. No direct investment in financial agreements whose returns are linked to or derived from the performance of some underlying assets such as stocks, bonds, currencies or commodities products ("Derivatives"). Only allowed as part of the City's investments in Government Investment Pools and sweep accounts. This may include dual index notes, leveraged or de-leveraged floating rate notes, or any other complex variable rate or structured note, and any other financial derivative.

2. Leveraged investing, such as in margin accounts or any form of borrowing against or otherwise obligating city investments for the purpose of investment.

3. Options and future contracts.

4. Taking short positions; that is, selling securities that the City does not own.

5. Equity Securities (Common or Preferred Stocks).

Purchasing these types of instruments does not coincide with the City's Investment Policy objectives and would require a thorough review and monitoring of the underlying security. Although some of these transactions are legal under California Government Code, they do not meet the objectives contained in this Investment Policy.

Prohibited investments already held in the portfolio at the time of adoption of this policy may continue to be held until maturity at the discretion of the Finance Director/Treasurer.

17.0 MAXIMUM MATURITY LIMIT

To the extent possible, the City of Vallejo will attempt to match its investments with anticipated cash flow requirements. In compliance with State of California Government Code Section 53601, the City will not directly invest in any securities with a legal final maturity of more than five years from the date of purchase unless specifically approved by the City Council.

Furthermore, in order to maintain liquidity, the weighted average time to maturity of the City's investment portfolio shall not exceed three years. The Treasurer shall adjust average portfolio maturity to market conditions and specific investment goals/return objectives, as needed.

18.0 PORTFOLIO MANAGEMENT

Following the primary objective of preservation of capital, the investment portfolio may be actively managed to take advantage of market opportunities. In doing so, negotiable securities may be sold prior to their maturity to provide liquid funds as needed for cash flow purposes, to enhance portfolio returns, or to restructure maturities to increase yield and/or decrease risk. In addition, fluctuations in market rates or changes in credit quality may produce situations where securities may be sold at a loss in order to mitigate further erosion of principal or to reinvest proceeds of sale in securities that will out-perform the original investment. In practice,

however, it is primarily a hold to maturity portfolio.

19.0 USE OF EXTERNAL PROFESSIONAL INVESTMENT MANAGERS

The City may employ the services of professional investment managers to assist in the management of the City's investment portfolio. Such managers may be granted the discretion to purchase and sell investment securities in accordance with this Investment Policy. In addition, such managers may review cash flow requirements, formulate investment strategies, and execute security purchases, sales and deliveries. External investment managers must be well established and exceptionally reputable. Members of the staffs of such companies who will have primary responsibility for managing the City's investments must have a working familiarity with the special requirements and constraints of investing municipal funds in general and this City's funds in particular. Such managers shall only be retained by written agreement with the City, and approved by the City Council. They must contractually agree to conform to the City's Investment Policy and all provisions of governing law and collateralization and other requirements contained herein.

Investment Managers shall exercise reasonable care in compliance with this Investment Policy and their Investment Management Agreements. If an Investment Manager causes a loss of funds to the City where the Manager is held to be liable for the loss of funds, compensation due to the City from the Investment Manager for such loss of funds is defined in each investment management agreement.

No more than 40 percent of the City's total investment portfolio may be placed in any one investment management account. In order to implement this requirement, the City's portfolio assets will be reallocated annually among its investment managers based on June 30 year-end values.

20.0 INDEMNIFICATION OF CITY INVESTMENT OFFICIALS

The City Finance Director/Treasurer and any other City of Vallejo employee designated or assigned to perform the investment transactions and/or manage the City's investment portfolio, acting within the intent and scope of the investment policy and other written procedures and exercising due diligence, will not be held personally liable for any individual investment losses or total portfolio losses and shall be relieved of personal responsibility and liability for any individual security's credit risk or market price changes. Such indemnity shall extend to judgments, fines, attorney fees, and any other amounts paid in settlement of any such claim, suit, or proceeding, including any appeal thereof.

21.0 ALLOCATION OF ANY INVESTMENT GAIN OR LOSS

Any gain or loss realized on any investments will be distributed on a pro rata basis to all non-restricted funds which at the time of the investment gain or loss were part of the City's portfolio, or such other method as otherwise directed by the City Finance Director/Treasurer, and in accordance with generally accepted accounting principles.

22.0 POLICY EXCEPTIONS

Occasionally, exceptions to some of the requirements specified in this Investment Policy may occur for pooled investments because of events subsequent to the purchase of investment instruments, e.g., the rating of a corporate note held in the portfolio is downgraded below an "A" rating, or total assets in the portfolio decline causing the percentage invested in corporate notes to rise above 30%.

State law is silent as to how exceptions should be corrected. Exceptions may be temporary or more lasting; they may be self-correcting or require specific action. If specific action is required, the City Finance Director/Treasurer should determine the course of action that would correct exceptions to move the portfolio into compliance with State and City requirements. Decisions to correct exceptions should not expose the assets of the portfolio to undue risk, and should not impair the meeting of financial obligations as they fall due. Evaluation of divestiture of securities will be determined on a case-by-case basis. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

23. USE OF STATE GUIDELINES

State of California Government Code Sections 16429.1, 53601, 53635, and 53646 regulate investment practices. It is the policy of the City of Vallejo to use the State's provisions for local government investments as a guide in the developing and implementing the City's investment policies and practices with the exception of those investments listed as Prohibited Transactions in Section 16 above.

24. LEGISLATIVE CHANGES

Any State of California legislative action that further restricts allowable maturities, investment types or percentage allocations will be incorporated into the City of Vallejo Statement of Investment Policy and supersede any and all previous applicable language. If the City is holding an investment that is subsequently prohibited by a legislative change, the City may hold that investment until the maturity date, if it is deemed prudent by the Finance Director/Treasurer.

ATTACHMENT A

SCHEDULE OF AUTHORIZED INVESTMENT INSTRUMENTS

Allowable Investment Instruments

The City Finance Director/Treasurer is authorized to invest in any of the investment instruments allowed by Sections 53601, 53635 and 16429.1 of the California Government Code with the exception of those investments listed as Prohibited Transactions in Section 16 above. Exclusion of the instruments in Section 16 (B) is consistent with the City's and RDA's overall objective of achieving reasonable yields on public funds while minimizing risk and capital losses. Although the potential exists for greater interest yields with these instruments, it is believed that the potential level of risk exceeds their benefits except in very limited circumstances. Accordingly, City Council approval is required on a case-by-case basis for any investments listed in Prohibited Transactions Section 16 (B).

Term

Reserve funds from the proceeds of debt issues of the City or RDA may be invested by the City Finance Director/ Treasurer in government agency securities with terms exceeding five (5) years if the maturity of such investments is made to coincide as nearly as practicable with the life of the debt issue.

In all other cases, City Council approval to make investments with terms in excess of five (5) years is required on a case-by-case basis.

The City's and RDA's funds may be invested in any of the following instruments, which are not prohibited by law (California Government Code Section 53601.6):

A. **LOCAL AGENCY INVESTMENT FUND (LAIF).** As authorized in Government Code Section 16429.1, local agencies may invest in the Local Agency Investment Fund (LAIF), a pooled investment money market fund established by the State of California, and overseen by the State Treasurer, which allows local agencies to pool their investment resources. Principal may be withdrawn on a one-day notice. Interest earned is paid quarterly. The fees charged are limited to one-quarter of one percent of the earnings of the fund. Current policies of LAIF set minimum and maximum amounts of monies that may be invested as well as maximum numbers of transactions that are allowed per month. Currently, there is a limitation of $40 million per agency subject to a maximum of 15 total transactions per month. The LAIF is in trust in the custody of the State Treasurer. The City's right to withdraw its deposited monies from LAIF is not contingent upon the State's ability to adopt a State Budget by July 1st of each new fiscal year.

B. **U.S. TREASURY BILLS.** Commonly referred to as T-Bills, these are short-term marketable securities sold as obligations of the U.S. Government. They are offered in three-month, six-month, and one-year maturities. T-Bills do not accrue interest but are sold at a discount to pay face value at maturity.

C. **U.S. TREASURY NOTES.** These are marketable, interest-bearing securities sold as obligations of the U.S. Government with original maturities of one to ten years at

issuance. Interest is paid semiannually. Purchases of these assets are limited to a remaining maturity of 5 years or less.

D. **U.S. TREASURY BONDS.** These are the same as U.S. Treasury Notes except they have original maturities of ten years or longer at issuance. Purchases of these assets are limited to a remaining maturity of 5 years or less.

E. **U.S. GOVERNMENT AGENCY ISSUES.** This includes obligations, participations, or other instruments of, or issued by, a federal government agency or a United States government-sponsored enterprise.

These securities fall into three categories: 1) Issues which are backed by the full faith and credit of the United States, 2) Issues which are conditionally backed by the full faith and credit of the United States and 3) Issues which are not backed by the full faith and credit of the United States.

These Issues include, but are not limited to:

1. Issues, which are unconditionally backed by the full faith and credit of the United States, including: Small Business Administration (SBA) and General Services Administration (GSA).

2. Issues which are not backed by the full faith and credit of the United States including but are not limited to: Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Farm Credit System, Banks for Cooperation (Co-ops), Federal Lands Banks (FLB), Federal Intermediate Credit Banks (FICB), Tennessee Valley Authority (TVA), Student Loan Marketing Association (SLMA).

F. **BANKER'S ACCEPTANCE.** Otherwise known as bills of exchange or time drafts, are negotiable instruments with a maturity of six months or less drawn on and accepted by a commercial bank. These instruments are usually created to finance the import or export of goods, or the shipment of goods within the United States.

G. **CERTIFICATE OF DEPOSIT (CDS).** As authorized in Government Code Section 53601.7 (7), local agencies may invest in Certificates of Deposit. These instruments must comply with Government Code Sections 16500 or 16600. This is a receipt for funds deposited in a Bank or Savings and Loan Association for a specified period at a specified rate of interest. The first $100,000 of a CD is guaranteed by the FDIC if with a bank, or the FSLIC if with a savings and loan association. CD's with a face value in excess of $100,000 can be collateralized by Treasury Department Securities, which must be at least 110% of the face value of the CD's in excess of the first $100,000, or by first mortgage loans, which must be at least 150% of the face value of the CD balance in excess of the first $100,000.

All institutions must: (1) have a minimum of $100 million in assets; (2) have a demonstrated history of positive earnings; and, (3) must carry a minimum 3.5% equity ratio and hold that ratio for at least one year prior to the City's investment. All institutions must be located within the State of California. For collateralized or

negotiable certificates of deposit, the institution must have a minimum $1 billion in assets, in addition to meeting the above criteria.

H. **NEGOTIABLE CERTIFICATE OF DEPOSIT.** Allowable certificates of deposits must be issued by a nationally or state-chartered bank or a state or federal association or by a state-licensed branch of a foreign bank. The maturity period for this investment vehicle may not exceed five years unless approved by the Council.

I. **COMMERCIAL PAPER.** As authorized in Government Code Section 53601(g), 25% of the City's portfolio may be invested in "prime" quality commercial paper of the highest ranking or of the highest letter and numerical rating as provided for by Moody's or Standard and Poor's, with maturities not to exceed 270 days. These notes are secured promissory notes of industrial corporations, utilities and bank holding companies. State law limits a city to investments in US corporations having assets in excess of five hundred million dollars with an "A" or higher rating.

J. **REPURCHASE AGREEMENTS.** As authorized in Government Code Section 53601(i), repurchase agreements are agreements between the local agency and seller for the purchase of government securities to be resold at a specific date and for a specific amount. Repurchase agreements are generally used for short term investments for the City's daily automatic sweep account and will generally not exceed 30 days. The legal limitation on the maturity period for a repurchase agreement is for one year with the required market value underlying the agreement at 102% of the funds borrowed with the value adjusted quarterly.

K. **BONDS OF THE STATE OF CALIFORNIA OR LOCAL AGENCIES**. Bonds of the State of California and any local government in the State of California, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency. In no event shall this classification of investment exceed 10% of the value of the portfolio.

L. **MUTUAL FUNDS**. Mutual Funds are referred to in California Government Code, Section 53601(k), as "shares of beneficial interest issued by diversified management companies." The following mutual funds and money market funds are authorized investments for funds subject to the following provisions:

1. Shares of mutual funds with portfolios consisting only of United States government bonds or United States government guaranteed bonds issued by federal agencies with average maturities less than four years.
2. Shares of money market funds with portfolios consisting of only bonds of states and local governments or other issuers authorized by State law for investment by local governments, which bonds have at the time of investment one of the two highest credit ratings of a nationally recognized rating agency.
3. Shares of money market funds with portfolios consisting of securities otherwise authorized by State law for investment by local governments.

M. **LOCAL GOVERNMENT INVESTMENT POOLS (LGIP).** Established by the State of California to enable Finance Directors to place funds in a pool for investments. In no event shall this classification of investment exceed the maximum limit allowed by the pool.

N. **CORPORATE NOTES.** As authorized in Government Code Sections 53601(j), local agencies may invest in corporate notes issued by corporations organized and operating in the United States that have an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and having a maximum remaining maturity period of five years or less in an amount not to exceed 30% of the agency's portfolio. Furthermore, the maximum principal amount in any one company will not exceed 5% of the City's portfolio.

Issuers must possess an acceptable long-term senior debt rating by one of the nationally recognized rating services, ie Moodys, Standard and Poors, or Fitch or Duff & Phelps, as detailed below:

1. For maturities of two years or less, a minimum rating of "A" or better.
2. For maturities of two to four years, a minimum rating of "AA" or better.
3. For maturities of four to five years, a minimum rating of "AAA".

O. ASSET BACKED SECURITIES. As authorized in Government Code Section 53601(n), local agencies may invest in any equipment lease-backed certificate, consumer receivable pass-through certificate or consumer receivable-backed bond with a maximum remaining maturity of five years.

Securities eligible for investment under this subdivision shall be rated "AAA" by a nationally recognized rating service. Purchases of securities authorized by this subdivision may not exceed 20% of the agency's portfolio.

P. MORTGAGE-BACKED SECURITIES. As authorized in Government Code Section 53601(n), local agencies may invest in any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, with a maximum remaining maturity of five years.

Securities eligible for investment under this subdivision shall be rated "AAA" by a nationally recognized rating service. Purchases of securities authorized by this subdivision may not exceed 20% of the agency's portfolio.

It should be noted that while the Government Code specifies the maximum percentage of the portfolio that may be held in each type of investment at any one time, fluctuations in the portfolio balance will prevent strict adherence to such restrictions. Therefore, the constraints listed in this policy are to be applied at the time the investment is made and not necessarily to subsequent events which may change the percentage.

SUMMARY OF AUTHORIZED SECURITIES AND CRITERIA INCLUDING DIVERSIFICATION CRITERIA

The City's investment portfolio, in aggregate, will be diversified to limit market and credit risk by observing the following City Policy Legal limitations:

Permitted Investments	State Code Legal Limit (% or $)	City Policy Legal Limit (% or $)	City Maximum Maturity Constraints	City Policy Other Constraints
U.S. Government Treasury Bills	Unlimited	Unlimited	5 years	None
U.S. Government Treasury Notes	Unlimited	Unlimited	5 years	None
U.S. Government Treasury Bonds	Unlimited	Unlimited	5 years	None
U.S. Government Agencies (e.g., GNMA, FNMA)	Unlimited	50%	5 years	None
Repurchase Agreements	Unlimited	20%	N.A.	Collateralized by securities with a market value of at least 102% of the loan amount.
Bankers Acceptances	40%	5%	*180 days*	No more than $1,000,000 invested in any one commercial bank
Commercial Paper	25%	25%	*270 days*	U.S. Corporations with assets in excess of $500,000,000; "A" debt rating; maximum of $1,000,000 from an issuing corporation
Corporate Medium Term Notes	30%	30%	5 years	U.S. Corporations; minimum "A" debt rating; maximum of 5% of portfolio per issuing company
Certificates of Deposit	Unlimited	10%	5 years	Must be collateralized to 110% of the CD value by other eligible securities
Negotiable Certificates of Deposit	30%	5%	5 years	State and Federally chartered banks and savings institutions, "AA" rating by one agency
LAIF State Pool	$40,000,000	$40,000,000	On Demand	Limited to 15 transactions per month, per account, per State Policy
State of California or Local Agency Bonds	Unlimited	10%	5 years	None
Mutual Funds	20%	20%	5 years	Funds invested as defined in Section 53601 (a) to (l); maximum of 10% in any one fund
Asset-backed Securities	20%	20%	5 years	Minimum "AAA" Debt rating
Mortgage-backed Securities	20%	20%	5 years	Minimum "AAA" Debt rating
Local Government Investment Pools	Unlimited	Unlimited	On Demand	None

1) Limits on percent of portfolio do not apply to investments made by LAIF or other Government Investment Pools.
2) U.S. Treasury Bonds are currently only available for 10 years or more, which currently prohibits the use of newly issued bonds as an investment tool. However, existing bonds could be purchased if remaining term to maturity is less than 5 years.

MASTER REPURCHASE AGREEMENT

If repurchase agreements are legal or authorized, a Master Repurchase Agreement must be signed with the bank or dealer.

ATTACHMENT B

GLOSSARY OF CASH MANAGEMENT TERMS

ACCRETION OF DISCOUNT - Periodic straight-line increases in the book or carrying value of a security so the amount of the purchase price discount below face value is completely eliminated by the time the bond matures or by the call date, if applicable.

ACCRUED INTEREST - Interest earned but not yet received. The interest accumulated on a bond since issue date or the last coupon payment. The buyer of the bond pays the market price and accrued interest, which is payable to the seller.

AGENCIES - A debt security issued by a federal or federally sponsored agency.

In the government securities industry, investors frequently refer to all debt instruments issued by U.S. government agencies, departments, and related instrumentalities as *agency* securities. Only those securities backed by the full faith and credit of the U. S. Government are true agency securities. Only securities issued by the Government National Mortgage Association (Ginnie Mae or GNMA) are widely used by public investors as true agency securities backed by the full faith and credit of the U.S. Government.

Generally, the underlying security associated with a U.S. agency is considered to be as risk-free as direct Treasury securities. The key difference in risk with these instruments is their liquidity and marketability, which is diminished as a result of smaller, irregular, and less familiar issues.

U.S. Government Instrumentalities, also known as government sponsored enterprises (GSEs), are financial intermediaries established by the federal government to fund loans to certain groups of borrowers, such as homeowners, farmers, and students. In short, GSEs are privately owned corporations with a public purpose. The most common instrumentalities are:

- Federal Farm Credit System Banks,
- Federal Home Loan Banks (FHLB),
- Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC),
- Federal National Mortgage Association (Fannie Mae or FNMA)
- Student Loan Marketing Association (Sallie Mae or SLMA), and
- Tennessee Valley Authority (TVA).

GSEs sell securities on a regularly scheduled basis through selling groups, which are chosen groups of dealers that the GSE uses to "bring the paper to the streets." Short-term securities are regularly issued as discount notes with maturities ranging from overnight to 360 days. GSEs also issue securities with fixed interest rates, ranging in maturity from three months to 30 years.

AMORTIZATION OF PREMIUM - Periodic straight-line decreases in the book or carrying value of a security so the premium paid for a bond above its face value or call price is completely eliminated.

ASK – The price at which securities are offered for sale.

ASSET BACKED SECURITIES (ABS) – Asset Backed Securities are pass-through instruments collateralized by installment loans, leases, revolving lines of credit or other consumer finance receivables. Securitizations are structured to separate the credit of the ABS issuer from the assets being securitized.

AVERAGE MATURITY - A weighted average of the expiration dates for a portfolio of debt securities. An income fund's volatility can be managed by shortening or lengthening the average maturity of its portfolio.

BANK WIRE - A virtually instantaneous electronic transfer of funds between two financial institutions.

BANKERS ACCEPTANCES (BAs) - Bankers Acceptances generally are created based on a letter of credit issued in a foreign trade transaction. They are used to finance the shipment of commodities between countries as well as the shipment of some specific goods within the United States. BAs are short-term, non-interest bearing notes sold at a discount and redeemed by the accepting bank at maturity for full face value. These notes trade at a rate equal to or slightly higher than Certificates of Deposit (CDs), depending on market supply and demand.

Bankers Acceptances are sold in amounts that vary from $100,000 to $5,000,000, or more, with maturities ranging from 30 - 270 days. They offer liquidity to the investor as it is possible to sell BAs prior to maturity at the current market price.

BASIS POINT - A measure of an interest rate, i.e., 1/100 of 1 percent, or .0001.

BID - The indicated price at which a buyer is willing to purchase a security or commodity. When selling a security a bid is obtained.

BOND - A long-term debt security, or IOU, issued by a government or corporation that generally pays a stated rate of interest and returns the face value on the maturity date.

BOOK ENTRY SECURITIES - U.S. government and federal agency securities that do not exist in definitive (paper) form; they exist only in computerized files maintained by the Federal Reserve Bank.

BOOK VALUE - The amount at which an asset is carried on the books of the owner. The book value of an asset does not necessarily have a significant relationship to market value.

BROKER – A broker brings buyers and sellers together for a commission.

CALLABLE BOND - A bond issue in which all or part of its outstanding principal amount may be redeemed before maturity by the issuer under specified conditions. Bonds are generally called when interest rates fall so that the bond issuer can save money by floating new bonds at the lower rate. The first call date is the date which a specific call price will be offered by the issuer, usually a premium price to par, as an incentive to the bondholder to redeem the bond.

CALL PRICE - The price at which an issuer may redeem a bond prior to maturity. The price is usually at a slight premium to the bond's original issue price to compensate the holder for loss of income and ownership.

CALL RISK - The risk to a bondholder that a bond may be redeemed prior to maturity.

CASH SALE\PURCHASE - A transaction which calls for delivery and payment of securities on the same day that the transaction is initiated.

CERTIFICATES OF DEPOSIT - Certificates of Deposit, familiarly known as CDs, are certificates issued against funds deposited in a bank for a definite period of time and earning a specified rate of return. Certificates of Deposit bear rates of interest in line with money market rates current at the time of issuance.

COLLATERALIZATION - Process by which a borrower pledges securities, property, or other deposits for the purpose of securing the repayment of a loan and/or security.

COMMERCIAL PAPER - Commercial paper is an unsecured promissory note issued by a corporation for a specific amount and maturing on a specific day that cannot be farther into the future than 270 days. Commercial Paper is typically rated by credit agencies that attempt to evaluate the liquidity, cash flow, profitability, and backup credit availability of the entity that is issuing the paper.

COMPETITIVE BID PROCESS - A process by which three or more institutions are contacted via the telephone to obtain interest rates for specific securities.

CONVEXITY - A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

COUPON RATE - The annual rate of interest received by an investor from the issuer of certain types of fixed-income securities. Also known as the "interest rate."

CREDIT QUALITY - The measurement of the financial strength of a bond issuer. This measurement helps an investor to understand an issuer's ability to make timely interest payments and repay the loan principal upon maturity. Generally, the higher the credit quality of a bond issuer, the lower the interest rate paid by the issuer because the risk of default is lower. Credit quality ratings are provided by nationally recognized rating agencies.

CREDIT RISK - The risk that another party to an investment transaction will not fulfill its obligations. Credit risk can be associated with the issuer of a security, a financial institution holding the entity's deposit, or a third party holding securities or collateral. Credit risk exposure can be affected by a concentration of deposits or investments in any one investment type or with any one party.

CUSIP NUMBER - A nine-digit number established by the Committee on Uniform Securities Identification Procedures that is used to identify publicly traded securities. Each publicly traded security receives a unique CUSIP number when the security is issued.

CURRENT YIELD - A yield calculation determined by dividing the annual interest received on a security by the current market price of that security.

CUSTODIAN - An independent third party (usually bank or trust company) that holds securities in safekeeping as an agent for the city.

DEBENTURE – A bond secured only by the general credit of the issuer.

DEFEASE - To discharge the lien of an ordinance, resolution, or indenture relating to a bond issue, and in the process, render inoperative restrictions under which the issuer has been obliged to operate. Comment: Ordinarily an issuer may defease an indenture requirement by depositing with a trustee an amount sufficient to fully pay all amounts under a bond contract as they become due.

DELIVERY - The providing of a security in an acceptable form to the City or to an agent acting on behalf of the City and independent of the seller. Acceptable forms can be physical securities or the

transfer of book entry securities. The important distinction is that the transfer accomplishes absolute ownership control by the City.

DELIVERY VS PAYMENT - There are two methods of delivery of securities: Delivery vs. payment and delivery vs. receipt (also called free). Delivery vs. payment is delivery of securities with an exchange of money for the securities. Delivery vs. receipt is delivery of securities with an exchange of a signed receipt for the securities.

DEPOSITORY BANK - A local bank used as the point of deposit for cash receipts.

DEPOSITORY INSURANCE - Insurance on deposits with financial institutions. For purposes of this policy statement, depository insurance includes: a) Federal depository insurance funds, such as those maintained by the Federal Deposit Insurance Corporation (FDIC) AND Federal Savings and Loan Insurance Corporation (FSLIC).

DERIVATIVE SECURITY - Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

DISCOUNT - 1. (n.) selling below par; e.g., a $1,000 bond selling for $900. 2. (v.) anticipating the effects of news on a security's value; e.g., "The market had already discounted the effect of the labor strike by bidding the company's stock down."

DISCOUNT SECURITIES – Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury Bills.

DIVERSIFICATION - Dividing available funds among a variety of securities and institutions so as to minimize market risk.

DOLLAR-WEIGHTED AVERAGE MATURITY - The sum of the amount of each outstanding investment multiplied by the number of days to maturity, divided by the total amount of outstanding investment.

EFFECTIVE RATE - The yield you would receive on a debt security over a period of time taking into account any compounding effect.

FACE VALUE - The value of a bond stated on the bond certificate; thus, the redemption value at maturity. Most bonds have a face value, or par, of $1,000.

FAIR VALUE - The amount at which a financial instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

FEDERAL AGENCY SECURITIES - Several government-sponsored agencies, in recent years, have issued short and long-term notes. Such notes typically are issued through dealers, mostly investment banking houses. These Federal government-sponsored agencies were established by the U.S. Congress to undertake various types of financing without tapping the public treasury. In order to do so, the agencies have been given the power to borrow money by issuing securities, generally under the authority of an act of Congress. These securities are highly acceptable and marketable for several reasons, mainly because they are exempt from state, municipal and local income taxes. Furthermore, agency securities must offer a higher yield than direct Treasury debt of the same maturity to find investors, partly because these securities are not direct obligations of the Treasury.

The main agency borrowing institutions are the Federal National Mortgage Association (FNMA), the Federal Home Loan Bank System (FHLB), and the Federal Farm Credit System (FFCS).

FLOATING-RATE NOTES - The term floating-rate notes includes different types of securities with a similar feature that the interest rate or coupon rate is adjusted periodically to a benchmark or base rate. A simple example of a floating-rate instrument is a Series EE savings bond where the semiannual interest rate is determined in May and November based on 85 percent of the average market return of the five-year Treasury note for the preceding six months. In theory, floating-rate notes are securities with coupons based on a short-term rate index.

FNMA - FEDERAL NATIONAL MORTGAGE ASSOCIATION - issues notes tailored to the maturity needs of the investor. Maturities range from 30 days up to 10 years. These notes are made attractive by their denominations from $5,000 to $1 million.

FHLB - FEDERAL HOME LOAN BANK SYSTEM - consists of twelve Federal Home Loan Banks, issues, in addition to long-term bonds, coupon notes with maturities of up to one year. Their attractiveness stems from their investment denominations of $10,000 to $1 million.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) - A Federal institution that insures bank deposits. The current limit is up to $100,000 per depository account.

FEDERAL FUNDS (Fed Funds) - Funds placed in Federal Reserve banks by depository institutions in excess of current reserve requirements. These depository institutions may lend fed funds to each other overnight or on a longer basis. They may also transfer funds among each other on a same-day basis through the Federal Reserve banking system. Fed funds are considered to be immediately available funds.

FEDERAL FUNDS RATE - The rate of interest at which Fed Funds are traded between banks. Fed Funds are excess reserves held by banks that desire to invest or lend them to banks needing reserves. The particular rate is heavily influenced through the open market operations of the Federal Reserve Board. Also referred to as the "Fed Funds rate."

FEDERAL HOME LOAN BANKS (FHLB) - The institutions that regulate and lend to savings and loan associations. These are Government sponsored wholesale banks which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLB's is to liquefy the housing related assets of its members who must purchase stock in their district bank.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA) - FNMA, like GNMA, was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a Federal corporation working under the auspices of the Department of Housing and Urban Development, HUD. It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC) – Consists of seven members of the Federal Reserve Board and five of the twelve Federal reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and

sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM - The central bank of the United States which has regulated credit in the economy since its inception in 1913. Includes the Federal Reserve Bank, 12 district banks and the member banks of the Federal Reserve, and is governed by the Federal Board.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION (FSLIC) - A federal institution that insures savings and loan deposits. The current limit is up to $100,000 per depository account.

FLEXIBLE REPURCHASE AGREEMENTS (Flex Repos) - Similar to a term repurchase agreement, a flex repo is a contractual transfer of U.S. government securities during the investment period, whereby the Seller agrees to repurchase the collateral securities from the Buyer on the Buyer's demand, subject to provisions of the agreement. The Seller is generally a financial institution such as a securities dealer or a bank. As buyers, most issuers require over-collateralization, marking-to-market of collateral and delivery-vs.-payment of collateral.

GINNIE MAES (GNMAs) - Mortgage securities issued and guarantied, as to timely interest and principal payments, by the Government National Mortgage Association, an agency within the Department of Housing and Urban Development (HUD).

GOVERNMENT SECURITY - Any debt obligation issued by the U.S. government, its agencies or instrumentalities. Certain securities, such as Treasury bonds and Ginnie Maes, are backed by the government as to both principal and interest payments. Other securities, such as those issued by the Federal Home Loan Mortgage Corporation, or Freddie Mac, are backed by the issuing agency.

GOVERNMENT-SPONSORED ENTERPRISES (GSE's) - Payment of principal and interest on securities issued by these corporations is not guaranteed explicitly by the U.S. government, however, most investors consider these securities to carry an implicit U.S. government guarantee. The debt is fully guaranteed by the issuing corporations. GSE's include: Farm Credit System, Federal Home Loan Bank System, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Student Loan Marketing Association, and the Tennessee Valley Authority.

HAIRCUT - This term describes the way brokers and clients protect themselves from market risk in doing repos. An entity wanting to finance the purchase of $100 million in Treasury bonds may borrow just $98 million of the money. The two percent difference between the amount of securities purchased and the amount of money borrowed is the haircut. Similarly, an entity looking to borrow $100 million may need to provide, as collateral, Treasury securities with a market price equal to $102 million.

INTERNAL CONTROLS - An internal control structure designed to ensure that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

1. **Control of collusion** - Collusion is a situation where two or more employees are working in conjunction to defraud their employer.

2. **Separation of transaction authority from accounting and record keeping** - By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a separation of duties is achieved.

3. **Custodial safekeeping** - Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.

4. **Avoidance of physical delivery securities** - Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.

5. **Clear delegation of authority to subordinate staff members** - Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.

6. **Written confirmation of transactions for investments and wire transfers** - Due to the potential for error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.

7. **Development of a wire transfer agreement with the lead bank and third-party custodian** - The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

INVERSE FLOATER - A bond or note that does not earn a fixed rate of interest. Rather, the interest rate that is earned is tied to a specific interest-rate index identified in the bond/note structure. The interest rate earned by the bond/note will move in the opposite direction of the index, e.g., if market interest rates as measured by the selected index rises, the interest rate earned by the bond/note will decline. An inverse floater increases the market rate risk and modified duration of the investment.

INVERTED YIELD CURVE - A chart formation that illustrates long-term securities having lower yields than short-term securities. This configuration usually occurs during periods of high inflation coupled with low levels of confidence in the economy and a restrictive monetary policy.

INVESTMENT COMPANY ACT OF 1940- Federal legislation which sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

INVESTMENT POLICY - A concise and clear statement of the objectives and parameters formulated by an investor or investment manager for a portfolio of investment securities.

INVESTMENT-GRADE OBLIGATIONS - An investment instrument suitable for purchase by institutional investors under the prudent person rule. Investment-grade is restricted to those obligations rated BBB or higher by a rating agency.

LIQUIDATION - Conversion into cash.

LIQUIDITY - Refers to the ease and speed with which an asset can be converted into cash without a substantial loss in value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

LOSS - The excess of the cost or book value of an asset over selling price.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP) - The aggregate of all funds from political subdivisions that are placed in the custody of the Treasurer for investment and reinvestment.

LONG-TERM INVESTMENTS - Investments considered long-term are generally defined as those instruments maturing in one year or longer.

MARK-TO-MARKET - The practice of valuing a security or portfolio according to its market value, rather than its cost or book value. An adjustment in the valuation of a securities portfolio to reflect the current market values of the respective securities in the portfolio.

MARKETABILITY - Ability to sell large blocks of money market instruments quickly and at competitive prices.

MARKET VALUE - The price at which a security is trading and could presumably be sold.

MARKET RISK - The risk associated with declines or rises in interest rates which cause an investment in a fixed-income security to increase or decrease in value. The risk that the market value of an investment, collateral protecting a deposit, or securities underlying a repurchase agreement will decline.

MASTER REPURCHASE AGREEMENT - An agreement between the investor and the dealer or financial institute. This agreement defines the nature of the transactions, identifies the relationship between the parties, establishes normal practices regarding ownership and custody of the collateral securities during the term of the investment, provides for remedies in the event of a default by either party and otherwise clarifies issues of ownership.

MATURITY - The date upon which the principal or stated value of an investment becomes due.

MONEY MARKET – The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

MORTGAGE-BACKED SECURITIES - Mortgage-backed securities have several unique characteristics, beginning with the payment of interest on a monthly basis. Mortgage Backed Securities also differ from standard Treasury investments in that the cash flow pattern is uncertain due to the risk of prepayments or the unscheduled payment of principal. Moreover, a change in the future assumption for prepayments will also affect the rate of return on the investment of a mortgage-backed security. Mortgage-backed securities are created when mortgage pools are collateralized into interest-bearing securities. This securitization process can be accomplished via either a sale of assets or as a debt obligation of the issuer. In the former, a mortgage pass-through security is created, while in the latter case a mortgage-backed bond is originated.

MUTUAL FUND - An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments. Mutual funds are regulated by the Investment Company Act of 1940 and must abide by the following Securities and Exchange Commission (SEC) disclosure guidelines:

1. Report standardized performance calculations.
2. Disseminate timely and accurate information regarding the fund's holdings, performance, management and general investment policy.
3. Have the fund's investment policies and activities supervised by a board of trustees, which are independent of the adviser, administrator or other vendor of the fund.
4. Maintain the daily liquidity of the fund's shares.
5. Value their portfolios on a daily basis.
6. Have all individuals who sell SEC-registered products licensed with a self-regulating organization (SRO) such as the National Association of Securities Dealers (NASD).
7. Have an investment policy governed by a prospectus which is updated and filed by the SEC annually.

MUTUAL FUND STATISTICAL SERVICES - Companies that track and rate mutual funds, e.g., IBC/Donoghue, Lipper Analytical Services, and Morningstar.

NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD) - A self-regulatory organization (SRO) of brokers and dealers in the over-the-counter securities business. Its regulatory mandate includes authority over firms that distribute mutual fund shares as well as other securities.

NEGOTIABLE CERTIFICATES OF DEPOSIT - Large denomination ($100,000 or more) interest bearing time deposits, paying the holder a fixed amount of interest at maturity. Issues can be sold to a new owner before maturity.

NET ASSET VALUE - The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets which includes securities, cash, and any accrued earnings, subtracting this from the fund's liabilities and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. [(Total assets) - (Liabilities)]/(Number of shares outstanding)

NO LOAD FUND - A mutual fund which does not levy a sales charge on the purchase of its shares.

NOMINAL YIELD - The stated rate of interest that a bond pays its current owner, based on par value of the security. It is also known as the "coupon," "coupon rate," or "interest rate."

OFFER - The indicated price at which a seller is willing to sell a security or commodity. When buying a security an offer is obtained.

OPEN MARKET OPERATIONS – Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PAR VALUE - The nominal or face value of a debt security; that is, the value at maturity.

PORTFOLIO – Collection of securities held by an investor.

POSITIVE YIELD CURVE - A chart formation that illustrates short-term securities having lower yields than long-term securities.

PREMIUM - The amount by which a bond sells above its par value.

PRIMARY DEALERS - A group of government securities dealers that submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC), registered securities broker-dealers, banks, and a few unregulated firms.

PRIME RATE - The interest rate a bank charges on loans to its most credit worthy customers. Frequently cited as a standard for general interest rate levels in the economy.

PRINCIPAL - An invested amount on which interest is charged or earned.

PRUDENT PERSON RULE – An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state – the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

QUALIFIED PUBLIC DEPOSITORY - A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated, for the benefit of the commission, eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

RANGE NOTE - An investment whose coupon payment varies (e.g. either 7% or 3%) and is dependent on whether the current benchmark (e.g. 30 year Treasury) falls within a pre-determined range (e.g. between 6.75% and 7.25%).

RATE OF RETURN - The amount of income received from an investment, expressed as a percentage. A market rate of return is the yield that an investor can expect to receive in the current interest-rate environment utilizing a buy-and-hold to maturity investment strategy.

REGISTERED SECURITY - A security that has the name of the owner written on its face. A registered security cannot be negotiated except by the endorsement of the owner.

REINVESTMENT RISK - The risk that a fixed-income investor will be unable to reinvest income proceeds from a security holding at the same rate of return currently generated by that holding.

REPURCHASE AGREEMENT (REPO) - The Repo is a contractual transaction between an investor and an issuing financial institution (not a secured loan). The investor exchanges cash for temporary ownership of specific securities, with an agreement between the parties that on a future date, the financial institution will repurchase the securities at a prearranged price. An "Open Repo" does not have a specified repurchase date and the repurchase price is established by a formula computation.

REPRICING - The revaluation of the market value of securities.

REVERSE REPO's - The opposite of the transaction undertaken through a regular repurchase agreement. In a "reverse" the City initially owns securities and the bank or dealer temporarily exchanges cash for this collateral. This is, in effect, temporarily borrowing cash at a high interest rate. Most typically, a Repo is initiated by the lender of funds. Reverses are used by dealers to borrow

securities they have shorted. Such investments are not authorized in the City of Vallejo's Investment Policy.

RULE 2a-7 OF THE INVESTMENT COMPANY ACT - Applies to all money market mutual funds and mandates such funds to maintain certain standards, including a 13- month maturity limit and a 90-day average maturity on investments, to help maintain a constant net asset value of one dollar ($1.00).

SAFEKEEPING - A service to customers rendered by banks for a fee whereby all securities and valuables of all types and descriptions are held in the bank's vaults for protection, or in the case of book entry securities, are held and recorded in the customer's name and are inaccessible to anyone else.

SALLIE MAES - Pooling of student loans guaranteed by the Student Loan Marketing Association (SLMA) to increase the availability of education loans. The SLMA purchases the loans after buying them on the secondary market from lenders. SLMA stock is publicly traded.

SECONDARY MARKET – A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES - Bonds, notes, mortgages, or other forms of negotiable or non-negotiable instruments.

SECURITIES & EXCHANGE COMMISSION – Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SERIAL BOND - A bond issue, usually of a municipality, with various maturity dates scheduled at regular intervals until the entire issue is retired.

SETTLEMENT DATES - The day on which payment is due for a securities purchase. For stocks and mutual funds bought through an investment dealer, settlement is normally five business days after the trade date. Bonds and options normally settle one business day after the trade date, mutual fund shares purchased directly by mail or wire settle on the day payment is received.

SHORT-TERM INVESTMENTS - Short-term investments are generally defined as those instruments maturing in one year or less.

SINKING FUND - Money accumulated on a regular basis in a separate custodial account that is used to redeem debt securities or preferred stock issues.

SPREAD - (a) Difference between the best buying price and the best selling price for any given security. (b) Difference between yields on or prices of two securities of differing quality or differing maturities. (c) In underwriting, difference between price realized by the issuer and price paid by the investor.

STRIPS - Separation of the principal and interest cash flows due from any interest-bearing securities into different financial instruments. Each coupon payment is separated from the underlying investment to create a separate security. Each individual cash flow is sold at a discount. The amount of the discount and the time until the cash flow is paid determine the investor's return.

STRIPPED TREASURIES - U.S. Treasury debt obligations in which coupons are removed by brokerage houses, creating zero-coupon bonds.

STRUCTURED NOTES – A complex, fixed income instrument, which pays interest, based on a formula tied to other interest rates, commodities or indices. Examples include inverse floating rate

notes that have coupons that increase when other interest rates are falling, and which fall when other interest rates are rising, and "dual index floaters," which pay interest based on the relationship between two other interest rates - for example, the yield on the ten-year Treasury note minus the Libor rate. Issuers of such notes lock in a reduced cost of borrowing by purchasing interest rate swap agreements.

Notes issued by government Sponsored Enterprises (GSE) such as FHLB, FNMA, SLMA and Corporations which have imbedded options (e.g., call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

TERM BOND - Bonds comprising a large part or all of a particular issue which come due in a single maturity. The issuer usually agrees to make periodic payments into a sinking fund for mandatory redemption of term bonds before maturity.

TOTAL RETURN - The sum of all investment income plus changes in the capital value of the portfolio. For mutual funds, return on an investment is composed of share price appreciation plus any realized dividends or capital gains. This is calculated by taking the following components during a certain time period. (Price Appreciation) + (Dividends and Interest received) + (Capital gains) = Total Return

TRIPARTITE CUSTODIAN AGREEMENT - An agreement that occurs when a third party or custodian becomes a direct participant in a repurchase transaction. The custodian ensures that the exchange occurs simultaneously and that appropriate safeguards are in place to protect the investor's interest in the underlying collateral.

THIRD-PARTY SAFEKEEPING - A safekeeping arrangement whereby the investor has full control over the securities being held and the dealer or bank investment department has no access to the securities being held.

TIME DEPOSIT - Interest-bearing deposit at a savings institution that has a specific maturity.

TREASURY BILLS - Treasury bills are short-term debt obligations of the U.S. Government. They offer maximum safety of principal since they are backed by the full faith and credit of the United States Government. Treasury bills, commonly called "T-Bills," account for the bulk of government financing, and are the major vehicle used by the Federal Reserve System in the money market to implement national monetary policy. T-Bills are sold in three, six, nine, and twelve-month bills. Because treasury bills are considered "risk-free," these instruments generally yield the lowest returns in the major money market instruments.

TREASURY NOTES AND BONDS - While T-Bills are sold at a discount rate that establishes the yield to maturity, all other marketable treasury obligations are coupon issued. These include Treasury Notes with maturities from one to ten years and Treasury Bonds with maturities of 10-30 years. The instruments are typically held by banks and savings and loan associations. Since Bills, Notes and Bonds are general obligations of the U.S. Government, and since the Federal Government has the lowest credit risk of all participants in the money market, its obligations generally offer a lower yield to the investor than do other securities of comparable maturities.

UNDERLYING SECURITIES - Securities transferred in accordance with a repurchase agreement.

UNIFORM NET CAPITAL RULE – Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

VARIABLE RATE - An interest rate which is adjusted periodically, usually based on a standard market rate outside the control of the bank or savings institution, such as that prevailing on a Treasury bill or the prime interest rate. These rates often have a specified floor and/or ceiling, called a cap or a collar, which limit the adjustment. Also called adjustable rate or floating rate.

WEIGHTED AVERAGE MATURITY - The sum of the amount of each outstanding investment multiplied by the number of days to maturity, divided by the total amount of outstanding investment.

WHEN-ISSUED TRADES - Typically, there is a lag between the time a new bond is announced and sold and the time it is actually issued. During this interval, the security trades "wi," "when, as, and if issued."

Wi - When, as, and if issued. See When-issued trades.

YIELD - The rate at which an investment pays out interest or dividend income, expressed in percentage terms and calculated by dividing the amount paid by the price of the security and annualizing the result.

YIELD BASIS - Stated in terms of yield as opposed to price. As yield increases for a traded issue, price decreases and vice versa. Charts prepared on a yield basis appear exactly opposite of those prepared on a price basis.

YIELD CURVE - A graphic representation that depicts the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity. A normal yield curve may be alternatively referred to as a positive yield curve.

YIELD SPREAD - The variation between yields on different types of debt securities; generally a function of supply and demand, credit quality and expected interest rate fluctuations. Treasury bonds, for example, because they are so safe, will normally yield less than corporate bonds. Yields may also differ on similar securities with different maturities. Long-term debt, for example, carries more risk of market changes and issuer defaults than short-term debt and thus usually yields more.

YIELD-TO-CALL (YTC) - The rate of return an investor earns from a bond assuming the bond is redeemed (called) prior to its nominal maturity date. It is the percentage rate of a bond or note, if an investor were to buy and hold the security until the call date. This yield is valid only if the security is called prior to maturity. Generally bonds are callable over several years and normally are called at a slight premium. The calculation of yield to call is based on the coupon rate, length of time to the call and the market price.

YIELD-TO-MATURITY (YTM) - The rate of return yielded by a debt security held to maturity when both interest payments and the investor's potential capital gain or loss are included in the calculation of return. The calculation for YTM is based on the coupon rate, length of time to maturity and market price. It assumes that coupon interest paid over the life of the bond will be reinvested at the same rate.

ZERO-COUPON BONDS - Securities that do not pay interest but are instead sold at a deep discount from face value. They rise in price as the maturity date nears and are redeemed at face value upon maturity.

ATTACHMENT 4
New text is shown with double underline

CITY OF VALLEJO, CALIFORNIA
REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO

STATEMENT OF INVESTMENT POLICY

~~*Certified by the Association of Public Treasurers' of the United States and Canada (APT US&C) in 2001*~~

Adopted by the City Council and Redevelopment Agency of the City of Vallejo
On February 2~~7~~8, 200~~7~~6

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CITY OF VALLEJO
REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO
INVESTMENT POLICY

1.0 POLICY

It is the policy of the City of Vallejo and the Redevelopment Agency of the City of Vallejo (hereinafter collectively "City") to invest public funds of the City in a prudent manner which will provide security of principal and achieve a reasonable rate of return on public funds while maintaining sufficient liquidity to insure that the City is able to meet daily cash flow requirements, and conforming to all state and local statutes governing the investment of public funds.

2.0 SCOPE

Pursuant to California Government Code Section 53600 et. seq., the City Council as the legislative body of the City has primary responsibility for investment of money in the City Treasury not required for the immediate needs of the City. In accordance with the Charter of the City, the City Council has assigned the responsibility of investing the unexpended cash of the City Treasury to the City Manager. Furthermore, daily management responsibility for unexpended cash and the investment portfolio has been further delegated by the City Manager to the City Finance Director/Treasurer. This Investment Policy applies equally to both the City of Vallejo and the Redevelopment Agency of the City of Vallejo.

Therefore, as authorized under California Government Code Section 53607, the City Council hereby delegates its authority to invest or reinvest the funds of the City, and to buy, sell or exchange securities so purchased, to the City Finance Director/Treasurer who shall assume full responsibility for all such transactions until such time as this delegation of authority may expire or be revoked by the City Council.

A. This investment policy shall apply to all financial assets and investment activities of the City of Vallejo and the Vallejo Redevelopment Agency including the following fund types:

    1. General Fund
    2. Special Revenue Funds
    3. Debt Service Funds
    4. Capital Project Funds
    5. Enterprise Funds
    6. Internal Service Funds
    7. Trust & Agency Funds

B. This policy does not cover funds held by the Public Employees Retirement System nor shall it apply to investments held by the administrators of the City's IRS Code Section 457 Deferred Compensation program.

C. Except for cash in certain restricted and special funds, the City will consolidate cash balances from all funds to maximize investment options.

D. The proceeds of City bond issues, notes or similar financings including, but not limited to reserve funds, project funds, debt service funds and capital trust funds derived from such financings, as well as funds set aside to defease City or RDA debt in conjunction with an advance refunding agreement, shall be invested pursuant to their respective bond or trust indentures or the State of California Government Code 53600 et. seq., as applicable and not necessarily in compliance with this policy.

3.0 INVESTMENT INCOME AND EXPENSE ALLOCATIONS

Investment income will be allocated to the various funds based on their respective participation based on the cash balance in each fund as a percentage of the entire pooled portfolio, or such other method as otherwise directed by the City Finance Director/Treasurer, and in accordance with generally accepted accounting principles. ~~Investment income will be allocated on a quarterly basis.~~

The costs of managing the investment portfolio, including but not limited to: investment management fees; accounting for the investment activity; custody of the assets; oversight controls; are charged to the ~~Bank Service Charges Account in the General Fund which is allocated to the~~ individual funds on an annual basis, based upon actual expenses incurred, or using such other method as otherwise directed by the City Finance Director/Treasurer.

4.0 PRUDENCE

The City will manage the investment portfolio under the Prudent Investor Standard, which as authorized under California Government Code Section 53600.3 states that:

> *"Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law."*

In determining whether an investment official has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds over which the official had responsibility rather than consideration as to the prudence of a single investment and, whether the investment decision was consistent with the City's Investment Policy and written investment procedures.

The City recognizes that in a diversified portfolio selected losses may occur when selected securities are sold to meet cash flow needs or to improve the overall portfolio performance and must be considered within the context of the overall portfolio's investment return.

This standard of prudence shall be applied in the context of managing the City and RDA's investment portfolios.

5.0 INVESTMENT OBJECTIVES

The objective of this policy is to provide guidance to invest City funds in accordance with California Government Code Section 53600 et. seq., using sound treasury management principles with the following objectives, in order of priority:

A. **Safety:** Safety of invested funds is the first and primary objective of the City's investment program. The highest priority must be accorded to the preservation and protection of capital.

B. **Liquidity:** Maintenance of sufficient liquidity to meet all cash flow requirements that might be reasonably anticipated for at least six (6) months.

C. ~~**Yield**~~**Return:** The City's investment portfolio shall be designed with the objective of attaining the best ~~yield~~return, throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio, consistent with the higher priorities accorded to the safety and liquidity of principal.

Investments shall be selected in a manner that will attempt to ensure the safety of the City's capital. This will be accomplished through a program of investment instrument selection, diversification and maturity limitations. Investment transactions shall seek to keep capital losses at a minimum, whether they are from securities defaults or erosion of market value.

A. SAFETY

To protect the value of the principal and interest of the invested funds, the City will invest only in ~~very safe~~ securities with acceptable credit quality as outlined in the California Government Code Section 53600 et. Seq. which include, but are not limited to, those backed by the U.S. Government or its agencies; those which have insurance on principal backed by FDIC or FSLIC; or those which have legally required collateral backing of the invested principal.

Investments shall be undertaken in a manner that seeks to ensure the preservation of principal in the overall portfolio. This statement refers to the overall portfolio as opposed to individual investments. The objective will be to minimize credit risk and market risk.

It is recognized that within a well-diversified portfolio, at any particular point in time, that security valuations are impacted by changes in interest rates and economic conditions. Accordingly, securities may at times be worth less than the original purchase price based on market fluctuations. It is further understood, that in the event of the need for a forced liquidation of investments to meet unplanned or unanticipated cash flow demands, a potential loss of investment principal might occur.

The City recognizes that investment risk can result from issuer defaults, market price changes or various technical complications leading to temporary illiquidity. Portfolio diversification is employed as a way to minimize and control these risks.

a. Credit Risk - Credit Risk is the risk of loss due to the failure of the security issuer or backer to fulfill its obligations. Credit risk will be mitigated by:

- Limiting investments to ~~only very safe securities~~ the acceptable credit quality as outlined in the California Government Code Section 53600 et. Seq.; and

~~1.~~ • Pre-qualifying the financial institutions, broker/dealers and intermediaries with which the City will do business; and

~~2.~~ • Diversifying the investment portfolio so that the failure of any one issuer would not unduly harm the City's cash flow.

b. Market Risk - Market risk is the risk that the market value of securities in the portfolio will fall due to market influence such as changes in general interest rates. Market risk may be minimized by:

- Structuring the investment portfolio to limit the average maturity of the City's portfolio to a maximum of three years and the maximum legal final maturity of any one security in the portfolio to five years, and by structuring the portfolio with an adequate mix of highly liquid securities and maturities to meet major cash outflow requirements.

B. LIQUIDITY

Maturity dates of investments will be timed to make available funds for payment obligations that may be reasonably anticipated. Liquidity refers to the ability to sell investments at any given moment while minimizing the chance of losing some portion of principal or interest. Since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets.

Furthermore, the City shall maintain short term investments ~~to be placed in money market mutual funds or local government investment pools~~ which offer same day liquidity for short-term funds.

C. RETURN ON INVESTMENTS

The City of Vallejo's investment portfolio shall be designed with the objective of attaining a rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio. Return on investments is subordinate to the requirements of safety and liquidity. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

6.0 PERFORMANCE STANDARDS

The City's investment portfolio shall be designed to attain a market-average rate of return throughout budgetary and economic cycles, taking into account the city's investment risk constraints and cash flow. In order to assist in the evaluation of the portfolios' performance, the City will use a performance benchmark for the portfolio consistent with agreed-upon maturity targets that fall within the portfolio-established maturity parameters. ~~. The market-average rate of return for benchmark purposes~~ Useful comparative benchmarks of the City's portfolio performance will be the quarter-to-date LAIF apportionment rate, and the two-year U.S. Treasury Note yield.~~Merrill Lynch 1-3 Year Treasuries Index. The Merrill Lynch 1-3 Year Treasury Index represents all U.S. Treasury securities with an outstanding par that is greater than or equal to $25 million with a maturity range from maturing over one to three years, reflecting total return. but less than three years.~~ This maturity range is an appropriate benchmark based on the objectives of the City. Whenever possible, and consistent with risk limitations as defined herein and prudent investment principles, the Treasurer shall seek to augment returns above the market-average rate of return.

7.0 DIVERSIFICATION

The City will diversify its investments to reduce credit risk or market risk losses to the portfolio as a whole, while still attaining a market-average rate of return. Diversification requires not just a mix of instrument types, but also a mix of maturities and issuers. No more than 5% of the portfolio is to be invested in any one issue (except the Local Agency Investment Fund). With the exception of U.S. Treasury securities and authorized pools, no more than 50% of the City's total investment portfolio will be invested in a single security type or with a single financial institution.

8.0 REPORTING

In accordance with California Government Code Section 53646, the Treasurer may submit an investment report to the City Council on a quarterly basis within 30 days of the end of the quarter, which provides a review of investments and summarizes total investment return as described in items A through E found below within this section.

The report shall include the following information:

A. Type of investment, issuer, date of maturity, par value and dollar amount invested in all securities, investments and money held by the City at the end of the reporting period; and

B. A listing of individual securities held at the end of the reporting period by authorized investment category and percentage of portfolio represented by each investment category; and

C. Average life and final maturity of all investments listed, and coupon, discount or earnings rate; and

D. Par Value, Fair Value and Cost Value; and

~~E.Description of any of the City's funds, investments or programs that are under the management of contracted parties, including lending programs; and~~

~~F.~~E. For all securities held by the City or under management by an outside party that is not a local agency pool or the State of California Local Agency Investment Fund, the current fair value as of the date of the report; and

~~G.~~F. Statement that the portfolio complies with the Investment Policy or the manner in which the portfolio is not in compliance; and

~~H.~~G. Statement that the City has the ability to meet its pooled expenditure requirements (cash flow) for the next six months or provide an explanation as to why sufficient money shall or may not be available.

If the City places all of its investments in the Local Agency Investment Fund, Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association (or any combination of these three), the Finance Director can simply submit, on at least a quarterly basis, the most recent statements from these institutions to meet the requirements of items A - D above, with a supplemental report addressing items E - H above, per California Government Code Section 53646(b)-(e).

Reports to California Debt and Investment Advisory Commission (CDIAC)

With the passage of AB 943, reporting to the California Debt and Investment Advisory Commission (CDIAC) commenced in January 2001. Cities and Counties are now required to forward copies of their second and fourth quarter calendar year investment portfolio reports and copies of their investment policies to the CDIAC. The City has 60 days following the close of the quarter to provide CDIAC with its investment portfolio report.

In addition, with the passage of SB 1326 in 2002, Cities and Counties are now required to submit copies of their investment policies to the CDIAC within 60 days after the close of the second quarter of each calendar year and within 60 days of any subsequent amendment. The City of Vallejo will comply with CDIAC oversight agency reporting requirements.

9.0 SAFEKEEPING AND CUSTODY

All security transactions of the City and RDA, including collateral on repurchase agreements, will be executed by delivery-versus-payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. A third party custodian, as designated by the Treasurer and as evidenced by safekeeping receipts, will hold securities of the City and RDA.

10.0 AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

If deemed necessary by the Finance Director/Treasurer, ~~T~~the Treasurer's office will maintain a list of financial institutions authorized to provide investment services, including approved security broker/dealers.

A. The City and Redevelopment Agency shall transact business only with banks, savings and loans, and with investment securities dealers as defined in Government Code Section 53601.5:

   53601.5 – Designated entities from whom a local agency may purchase authorized investments:

   "The purchase by a local agency of any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a federal or state association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary government dealer by the Federal Reserve Bank."

B. Before accepting funds or engaging in investment transactions with the City, the supervising officer at each depository and recognized securities broker/dealer shall submit a certification that the officer has reviewed the investment policies and objectives and agrees to disclose potential conflicts or risks to public funds that might arise out of business transactions between the firm/depository and the City of Vallejo.

~~C.An annual review of the financial condition and registrations of qualified bidders will be conducted by the Treasurer.~~

11.0 COLLATERALIZATION

Collateralization will be required on two types of investments: certificates of deposit and repurchase agreements. In order to anticipate market changes and provide a level of security for all funds, the collateralization level for any amount exceeding FDIC coverage shall be in accordance with California Government Code Section 53652 and/or 53651 (m)(1).

The City chooses to limit acceptable collateral to the following: Cash, U.S. Treasury Bills, Notes and Bonds, and Federal Agency issues.

Collateral will always be held in the City's name by an independent third party with whom the City of Vallejo has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City.

The right of collateral substitution is reserved by the City.

12.0 DELEGATION OF AUTHORITY

In accordance with State law (SB 109), the City Council designates the Finance Director/Treasurer and/or those person(s), city employees, outside professional investment managers or fund managers assigned or designated by the Finance Director/Treasurer, to perform the needed investment transactions in accordance with this Policy. At times of absence of the Finance Director/Treasurer, the Assistant Finance Director, or other City Finance Director/Treasurer designee shall perform those functions of the investment of City or RDA Funds. In the absence of the Finance Director/Treasurer, the Assistant Finance Director, and other City Finance Director/Treasurer designees, the City Manager shall assume this responsibility. The investment authority granted to the investing officers is effective until rescinded by the City Council or until termination of the person's employment by the City. No person may engage in an investment transaction except as provided for under the terms of this policy. Although the Finance Director/Treasurer may delegate these duties to another official in the Department of Finance, the Finance Director shall be responsible for all transactions undertaken and will establish a system of controls to regulate the activities of subordinate officials. Section 53607 of the State of California Government Code limits the authorization of the legislative body to delegate investment authority to a one-year period, renewable annually.

13.0 ETHICS AND CONFLICT OF INTEREST

In accordance with California Government Code Sections 1090 et seq. and 87100 et seq., officers and employees of the City will refrain from any activity that could conflict with the proper execution of the investment program or which could impair their ability to make impartial investment decisions for the City or RDA. All investment personnel shall comply with the reporting requirements of the Political Reform Act, to include the annual filing of Statements of Economic interest. No investments will be made with or through any family or blood-related relative or any firm that employs any family or blood-related relative of any City Elected Official, Appointed Official, or City employee.

14.0 INTERNAL CONTROL

The Treasurer shall establish an annual process of independent review by an external auditor. This review will provide internal control by assuring compliance with policies and procedures.

15.0 POLICY REVISION AND ADOPTION

This Investment Policy shall be reviewed and adopted at least annually by resolution of the City Council of Vallejo. Furthermore, it can be revised whenever necessary by the City Council or Finance Director with City Council approval, and any modifications made thereto must be approved by the City Council, as required by law.

16.0 PROHIBITED TRANSACTIONS

Certain investment practices and instruments may be inconsistent with the safety of invested funds, or prohibited by the State of California Government Code Section 53601.6 and are

therefore prohibited transactions. Prohibited investments include securities not listed in Attachment A below, as well as but not limited to:

A. Investments Prohibited by State of California Government Code Section 53601.6:

1. Mortgage Derived Interest-Only Strips.

2. Any security that could result in zero interest accrual if held to maturity.

3. "Complex" derivative structures such as range notes or inverse floaters.

B. Additional Investments Prohibited by the City of Vallejo:

1. No direct investment in financial agreements whose returns are linked to or derived from the performance of some underlying assets such as stocks, bonds, currencies or commodities products ("Derivatives"). Only allowed as part of the City's investments in Government Investment Pools and sweep accounts. This may include dual index notes, leveraged or de-leveraged floating rate notes, or any other complex variable rate or structured note, and any other financial derivative.

2. Leveraged investing, such as in margin accounts or any form of borrowing against or otherwise obligating city investments for the purpose of investment.

3. Options and future contracts.

4. Taking short positions; that is, selling securities that the City does not own.

5. Equity Securities (Common or Preferred Stocks).

Purchasing these types of instruments does not coincide with the City's Investment Policy objectives and would require a thorough review and monitoring of the underlying security. Although some of these transactions are legal under California Government Code, they do not meet the objectives contained in this Investment Policy.

Prohibited investments already held in the portfolio at the time of adoption of this policy may continue to be held until maturity at the discretion of the Finance Director/Treasurer.

17.0 MAXIMUM MATURITY LIMIT

To the extent possible, the City of Vallejo will attempt to match its investments with anticipated cash flow requirements. In compliance with State of California Government Code Section 53601, the City will not directly invest in any securities with a legal final maturity of ~~maturing~~ more than five years from the date of purchase unless specifically approved by the City Council.

Furthermore, in order to maintain liquidity, the weighted average time to maturity of the City's investment portfolio shall not exceed three years. The Treasurer shall adjust average portfolio maturity to market conditions and specific investment goals/return objectives, as needed.

18.0 PORTFOLIO MANAGEMENT

Following the primary objective of preservation of capital, the investment portfolio may be actively managed to take advantage of market opportunities. In doing so, negotiable securities may be sold prior to their maturity to provide liquid funds as needed for cash flow purposes, to enhance portfolio returns, or to restructure maturities to increase yield and/or decrease risk. In addition, fluctuations in market rates or changes in credit quality may produce situations where securities may be sold at a loss in order to mitigate further erosion of principal or to reinvest proceeds of sale in securities that will out-perform the original investment. In practice, however, it is primarily a hold to maturity portfolio.

19.0 USE OF EXTERNAL PROFESSIONAL INVESTMENT MANAGERS

The City may employ the services of professional investment managers to assist in the management of the City's investment portfolio. Such managers may be granted the discretion to purchase and sell investment securities in accordance with this Investment Policy. In addition, such managers may review cash flow requirements, formulate investment strategies, and execute security purchases, sales and deliveries. External investment managers must be well established and exceptionally reputable. Members of the staffs of such companies who will have primary responsibility for managing the City's investments must have a working familiarity with the special requirements and constraints of investing municipal funds in general and this City's funds in particular. Such managers shall only be retained by written agreement with the City, and approved by the City Council. They must contractually agree to conform to the City's Investment Policy and all provisions of governing law and collateralization and other requirements contained herein.

Investment Managers shall exercise reasonable care in compliance with this Investment Policy and their Investment Management Agreements. If an Investment Manager causes a loss of funds to the City where the Manager is held to be liable for the loss of funds, compensation due to the City from the Investment Manager for such loss of funds is defined in each investment management agreement.

No more than 40 percent of the City's total investment portfolio may be placed in any one investment management account. In order to implement this requirement, the City's portfolio assets will be reallocated annually among its investment managers based on June 30 year-end values.

20.0 INDEMNIFICATION OF CITY INVESTMENT OFFICIALS

The City Finance Director/Treasurer and any other City of Vallejo employee designated or assigned to perform the investment transactions and/or manage the City's investment portfolio, acting within the intent and scope of the investment policy and other written procedures and exercising due diligence, will not be held personally liable for any individual investment losses or total portfolio losses and shall be relieved of personal responsibility and liability for any individual security's credit risk or market price changes. Such indemnity shall

extend to judgments, fines, attorney fees, and any other amounts paid in settlement of any such claim, suit, or proceeding, including any appeal thereof.

21.0 ALLOCATION OF ANY INVESTMENT GAIN OR LOSS

Any gain or loss realized on any investments will be distributed on a pro rata basis to all non-restricted funds which at the time of the investment gain or loss were part of the City's portfolio, ~~.~~ or such other method as otherwise directed by the City Finance Director/Treasurer, and in accordance with generally accepted accounting principles.

22.0 POLICY EXCEPTIONS

Occasionally, exceptions to some of the requirements specified in this Investment Policy may occur for pooled investments because of events subsequent to the purchase of investment instruments, e.g., the rating of a corporate note held in the portfolio is downgraded below an "A" rating, or total assets in the portfolio decline causing the percentage invested in corporate notes to rise above 30%.

State law is silent as to how exceptions should be corrected. Exceptions may be temporary or more lasting; they may be self-correcting or require specific action. If specific action is required, the City Finance Director/Treasurer should determine the course of action that would correct exceptions to move the portfolio into compliance with State and City requirements. Decisions to correct exceptions should not expose the assets of the portfolio to undue risk, and should not impair the meeting of financial obligations as they fall due. Evaluation of divestiture of securities will be determined on a case-by-case basis. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

23. USE OF STATE GUIDELINES

State of California Government Code Sections 16429.1, 53601, 53635, and 53646 regulate investment practices. It is the policy of the City of Vallejo to use the State's provisions for local government investments as a guide in the developing and implementing the City's investment policies and practices with the exception of those investments listed as Prohibited Transactions in Section 16 above.

24. LEGISLATIVE CHANGES

Any State of California legislative action that further restricts allowable maturities, investment types or percentage allocations will be incorporated into the City of Vallejo Statement of Investment Policy and supersede any and all previous applicable language. If the City is holding an investment that is subsequently prohibited by a legislative change, the City may hold that investment until the maturity date, if it is deemed prudent by the Finance Director/Treasurer.

ATTACHMENT A

SCHEDULE OF AUTHORIZED INVESTMENT INSTRUMENTS

Allowable Investment Instruments

The City Finance Director/Treasurer is authorized to invest in any of the investment instruments allowed by Sections 53601, 53635 and 16429.1 of the California Government Code with the exception of those investments listed as Prohibited Transactions in Section 16 above. Exclusion of the instruments in Section 16 (B) is consistent with the City's and RDA's overall objective of achieving reasonable yields on public funds while minimizing risk and capital losses. Although the potential exists for greater interest yields with these instruments, it is believed that the potential level of risk exceeds their benefits except in very limited circumstances. Accordingly, City Council approval is required on a case-by-case basis for any investments listed in Prohibited Transactions Section 16 (B).

Term

Reserve funds from the proceeds of debt issues of the City or RDA may be invested by the City Finance Director/ Treasurer in government agency securities with terms exceeding five (5) years if the maturity of such investments is made to coincide as nearly as practicable with the life of the debt issue.

In all other cases, City Council approval to make investments with terms in excess of five (5) years is required on a case-by-case basis.

The City's and RDA's funds may be invested in any of the following instruments, which are not prohibited by law (California Government Code Section 53601.6):

A. **LOCAL AGENCY INVESTMENT FUND (LAIF).** As authorized in Government Code Section 16429.1, local agencies may invest in the Local Agency Investment Fund (LAIF), a pooled investment money market fund established by the State of California, and overseen by the State Treasurer, which allows local agencies to pool their investment resources. Principal may be withdrawn on a one-day notice. Interest earned is paid quarterly. The fees charged are limited to one-quarter of one percent of the earnings of the fund. Current policies of LAIF set minimum and maximum amounts of monies that may be invested as well as maximum numbers of transactions that are allowed per month. Currently, there is a limitation of $40 million per agency subject to a maximum of 15 total transactions per month. The LAIF is in trust in the custody of the State

Treasurer. The City's right to withdraw its deposited monies from LAIF is not contingent upon the State's ability to adopt a State Budget by July 1st of each new fiscal year.

B. **U.S. TREASURY BILLS.** Commonly referred to as T-Bills, these are short-term marketable securities sold as obligations of the U.S. Government. They are offered in three-month, six-month, and one-year maturities. T-Bills do not accrue interest but are sold at a discount to pay face value at maturity.

C. **U.S. TREASURY NOTES.** These are marketable, interest-bearing securities sold as obligations of the U.S. Government with original maturities of one to ten years at issuance. Interest is paid semiannually. Purchases of these assets are limited to a remaining maturity of 5 years or less.

D. **U.S. TREASURY BONDS.** These are the same as U.S. Treasury Notes except they have original maturities of ten years or longer at issuance. Purchases of these assets are limited to a remaining maturity of 5 years or less.

E. **U.S. GOVERNMENT AGENCY ISSUES.** This includes obligations, participations, or other instruments of, or issued by, a federal government agency or a United States government-sponsored enterprise.

These securities fall into three categories: 1) Issues which are backed by the full faith and credit of the United States, 2) Issues which are conditionally backed by the full faith and credit of the United States and 3) Issues which are not backed by the full faith and credit of the United States.

These Issues include, but are not limited to:

1. Issues, which are unconditionally backed by the full faith and credit of the United States, including: Small Business Administration (SBA) and General Services Administration (GSA).

2. Issues which are not backed by the full faith and credit of the United States including but are not limited to: Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Farm Credit System, Banks for Cooperation (Co-ops), Federal Lands Banks (FLB), Federal Intermediate Credit Banks (FICB), Tennessee Valley Authority (TVA), Student Loan Marketing Association (SLMA).

F. **BANKER'S ACCEPTANCE.** Otherwise known as bills of exchange or time drafts, are negotiable instruments with a maturity of six months or less drawn on and accepted by a commercial bank. These instruments are usually created to finance the import or export of goods, or the shipment of goods within the United States.

G. **CERTIFICATE OF DEPOSIT (CDS).** As authorized in Government Code Section 53601.7 (7), local agencies may invest in Certificates of Deposit. These instruments must comply with Government Code Sections 16500 or 16600. This is a receipt for funds

deposited in a Bank or Savings and Loan Association for a specified period at a specified rate of interest. The first $100,000 of a CD is guaranteed by the FDIC if with a bank, or the FSLIC if with a savings and loan association. CD's with a face value in excess of $100,000 can be collateralized by Treasury Department Securities, which must be at least 110% of the face value of the CD's in excess of the first $100,000, or by first mortgage loans, which must be at least 150% of the face value of the CD balance in excess of the first $100,000.

All institutions must: (1) have a minimum of $100 million in assets; (2) have a demonstrated history of positive earnings; and, (3) must carry a minimum 3.5% equity ratio and hold that ratio for at least one year prior to the City's investment. All institutions must be located within the State of California. For collateralized or negotiable certificates of deposit, the institution must have a minimum $1 billion in assets, in addition to meeting the above criteria.

H. **NEGOTIABLE CERTIFICATE OF DEPOSIT.** Allowable certificates of deposits must be issued by a nationally or state-chartered bank or a state or federal association or by a state-licensed branch of a foreign bank. The maturity period for this investment vehicle may not exceed five years unless approved by the Council.

I. **COMMERCIAL PAPER.** As authorized in Government Code Section 53601(g), 25% of the City's portfolio may be invested in "prime" quality commercial paper of the highest ranking or of the highest letter and numerical rating as provided for by Moody's or Standard and Poor's, with maturities not to exceed 270 days. These notes are secured promissory notes of industrial corporations, utilities and bank holding companies. State law limits a city to investments in US corporations having assets in excess of five hundred million dollars with an "A" or higher rating.

J. **REPURCHASE AGREEMENTS.** As authorized in Government Code Section 53601(i), repurchase agreements are agreements between the local agency and seller for the purchase of government securities to be resold at a specific date and for a specific amount. Repurchase agreements are generally used for short term investments for the City's daily automatic sweep account and will generally not exceed 30 days. The legal limitation on the maturity period for a repurchase agreement is for one year with the required market value underlying the agreement at 102% of the funds borrowed with the value adjusted quarterly.

K. **BONDS OF THE STATE OF CALIFORNIA OR LOCAL AGENCIES**. Bonds of the State of California and any local government in the State of California, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency. In no event shall this classification of investment exceed 10% of the value of the portfolio.

L. **MUTUAL FUNDS**. Mutual Funds are referred to in California Government Code, Section 53601(k), as "shares of beneficial interest issued by diversified management companies." The following mutual funds and money market funds are authorized investments for funds subject to the following provisions:

1. Shares of mutual funds with portfolios consisting only of United States government bonds or United States government guaranteed bonds issued by federal agencies with average maturities less than four years.

2. Shares of money market funds with portfolios consisting of only bonds of states and local governments or other issuers authorized by State law for investment by local governments, which bonds have at the time of investment one of the two highest credit ratings of a nationally recognized rating agency.

3. Shares of money market funds with portfolios consisting of securities otherwise authorized by State law for investment by local governments.

M. **LOCAL GOVERNMENT INVESTMENT POOLS (LGIP).** Established by the State of California to enable Finance Directors to place funds in a pool for investments. In no event shall this classification of investment exceed the maximum limit allowed by the pool.

N. **CORPORATE NOTES.** As authorized in Government Code Sections 53601(j), local agencies may invest in corporate notes issued by corporations organized and operating in the United States that have an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and having a maximum remaining maturity period of five years or less in an amount not to exceed 30% of the agency's portfolio. Furthermore, the maximum principal amount in any one company will not exceed 5% of the City's portfolio.

Issuers must possess an acceptable long-term senior debt rating by one of the nationally recognized rating services, ie Moodys, Standard and Poors, or Fitch or Duff & Phelps, as detailed below:

1. For maturities of two years or less, a minimum rating of "A" or better.

2. For maturities of two to four years, a minimum rating of "AA" or better.

3. For maturities of four to five years, a minimum rating of "AAA".

O. ASSET BACKED SECURITIES. As authorized in Government Code Section 53601(n), local agencies may invest in any equipment lease-backed certificate, consumer receivable pass-through certificate or consumer receivable-backed bond with a maximum remaining maturity of five years.

Securities eligible for investment under this subdivision shall be rated "AAA" by a nationally recognized rating service. Purchases of securities authorized by this subdivision may not exceed 20% of the agency's portfolio.

P. MORTGAGE-BACKED SECURITIES. As authorized in Government Code Section 53601(n), local agencies may invest in any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, with a maximum remaining maturity of five years.

Securities eligible for investment under this subdivision shall be rated "AAA" by a nationally recognized rating service. Purchases of securities authorized by this subdivision may not exceed 20% of the agency's portfolio.

It should be noted that while the Government Code specifies the maximum percentage of the portfolio that may be held in each type of investment at any one time, fluctuations in the portfolio balance will prevent strict adherence to such restrictions. Therefore, the constraints listed in this policy are to be applied at the time the investment is made and not necessarily to subsequent events which may change the percentage.

SUMMARY OF AUTHORIZED SECURITIES AND CRITERIA INCLUDING DIVERSIFICATION CRITERIA

The City's investment portfolio, in aggregate, will be diversified to limit market and credit risk by observing the following City Policy Legal limitations:

Permitted Investments	State Code Legal Limit (% or $)	City Policy Legal Limit (% or $)	City Maximum Maturity Constraints	City Policy Other Constraints
U.S. Government Treasury Bills	Unlimited	Unlimited	5 years	None
U.S. Government Treasury Notes	Unlimited	Unlimited	5 years	None
U.S. Government Treasury Bonds	Unlimited	Unlimited~~30%~~	5 years	None
U.S. Government Agencies (e.g., GNMA, FNMA)	Unlimited	50%	5 years	None
Repurchase Agreements	Unlimited	20%	N.A.	Collateralized by securities with a market value of at least 102% of the loan amount.
Bankers Acceptances	40%	5%	*180 days*	No more than $1,000,000 invested in any one commercial bank
Commercial Paper	25%	25%	*270 days*	U.S. Corporations with assets in excess of $500,000,000; "A" debt rating; maximum of $1,000,000 from an issuing corporation
Corporate Medium Term Notes	30%	30%	5 years	U.S. Corporations; minimum "A" debt rating; maximum of 5% of portfolio per issuing company
Certificates of Deposit	Unlimited	10%	5 years	Must be collateralized to 110%

				of the CD value by other eligible securities
Negotiable Certificates of Deposit	30%	5%	5 years	State and Federally chartered banks and savings institutions, "AA" rating by one agency
LAIF State Pool	$40,000,000	$40,000,000	On Demand	Limited to 15 transactions per month, per account, per State Policy
State of California or Local Agency Bonds	Unlimited	10%	5 years	None
Mutual Funds	20%	20%	5 years	Funds invested as defined in Section 53601 (a) to (l); maximum of 10% in any one fund
Asset-backed Securities	20%	20%	5 years	Minimum "AAA" Debt rating
Mortgage-backed Securities	20%	20%	5 years	Minimum "AAA" Debt rating
Local Government Investment Pools	Unlimited	Unlimited	On Demand	None

1) Limits on percent ~~%~~ of portfolio do not apply to investments made by LAIF or other Government Investment Pools.
2) U.S. Treasury Bonds are currently only available for 10 years or more, which currently prohibits the use of newly issued bonds as an investment tool. However, existing bonds could be purchased if remaining term to maturity is less than 5 years.

MASTER REPURCHASE AGREEMENT

If repurchase agreements are legal or authorized, a Master Repurchase Agreement must be signed with the bank or dealer.

~~INVESTMENT POOLS/MUTUAL FUNDS~~

~~A thorough investigation of the pool/fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed which will answer the following general questions:~~

- ~~A description of the eligible investment securities, and a written statement of investment policy and objectives.~~
- ~~A description of interest calculations and how it is distributed, and how gains and losses are treated.~~
- ~~A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.~~
- ~~A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.~~
- ~~A schedule for receiving statements and portfolio listing.~~
- ~~Are reserves, retained earnings, etc. utilized by the pool/fund?~~
- ~~A fee schedule, and when and how it is assessed.~~

■Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

ATTACHMENT B

GLOSSARY OF CASH MANAGEMENT TERMS

ACCRETION OF DISCOUNT - Periodic straight-line increases in the book or carrying value of a security so the amount of the purchase price discount below face value is completely eliminated by the time the bond matures or by the call date, if applicable.

ACCRUED INTEREST - Interest earned but not yet received. The interest accumulated on a bond since issue date or the last coupon payment. The buyer of the bond pays the market price and accrued interest, which is payable to the seller.

AGENCIES - A debt security issued by a federal or federally sponsored agency.

In the government securities industry, investors frequently refer to all debt instruments issued by U.S. government agencies, departments, and related instrumentalities as *agency* securities. Only those securities backed by the full faith and credit of the U. S. Government are true agency securities. Only securities issued by the Government National Mortgage Association (Ginnie Mae or GNMA) are widely used by public investors as true agency securities backed by the full faith and credit of the U.S. Government.

Generally, the underlying security associated with a U.S. agency is considered to be as risk-free as direct Treasury securities. The key difference in risk with these instruments is their liquidity and marketability, which is diminished as a result of smaller, irregular, and less familiar issues.

U.S. Government Instrumentalities, also known as government sponsored enterprises (GSEs), are financial intermediaries established by the federal government to fund loans to certain groups of borrowers, such as homeowners, farmers, and students. In short, GSEs are privately owned corporations with a public purpose. The most common instrumentalities are:

- Federal Farm Credit System Banks,

- Federal Home Loan Banks (FHLB),
- Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC),
- Federal National Mortgage Association (Fannie Mae or FNMA)
- Student Loan Marketing Association (Sallie Mae or SLMA), and
- Tennessee Valley Authority (TVA).

GSEs sell securities on a regularly scheduled basis through selling groups, which are chosen groups of dealers that the GSE uses to "bring the paper to the streets." Short-term securities are regularly issued as discount notes with maturities ranging from overnight to 360 days. GSEs also issue securities with fixed interest rates, ranging in maturity from three months to 30 years.

AMORTIZATION OF PREMIUM - Periodic straight-line decreases in the book or carrying value of a security so the premium paid for a bond above its face value or call price is completely eliminated.

ASK – The price at which securities are offered for sale.

ASSET BACKED SECURITIES (ABS) – Asset Backed Securities are pass-through instruments collateralized by installment loans, leases, revolving lines of credit or other consumer finance receivables. Securitizations are structured to separate the credit of the ABS issuer from the assets being securitized.

AVERAGE MATURITY - A weighted average of the expiration dates for a portfolio of debt securities. An income fund's volatility can be managed by shortening or lengthening the average maturity of its portfolio.

BANK WIRE - A virtually instantaneous electronic transfer of funds between two financial institutions.

BANKERS ACCEPTANCES (BAs) - Bankers Acceptances generally are created based on a letter of credit issued in a foreign trade transaction. They are used to finance the shipment of commodities between countries as well as the shipment of some specific goods within the United States. BAs are short-term, non-interest bearing notes sold at a discount and redeemed by the accepting bank at maturity for full face value. These notes trade at a rate equal to or slightly higher than Certificates of Deposit (CDs), depending on market supply and demand.

Bankers Acceptances are sold in amounts that vary from $100,000 to $5,000,000, or more, with maturities ranging from 30 - 270 days. They offer liquidity to the investor as it is possible to sell BAs prior to maturity at the current market price.

BASIS POINT - A measure of an interest rate, i.e., 1/100 of 1 percent, or .0001.

BID - The indicated price at which a buyer is willing to purchase a security or commodity. When selling a security a bid is obtained.

BOND - A long-term debt security, or IOU, issued by a government or corporation that generally pays a stated rate of interest and returns the face value on the maturity date.

BOOK ENTRY SECURITIES - U.S. government and federal agency securities that do not exist in definitive (paper) form; they exist only in computerized files maintained by the Federal Reserve Bank.

BOOK VALUE - The amount at which an asset is carried on the books of the owner. The book value of an asset does not necessarily have a significant relationship to market value.

BROKER – A broker brings buyers and sellers together for a commission.

CALLABLE BOND - A bond issue in which all or part of its outstanding principal amount may be redeemed before maturity by the issuer under specified conditions. Bonds are generally called when interest rates fall so that the bond issuer can save money by floating new bonds at the lower rate. The first call date is the date which a specific call price will be offered by the issuer, usually a premium price to par, as an incentive to the bondholder to redeem the bond.

CALL PRICE - The price at which an issuer may redeem a bond prior to maturity. The price is usually at a slight premium to the bond's original issue price to compensate the holder for loss of income and ownership.

CALL RISK - The risk to a bondholder that a bond may be redeemed prior to maturity.

CASH SALE\PURCHASE - A transaction which calls for delivery and payment of securities on the same day that the transaction is initiated.

CERTIFICATES OF DEPOSIT - Certificates of Deposit, familiarly known as CDs, are certificates issued against funds deposited in a bank for a definite period of time and earning a specified rate of return. Certificates of Deposit bear rates of interest in line with money market rates current at the time of issuance.

COLLATERALIZATION - Process by which a borrower pledges securities, property, or other deposits for the purpose of securing the repayment of a loan and/or security.

COMMERCIAL PAPER - Commercial paper is an unsecured promissory note issued by a corporation for a specific amount and maturing on a specific day that cannot be farther into the future than 270 days. Commercial Paper is typically rated by credit agencies that attempt to evaluate the liquidity, cash flow, profitability, and backup credit availability of the entity that is issuing the paper.

COMPETITIVE BID PROCESS - A process by which three or more institutions are contacted via the telephone to obtain interest rates for specific securities.

CONVEXITY - A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

COUPON RATE - The annual rate of interest received by an investor from the issuer of certain types of fixed-income securities. Also known as the "interest rate."

CREDIT QUALITY - The measurement of the financial strength of a bond issuer. This measurement helps an investor to understand an issuer's ability to make timely interest payments and repay the loan principal upon maturity. Generally, the higher the credit quality of a bond issuer, the lower the interest rate paid by the issuer because the risk of default is lower. Credit quality ratings are provided by nationally recognized rating agencies.

CREDIT RISK - The risk that another party to an investment transaction will not fulfill its obligations. Credit risk can be associated with the issuer of a security, a financial institution holding the entity's deposit, or a third party holding securities or collateral. Credit risk exposure can be affected by a concentration of deposits or investments in any one investment type or with any one party.

CUSIP NUMBER - A nine-digit number established by the Committee on Uniform Securities Identification Procedures that is used to identify publicly traded securities. Each publicly traded security receives a unique CUSIP number when the security is issued.

CURRENT YIELD - A yield calculation determined by dividing the annual interest received on a security by the current market price of that security.

CUSTODIAN - An independent third party (usually bank or trust company) that holds securities in safekeeping as an agent for the city.

DEBENTURE – A bond secured only by the general credit of the issuer.

DEFEASE - To discharge the lien of an ordinance, resolution, or indenture relating to a bond issue, and in the process, render inoperative restrictions under which the issuer has been obliged to operate. Comment: Ordinarily an issuer may defease an indenture requirement by depositing with a trustee an amount sufficient to fully pay all amounts under a bond contract as they become due.

DELIVERY - The providing of a security in an acceptable form to the City or to an agent acting on behalf of the City and independent of the seller. Acceptable forms can be physical securities or the transfer of book entry securities. The important distinction is that the transfer accomplishes absolute ownership control by the City.

DELIVERY VS PAYMENT - There are two methods of delivery of securities: Delivery vs. payment and delivery vs. receipt (also called free). Delivery vs. payment is delivery of securities with an exchange of money for the securities. Delivery vs. receipt is delivery of securities with an exchange of a signed receipt for the securities.

DEPOSITORY BANK - A local bank used as the point of deposit for cash receipts.

DEPOSITORY INSURANCE - Insurance on deposits with financial institutions. For purposes of this policy statement, depository insurance includes: a) Federal depository insurance funds, such as those maintained by the Federal Deposit Insurance Corporation (FDIC) AND Federal Savings and Loan Insurance Corporation (FSLIC).

DERIVATIVE SECURITY - Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

DISCOUNT - 1. (n.) selling below par; e.g., a $1,000 bond selling for $900. 2. (v.) anticipating the effects of news on a security's value; e.g., "The market had already discounted the effect of the labor strike by bidding the company's stock down."

DISCOUNT SECURITIES – Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury Bills.

DIVERSIFICATION - Dividing available funds among a variety of securities and institutions so as to minimize market risk.

DOLLAR-WEIGHTED AVERAGE MATURITY - The sum of the amount of each outstanding investment multiplied by the number of days to maturity, divided by the total amount of outstanding investment.

EFFECTIVE RATE - The yield you would receive on a debt security over a period of time taking into account any compounding effect.

FACE VALUE - The value of a bond stated on the bond certificate; thus, the redemption value at maturity. Most bonds have a face value, or par, of $1,000.

FAIR VALUE - The amount at which a financial instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

FEDERAL AGENCY SECURITIES - Several government-sponsored agencies, in recent years, have issued short and long-term notes. Such notes typically are issued through dealers, mostly investment banking houses. These Federal government-sponsored agencies were established by the U.S. Congress to undertake various types of financing without tapping the public treasury. In order to do so, the agencies have been given the power to borrow money by issuing securities, generally under the authority of an act of Congress. These securities are highly acceptable and marketable for several reasons, mainly because they are exempt from state, municipal and local income taxes. Furthermore, agency securities must offer a higher yield than direct Treasury debt of the same maturity to find investors, partly because these securities are not direct obligations of the Treasury.

The main agency borrowing institutions are the Federal National Mortgage Association (FNMA), the Federal Home Loan Bank System (FHLB), and the Federal Farm Credit System (FFCS).

FLOATING-RATE NOTES - The term floating-rate notes includes different types of securities with a similar feature that the interest rate or coupon rate is adjusted periodically to a benchmark or base rate. A simple example of a floating-rate instrument is a Series EE savings bond where the semiannual interest rate is determined in May and November based on 85 percent of the average market return of the five-year Treasury note for the preceding six months. In theory, floating-rate notes are securities with coupons based on a short-term rate index.

FNMA - FEDERAL NATIONAL MORTGAGE ASSOCIATION - issues notes tailored to the maturity needs of the investor. Maturities range from 30 days up to 10 years. These notes are made attractive by their denominations from $5,000 to $1 million.

FHLB - FEDERAL HOME LOAN BANK SYSTEM - consists of twelve Federal Home Loan Banks, issues, in addition to long-term bonds, coupon notes with maturities of up to one year. Their attractiveness stems from their investment denominations of $10,000 to $1 million.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) - A Federal institution that insures bank deposits. The current limit is up to $100,000 per depository account.

FEDERAL FUNDS (Fed Funds) - Funds placed in Federal Reserve banks by depository institutions in excess of current reserve requirements. These depository institutions may lend fed funds to each other overnight or on a longer basis. They may also transfer funds among each other on a same-day basis through the Federal Reserve banking system. Fed funds are considered to be immediately available funds.

FEDERAL FUNDS RATE - The rate of interest at which Fed Funds are traded between banks. Fed Funds are excess reserves held by banks that desire to invest or lend them to banks needing reserves. The particular rate is heavily influenced through the open market operations of the Federal Reserve Board. Also referred to as the "Fed Funds rate."

FEDERAL HOME LOAN BANKS (FHLB) - The institutions that regulate and lend to savings and loan associations. These are Government sponsored wholesale banks which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and

insurance companies. The mission of the FHLB's is to liquefy the housing related assets of its members who must purchase stock in their district bank.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA) - FNMA, like GNMA, was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a Federal corporation working under the auspices of the Department of Housing and Urban Development, HUD. It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC) – Consists of seven members of the Federal Reserve Board and five of the twelve Federal reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM - The central bank of the United States which has regulated credit in the economy since its inception in 1913. Includes the Federal Reserve Bank, 12 district banks and the member banks of the Federal Reserve, and is governed by the Federal Board.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION (FSLIC) - A federal institution that insures savings and loan deposits. The current limit is up to $100,000 per depository account.

FLEXIBLE REPURCHASE AGREEMENTS (Flex Repos) - Similar to a term repurchase agreement, a flex repo is a contractual transfer of U.S. government securities during the investment period, whereby the Seller agrees to repurchase the collateral securities from the Buyer on the Buyer's demand, subject to provisions of the agreement. The Seller is generally a financial institution such as a securities dealer or a bank. As buyers, most issuers require over-collateralization, marking-to-market of collateral and delivery-vs.-payment of collateral.

GINNIE MAES (GNMAs) - Mortgage securities issued and guarantied, as to timely interest and principal payments, by the Government National Mortgage Association, an agency within the Department of Housing and Urban Development (HUD).

GOVERNMENT SECURITY - Any debt obligation issued by the U.S. government, its agencies or instrumentalities. Certain securities, such as Treasury bonds and Ginnie Maes, are backed by the government as to both principal and interest payments. Other securities, such as those issued by the Federal Home Loan Mortgage Corporation, or Freddie Mac, are backed by the issuing agency.

GOVERNMENT-SPONSORED ENTERPRISES (GSE's) - Payment of principal and interest on securities issued by these corporations is not guaranteed explicitly by the U.S. government, however, most investors consider these securities to carry an implicit U.S. government guarantee. The debt is fully guaranteed by the issuing corporations. GSE's include: Farm Credit System, Federal Home Loan Bank System, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Student Loan Marketing Association, and the Tennessee Valley Authority.

HAIRCUT - This term describes the way brokers and clients protect themselves from market risk in doing repos. An entity wanting to finance the purchase of $100 million in Treasury bonds may borrow

just $98 million of the money. The two percent difference between the amount of securities purchased and the amount of money borrowed is the haircut. Similarly, an entity looking to borrow $100 million may need to provide, as collateral, Treasury securities with a market price equal to $102 million.

INTERNAL CONTROLS - An internal control structure designed to ensure that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

1. **Control of collusion** - Collusion is a situation where two or more employees are working in conjunction to defraud their employer.

2. **Separation of transaction authority from accounting and record keeping** - By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a separation of duties is achieved.

3. **Custodial safekeeping** - Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.

4. **Avoidance of physical delivery securities** - Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.

5. **Clear delegation of authority to subordinate staff members** - Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.

6. **Written confirmation of transactions for investments and wire transfers** - Due to the potential for error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.

7. **Development of a wire transfer agreement with the lead bank and third-party custodian** - The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

INVERSE FLOATER - A bond or note that does not earn a fixed rate of interest. Rather, the interest rate that is earned is tied to a specific interest-rate index identified in the bond/note structure. The interest rate earned by the bond/note will move in the opposite direction of the index, e.g., if market interest rates as measured by the selected index rises, the interest rate earned by the bond/note will decline. An inverse floater increases the market rate risk and modified duration of the investment.

INVERTED YIELD CURVE - A chart formation that illustrates long-term securities having lower yields than short-term securities. This configuration usually occurs during periods of high inflation coupled with low levels of confidence in the economy and a restrictive monetary policy.

INVESTMENT COMPANY ACT OF 1940- Federal legislation which sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

INVESTMENT POLICY - A concise and clear statement of the objectives and parameters formulated by an investor or investment manager for a portfolio of investment securities.

INVESTMENT-GRADE OBLIGATIONS - An investment instrument suitable for purchase by institutional investors under the prudent person rule. Investment-grade is restricted to those obligations rated BBB or higher by a rating agency.

LIQUIDATION - Conversion into cash.

LIQUIDITY - Refers to the ease and speed with which an asset can be converted into cash without a substantial loss in value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

LOSS - The excess of the cost or book value of an asset over selling price.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP) - The aggregate of all funds from political subdivisions that are placed in the custody of the Treasurer for investment and reinvestment.

LONG-TERM INVESTMENTS - Investments considered long-term are generally defined as those instruments maturing in one year or longer.

MARK-TO-MARKET - The practice of valuing a security or portfolio according to its market value, rather than its cost or book value. An adjustment in the valuation of a securities portfolio to reflect the current market values of the respective securities in the portfolio.

MARKETABILITY - Ability to sell large blocks of money market instruments quickly and at competitive prices.

MARKET VALUE - The price at which a security is trading and could presumably be sold.

MARKET RISK - The risk associated with declines or rises in interest rates which cause an investment in a fixed-income security to increase or decrease in value. The risk that the market value of an investment, collateral protecting a deposit, or securities underlying a repurchase agreement will decline.

MASTER REPURCHASE AGREEMENT - An agreement between the investor and the dealer or financial institute. This agreement defines the nature of the transactions, identifies the relationship between the parties, establishes normal practices regarding ownership and custody of the collateral securities during the term of the investment, provides for remedies in the event of a default by either party and otherwise clarifies issues of ownership.

MATURITY - The date upon which the principal or stated value of an investment becomes due.

MONEY MARKET – The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

MORTGAGE-BACKED SECURITIES - Mortgage-backed securities have several unique characteristics, beginning with the payment of interest on a monthly basis. Mortgage Backed Securities also differ from standard Treasury investments in that the cash flow pattern is uncertain due to the risk of prepayments or the unscheduled payment of principal. Moreover, a change in the future assumption for prepayments will also affect the rate of return on the investment of a mortgage-backed security. Mortgage-backed securities are created when mortgage pools are collateralized into interest-bearing securities. This securitization process can be accomplished via either a sale of assets or as a debt obligation of the issuer. In the former, a mortgage pass-through security is created, while in the latter case a mortgage-backed bond is originated.

MUTUAL FUND - An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments. Mutual funds are regulated by the Investment Company Act of 1940 and must abide by the following Securities and Exchange Commission (SEC) disclosure guidelines:

1. Report standardized performance calculations.
2. Disseminate timely and accurate information regarding the fund's holdings, performance, management and general investment policy.
3. Have the fund's investment policies and activities supervised by a board of trustees, which are independent of the adviser, administrator or other vendor of the fund.
4. Maintain the daily liquidity of the fund's shares.
5. Value their portfolios on a daily basis.
6. Have all individuals who sell SEC-registered products licensed with a self-regulating organization (SRO) such as the National Association of Securities Dealers (NASD).
7. Have an investment policy governed by a prospectus which is updated and filed by the SEC annually.

MUTUAL FUND STATISTICAL SERVICES - Companies that track and rate mutual funds, e.g., IBC/Donoghue, Lipper Analytical Services, and Morningstar.

NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD) - A self-regulatory organization (SRO) of brokers and dealers in the over-the-counter securities business. Its regulatory mandate includes authority over firms that distribute mutual fund shares as well as other securities.

NEGOTIABLE CERTIFICATES OF DEPOSIT - Large denomination ($100,000 or more) interest bearing time deposits, paying the holder a fixed amount of interest at maturity. Issues can be sold to a new owner before maturity.

NET ASSET VALUE - The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets which includes securities, cash, and any accrued earnings, subtracting this from the fund's liabilities and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. [(Total assets) - (Liabilities)]/(Number of shares outstanding)

NO LOAD FUND - A mutual fund which does not levy a sales charge on the purchase of its shares.

NOMINAL YIELD - The stated rate of interest that a bond pays its current owner, based on par value of the security. It is also known as the "coupon," "coupon rate," or "interest rate."

OFFER - The indicated price at which a seller is willing to sell a security or commodity. When buying a security an offer is obtained.

OPEN MARKET OPERATIONS – Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PAR VALUE - The nominal or face value of a debt security; that is, the value at maturity.

PORTFOLIO – Collection of securities held by an investor.

POSITIVE YIELD CURVE - A chart formation that illustrates short-term securities having lower yields than long-term securities.

PREMIUM - The amount by which a bond sells above its par value.

PRIMARY DEALERS - A group of government securities dealers that submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC), registered securities broker-dealers, banks, and a few unregulated firms.

PRIME RATE - The interest rate a bank charges on loans to its most credit worthy customers. Frequently cited as a standard for general interest rate levels in the economy.

PRINCIPAL - An invested amount on which interest is charged or earned.

PRUDENT PERSON RULE – An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state – the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

QUALIFIED PUBLIC DEPOSITORY - A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated, for the benefit of the commission, eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

RANGE NOTE - An investment whose coupon payment varies (e.g. either 7% or 3%) and is dependent on whether the current benchmark (e.g. 30 year Treasury) falls within a pre-determined range (e.g. between 6.75% and 7.25%).

RATE OF RETURN - The amount of income received from an investment, expressed as a percentage. A market rate of return is the yield that an investor can expect to receive in the current interest-rate environment utilizing a buy-and-hold to maturity investment strategy.

REGISTERED SECURITY - A security that has the name of the owner written on its face. A registered security cannot be negotiated except by the endorsement of the owner.

REINVESTMENT RISK - The risk that a fixed-income investor will be unable to reinvest income proceeds from a security holding at the same rate of return currently generated by that holding.

REPURCHASE AGREEMENT (REPO) - The Repo is a contractual transaction between an investor and an issuing financial institution (not a secured loan). The investor exchanges cash for temporary ownership of specific securities, with an agreement between the parties that on a future date, the financial institution will repurchase the securities at a prearranged price. An "Open Repo" does not have a specified repurchase date and the repurchase price is established by a formula computation.

REPRICING - The revaluation of the market value of securities.

REVERSE REPO's - The opposite of the transaction undertaken through a regular repurchase agreement. In a "reverse" the City initially owns securities and the bank or dealer temporarily exchanges cash for this collateral. This is, in effect, temporarily borrowing cash at a high interest rate. Most typically, a Repo is initiated by the lender of funds. Reverses are used by dealers to borrow securities they have shorted. Such investments are not authorized in the City of Vallejo's Investment Policy.

RULE 2a-7 OF THE INVESTMENT COMPANY ACT - Applies to all money market mutual funds and mandates such funds to maintain certain standards, including a 13- month maturity limit and a 90-day average maturity on investments, to help maintain a constant net asset value of one dollar ($1.00).

SAFEKEEPING - A service to customers rendered by banks for a fee whereby all securities and valuables of all types and descriptions are held in the bank's vaults for protection, or in the case of book entry securities, are held and recorded in the customer's name and are inaccessible to anyone else.

SALLIE MAES - Pooling of student loans guaranteed by the Student Loan Marketing Association (SLMA) to increase the availability of education loans. The SLMA purchases the loans after buying them on the secondary market from lenders. SLMA stock is publicly traded.

SECONDARY MARKET – A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES - Bonds, notes, mortgages, or other forms of negotiable or non-negotiable instruments.

SECURITIES & EXCHANGE COMMISSION – Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SERIAL BOND - A bond issue, usually of a municipality, with various maturity dates scheduled at regular intervals until the entire issue is retired.

SETTLEMENT DATES - The day on which payment is due for a securities purchase. For stocks and mutual funds bought through an investment dealer, settlement is normally five business days after the trade date. Bonds and options normally settle one business day after the trade date, mutual fund shares purchased directly by mail or wire settle on the day payment is received.

SHORT-TERM INVESTMENTS - Short-term investments are generally defined as those instruments maturing in one year or less.

SINKING FUND - Money accumulated on a regular basis in a separate custodial account that is used to redeem debt securities or preferred stock issues.

SPREAD - (a) Difference between the best buying price and the best selling price for any given security. (b) Difference between yields on or prices of two securities of differing quality or differing

maturities. (c) In underwriting, difference between price realized by the issuer and price paid by the investor.

STRIPS - Separation of the principal and interest cash flows due from any interest-bearing securities into different financial instruments. Each coupon payment is separated from the underlying investment to create a separate security. Each individual cash flow is sold at a discount. The amount of the discount and the time until the cash flow is paid determine the investor's return.

STRIPPED TREASURIES - U.S. Treasury debt obligations in which coupons are removed by brokerage houses, creating zero-coupon bonds.

STRUCTURED NOTES – A complex, fixed income instrument, which pays interest, based on a formula tied to other interest rates, commodities or indices. Examples include inverse floating rate notes that have coupons that increase when other interest rates are falling, and which fall when other interest rates are rising, and "dual index floaters," which pay interest based on the relationship between two other interest rates - for example, the yield on the ten-year Treasury note minus the Libor rate. Issuers of such notes lock in a reduced cost of borrowing by purchasing interest rate swap agreements.

Notes issued by government Sponsored Enterprises (GSE) such as FHLB, FNMA, SLMA and Corporations which have imbedded options (e.g., call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

TERM BOND - Bonds comprising a large part or all of a particular issue which come due in a single maturity. The issuer usually agrees to make periodic payments into a sinking fund for mandatory redemption of term bonds before maturity.

TOTAL RETURN - The sum of all investment income plus changes in the capital value of the portfolio. For mutual funds, return on an investment is composed of share price appreciation plus any realized dividends or capital gains. This is calculated by taking the following components during a certain time period. (Price Appreciation) + (Dividends and Interest received) + (Capital gains) = Total Return

TRIPARTITE CUSTODIAN AGREEMENT - An agreement that occurs when a third party or custodian becomes a direct participant in a repurchase transaction. The custodian ensures that the exchange occurs simultaneously and that appropriate safeguards are in place to protect the investor's interest in the underlying collateral.

THIRD-PARTY SAFEKEEPING - A safekeeping arrangement whereby the investor has full control over the securities being held and the dealer or bank investment department has no access to the securities being held.

TIME DEPOSIT - Interest-bearing deposit at a savings institution that has a specific maturity.

TREASURY BILLS - Treasury bills are short-term debt obligations of the U.S. Government. They offer maximum safety of principal since they are backed by the full faith and credit of the United States Government. Treasury bills, commonly called "T-Bills," account for the bulk of government financing, and are the major vehicle used by the Federal Reserve System in the money market to implement national monetary policy. T-Bills are sold in three, six, nine, and twelve-month bills.

Because treasury bills are considered "risk-free," these instruments generally yield the lowest returns in the major money market instruments.

TREASURY NOTES AND BONDS - While T-Bills are sold at a discount rate that establishes the yield to maturity, all other marketable treasury obligations are coupon issued. These include Treasury Notes with maturities from one to ten years and Treasury Bonds with maturities of 10-30 years. The instruments are typically held by banks and savings and loan associations. Since Bills, Notes and Bonds are general obligations of the U.S. Government, and since the Federal Government has the lowest credit risk of all participants in the money market, its obligations generally offer a lower yield to the investor than do other securities of comparable maturities.

UNDERLYING SECURITIES - Securities transferred in accordance with a repurchase agreement.

UNIFORM NET CAPITAL RULE – Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

VARIABLE RATE - An interest rate which is adjusted periodically, usually based on a standard market rate outside the control of the bank or savings institution, such as that prevailing on a Treasury bill or the prime interest rate. These rates often have a specified floor and/or ceiling, called a cap or a collar, which limit the adjustment. Also called adjustable rate or floating rate.

WEIGHTED AVERAGE MATURITY - The sum of the amount of each outstanding investment multiplied by the number of days to maturity, divided by the total amount of outstanding investment.

WHEN-ISSUED TRADES - Typically, there is a lag between the time a new bond is announced and sold and the time it is actually issued. During this interval, the security trades "wi," "when, as, and if issued."

Wi - When, as, and if issued. See When-issued trades.

YIELD - The rate at which an investment pays out interest or dividend income, expressed in percentage terms and calculated by dividing the amount paid by the price of the security and annualizing the result.

YIELD BASIS - Stated in terms of yield as opposed to price. As yield increases for a traded issue, price decreases and vice versa. Charts prepared on a yield basis appear exactly opposite of those prepared on a price basis.

YIELD CURVE - A graphic representation that depicts the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity. A normal yield curve may be alternatively referred to as a positive yield curve.

YIELD SPREAD - The variation between yields on different types of debt securities; generally a function of supply and demand, credit quality and expected interest rate fluctuations. Treasury bonds, for example, because they are so safe, will normally yield less than corporate bonds. Yields may also differ on similar securities with different maturities. Long-term debt, for example, carries more risk of market changes and issuer defaults than short-term debt and thus usually yields more.

YIELD-TO-CALL (YTC) - The rate of return an investor earns from a bond assuming the bond is redeemed (called) prior to its nominal maturity date. It is the percentage rate of a bond or note, if an investor were to buy and hold the security until the call date. This yield is valid only if the security is called prior to maturity. Generally bonds are callable over several years and normally are called at a slight premium. The calculation of yield to call is based on the coupon rate, length of time to the call and the market price.

YIELD-TO-MATURITY (YTM) - The rate of return yielded by a debt security held to maturity when both interest payments and the investor's potential capital gain or loss are included in the calculation of return. The calculation for YTM is based on the coupon rate, length of time to maturity and market price. It assumes that coupon interest paid over the life of the bond will be reinvested at the same rate.

ZERO-COUPON BONDS - Securities that do not pay interest but are instead sold at a deep discount from face value. They rise in price as the maturity date nears and are redeemed at face value upon maturity.

PUBLIC HEARING A

Agenda Item No.

COUNCIL COMMUNICATION

Date: February 27, 2007

TO: Honorable Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager/Community Development CW
Brian Dolan, Development Services Director BD

SUBJECT: CONSIDERATION OF RESOLUTIONS TO IMPLEMENT THE REQUIREMENTS OF THE SETTLEMENT AGREEMENT WITH THE VALLEJO WATERFRONT COALITION: 1) APPROVING AN ADDENDUM TO THE VALLEJO STATION PROJECT AND WATERFRONT PROJECT FINAL ENVIRONMENTAL IMPACT REPORT, 2) HOLDING ON FIRST READING AN ORDINANCE AMENDING THE WATERFRONT PLANNED DEVELOPMENT MASTER PLAN AND DESIGN GUIDELINES, AND 3) HOLDING ON FIRST READING AN ORDINANCE AMENDING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF VALLEJO AND CALLAHAN DeSILVA VALLEJO, LLC.

BACKGROUND AND DISCUSSION

The Final EIR for the Vallejo Station and Waterfront projects was certified by the City Council in November of 2005. The Vallejo Waterfront Coalition subsequently filed a lawsuit challenging the EIR. After almost a year of negotiation, the Coalition, Callahan De Silva Vallejo, LLC, and the City reached an agreement to settle the lawsuit contingent upon several modifications to the project Planned Development Master Plan (PDMP) and Development agreement (DA). The Settlement Agreement was approved by the City Council on November 28, 2006.

Although the overall scope of the project, land use pattern, and general design of the project is not proposed to be changed, the terms of the Settlement Agreement require several modifications to the PDMP and the DA. The proposed changes are included in red-lined format in the attachments to this report. (See exhibits to Attachments B and C.) The primary changes are summarized below:

Changes to PDMP:

The primary changes are the redesign of the site plan for Parcel A to include a 4 acre wetland park, and the reduction of allowed building heights along Mare Island Way on Parcel L in the Central Waterfront. The amendments also require the elimination of Civic

Drive from the central waterfront if future traffic studies document that the street is not necessary for circulation, and more specificity in allowed land uses for the commercial portion of parcel L . Other changes provide clarifying language on issues of concern to the Waterfront Coalition and the Master Developer.

In addition to the changes to the PDMP required by the Settlement Agreement, staff is recommending additional specificity as to what types of commercial uses be allowed on project parcels B, C, S and T. The existing document provides for broad category uses that would require some staff interpretation. The more detailed use regulations are consistent with the level of specificity found in the Zoning Ordinance, the Downtown Specific Plan, and new provisions regarding commercial land use on Parcel L that were required by the Settlement Agreement.

Finally, the organization of the document has also been modified as a component of the proposed amendments to improve the flow of the document and ease of use for future users.

Changes to DA:

Changes to the DA include the addition of clarifying language related to the Settlement Agreement and several relevant new definitions to the document. The following notable substantive issues are also addressed:

- Revised PDMP. The project must be developed in accordance with the revised PDMP as required by the Settlement Agreement.
- Term of DA. The term of the agreement is extended to reflect the time passed since its original adoption.
- Design Review Board. Newly adopted DRB ordinance applies to development in the Plan area.
- Inclusionary Housing. The document specifies that the City cannot impose additional inclusionary housing requirements beyond those addressed in the Disposition and Development Agreement (DDA).
- Landscaping, Lighting and Maintenance District. The LLMD will provide for cost of living increases and adjustments in district size.
- The DA specifies that the City (as the property owner of land within the Waterfront) must assist the developer in pursuing various lot line adjustments subdivisions of land to implement the PDMP.

RECOMMENDATION:

The approval of the attached three resolutions is recommended to conform the agreements to the terms of the Settlement Agreement. None of the physical changes (e.g., the addition of the wetland park, the changes in allowed building height along Mare Island Way in the

Central Waterfront, the elimination of Civic Center Drive) significantly change the overall objectives of the Waterfront project, but they do ensure consistency with the Settlement Agreement. The changes have been evaluated in the Addendum to the FEIR and none have been found to create significant additional environmental impacts. Approval of the Addendum to the FEIR and adoption of the proposed changes to the PDMP and DA will implement the policy decisions made by the City Council when they approved the Settlement Agreement and will allow the implementation of the Waterfront Plan.

ALTERNATIVES CONSIDERED:

The policy decisions resulting in the proposed changes in the Vallejo Station and Waterfront Plan PDMP and DA have already been made by the City Council when it approved the Settlement Agreement. Therefore no alternatives to the proposed actions were considered.

ENVIRONMENTAL REVIEW

The proposed changes to the Waterfront Project Planned Development Master Plan and the Development Agreement were evaluated in an Addendum to the Final EIR. The text of the addendum describes which environmental issues are affected and how the changes are appropriately addressed in an EIR addendum. The proposed changes to the PDMP and DA result in no physical changes to the project that would cause additional significant adverse impacts not already identified and addressed in the FEIR.

PROPOSED ACTION

1. Adopt a resolution approving the Addendum to the Vallejo Station Project and Waterfront Project Final EIR.
2. Adopt a resolution holding on first reading, an ordinance amending the Waterfront Planned Development Master Plan (PD #00-0022)
3. Adopt a resolution holding on first reading, an ordinance approving the First Amended and Restated Development Agreement (DA #05-0008)

DOCUMENTS ATTACHED

A. Resolution approving proposed Addendum to the Vallejo Station and Waterfront Project FEIR (including Addendum)
B. Resolution approving an ordinance amending the Waterfront PDMP (including revised PDMP)
C. Resolution approving an ordinance amending the Development Agreement (including amended DA)

CONTACT:

Brian Dolan, Development Services Director-648-4326, bdolan@ci.vallejo.ca.us

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RESOLUTION NO. _____

RESOLUTION OF THE VALLEJO CITY COUNCIL ADOPTING ADDENDUM NO. 1 TO THE CERTIFIED FINAL EIR FOR THE VALLEJO STATION PROJECT AND WATERFRONT PROJECT

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

WHEREAS, on October 25, 2005, the City Council of the City of Vallejo adopted Resolution No. 05-354 certifying the Final EIR for the Vallejo Station Project and the Waterfront Project (collectively, the Projects), SCH #2000052073 (the EIR), adopting findings and a statement of overriding considerations, and approving a mitigation monitoring and reporting plan; and

WHEREAS, following the City Council's certification of the EIR and the City Council's and Redevelopment Agency's adoption of various approvals for the Projects including approval of a General Plan Amendment by Resolution No. 05-357, amendment of the Zoning Ordinance by Ordinance No. 1557 N.C. (2d), adoption of the Planned Development Master Plan and Design Guidelines (the PDMP/DG) by Ordinance No. 1558 N.C. (2d) adoption of the Development Agreement by Ordinance No. 1559 N.C. (2d), and the Redevelopment Agency's (the Agency) approval of the Second Amended and Revised Development And Disposition Agreement (DDA), the Vallejo Waterfront Coalition (Coalition) filed a Petition for a Writ of Mandate challenging these approvals; and

WHEREAS, Callahan/DeSilva Vallejo, LLC (the Project Sponsor), the City, and the Agency engaged in settlement negotiations with the Coalition, which resulted in a Settlement Agreement approved by the City Council on November 28, 2006; and

WHEREAS, consistent with the Settlement Agreement, the Project Sponsor has requested approval of certain amendments to the PDMP/DG, the DDA, and the Development Agreement (the Proposed Amendments); and

WHEREAS, pursuant to the California Environmental Quality Act (Pub. Res. Code section 21000 et seq., CEQA) and the CEQA Guidelines (14 Cal Code of Regulations section 15000 et seq.), the City determined that an addendum to the EIR should be prepared; and

WHEREAS, an addendum entitled "The Vallejo Waterfront Project and the Waterfront Project Addendum No. 1 to the certified Final Environmental Impact Report State Clearinghouse No. 2000052073" dated December 5, 2005 (the Addendum) was prepared; and

WHEREAS, after hearing all qualified and interested persons and receiving and considering all relevant evidence in the record, the City Council finds and determines as follows:

1. The City Council has reviewed the EIR and the Addendum as required by CEQA Guidelines section 15164.

2. City Council Resolution No. 05-354 N.C. certifying the EIR, adopting findings and a statement of overriding considerations, and approving a mitigation monitoring and reporting plan is incorporated herein by reference as though fully set forth.

3. The Proposed Amendments that involve substantive changes to the Projects evaluated in the EIR are analyzed in the Addendum. Some of the Proposed Amendments involve reorganization of a document for clarity, edits, and other changes unrelated to any physical effect on the environment or any topics covered in the EIR, and these changes are not required by CEQA to be evaluated in the Addendum.

4. Based on the entire record before the City with respect to the Projects and the Proposed Amendments, including the information and analysis contained in the Addendum, the Proposed Amendments do not require preparation of a subsequent or supplemental EIR pursuant to CEQA section 21166 and CEQA Guidelines section 15164. The evidence in the entire record demonstrates that: there are no substantial changes proposed in the Projects that would require major revisions of the EIR due to the involvement of new significant environment effects or a substantial increase in the severity of previously identified significant effects; there are no substantial changes with respect to the circumstances under which the Projects will be undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and there is no new information of substantial importance that shows new significant effects, substantially more severe previously identified effects, or new information with respect to mitigation measures or alternatives.

5. By these findings, the City Council confirms and adopts the analysis and findings in the Addendum. Consequently, the Addendum represents the independent judgment and analysis of the City. The environmental analysis and findings contained in section IV of the Addendum are hereby incorporated by reference as though fully set forth.

6. The EIR and the Addendum are adequate to support the approval of the Proposed Amendments.

7. The custodians of the documents and other materials that constitute the record of the proceedings upon which the City's decision is based are: Brian Dolan, Development Services Director, Craig Whittom, Assistant City Manager/Community Development, and Allison Villarnate, City Clerk, all located at 555 Santa Clara Street, Vallejo, California 94590.

NOW, THEREFORE, BE IT RESOLVED, that the City Council approves and adopts the Addendum as presented in Exhibit A to this Resolution.

The Vallejo Station Project and the Waterfront Project

Addendum No. 1 to the certified Final Environmental Impact Report

State Clearinghouse No. 2000052073

December 5, 2006

I. Introduction

On October 25, 2005, the Vallejo City Council and Vallejo Redevelopment Agency certified the Final Environmental Impact Report (EIR) for the Vallejo Station Project and the Waterfront Project (collectively, the Projects) by Resolution No. 05-534. On October 27, 2005 and November 15, 2005, the Vallejo City Council and Redevelopment Agency took the following actions with respect to the Projects: (1) approved Resolution No. 00-0001 for the General Plan Amendment #00-0001; (2) approved Resolution No. 05-358 adopting the rezoning ordinance #03-0003; (3) approved Resolution No. 05-359 adopting the Planned Development Master Plan and Design Guidelines (PDMP/Design Guidelines); (4) approved Resolution No. 05-361 adopting the Development Agreement and (5) approved the amended and second revised Development and Disposition Agreement (DDA).

Following the City Council and Redevelopment Agency certification of the EIR and approval of the Projects, the Vallejo Waterfront Coalition (the Coalition) filed a Petition for a Writ of Mandate challenging the City's and the Agency's actions. Thereafter, the private project sponsor, Callahan DeSilva Vallejo LLC (CDV), the Vallejo Redevelopment Agency, and the City of Vallejo engaged in settlement negotiations with the Coalition. These negotiations resulted in the Settlement Agreement approved by the City Council on November 28, 2006. (Settlement Agreement, Appendix A) Based on the Settlement Agreement, CDV agreed to seek certain modifications of the approvals for Projects including modifications to the PDMP/Design Guidelines and the DDA, with conforming changes to the Development Agreement.

The Addendum reviews these modifications, but it does not change any of the environmental conclusions contained in the EIR. The analysis presented in this Addendum has been prepared consistent with the requirements of Sections 15162 and 15164 of the Guidelines to the California Environmental Quality Act (CEQA) discussed below. The City and Agency will use this Addendum, together with the EIR, in making its decisions with respect to the modifications to the Projects as discussed herein and future actions related to the implementation of the Projects.

II. CEQA Requirements

Pursuant to CEQA Guidelines Sections 15164 and 15162, an addendum to a previously certified EIR may be prepared if some changes or additions are necessary to the EIR but none of the conditions listed below for preparation of a subsequent EIR have occurred:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted show any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure of alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Based on a review of the modifications proposed for the Projects in the context of the analyses and conclusions contained in the EIR, this Addendum concludes that these modifications are within the scope of the EIR and would not result in new or more severe significant impacts.

III. Proposed Modifications to the Projects

As described below, the following modifications to the Projects are proposed in accordance with the terms of the Settlement Agreement. Each section below briefly reviews the existing approvals and then describes the proposed modifications to those approvals.

1. Northern Waterfront: Parcel A

A. Existing Approvals

The existing approvals for Parcel A allowed for the development of a 175 unit single family attached housing development on the 14.8 acre parcel. A conceptual site plan was included as Figure 2-7 in the EIR. Each unit was to have a two-car garage, with visitor parking on the public streets within the development. A .06 acre private recreational area was planned adjacent to Harbor Way. The existing marina parking lots were planned to be reconfigured to create a 3.4-acre park , which was to be located west of Harbor Way adjacent to the Waterfront Promenade and the Jazz Festival Green, which was to be located between Parcel B and the existing restaurant, Zio Freddo's. Building heights on Parcel A were limited to 40 feet.

B. Proposed Modifications

The revised plan for Parcel A would include 175 units distributed between two clustered neighborhoods located east of a realigned Harbor Way, the southern residential neighborhood located adjacent to Mare Island Way and the northern residential neighborhood located adjacent to the Mare Island Causeway, with a 4.0-acre wetland park (discussed in detail below) located between the two neighborhoods. The development site coverage on Parcel A would be reduced from 14.8 acres to 10.8 acres. Figure 1A depicts the preliminary site plan for Parcel A. The units would be distributed among approximately 30 buildings comprised of traditional townhouses with stacked flats located at one or both ends of each building. The buildings would range from three-plexes to seven-plexes. Building heights in the southern residential neighborhood would be limited to 38 feet and in the northern residential neighborhood would be limited to 45 feet.

Each unit would contain a two-car garage. The parking ratio provided for the residential development would be 2.5 spaces per unit including two garage spaces per unit and on-street parking on the in-tract streets of the residential development area and on Harbor Way adjacent to the northern residential neighborhood. Streets within the residential neighborhoods would have a maximum 36 foot curb-to-curb width and would allow for two-way traffic with parallel parking on each side of the street.

The architectural quality and detail of the residential development would be comparable to the prototypes depicted in Figure 1B. Additionally, the project sponsor would conduct two public community design workshops regarding the residential architectural design.

The modified site plan for Parcel A would also contain certain accessibility and circulation components. Public access points from Mare Island Way, the Mare Island Causeway, and Harbor Way into the residential neighborhoods would be provided as depicted on Figure 1C. A pedestrian pathway would be provided along the southern sidewalk of the Mare Island Causeway and would provide a connection through the residential neighborhood to the waterfront promenade. The existing pedestrian pathway under the Mare Island Causeway Bridge would be improved with a new surface, fencing, landscaping and bollard lights as depicted on Figure 1D. Additionally, in order to provide public access to the proposed wetland and promenade parks, the on-street parking spaces along the west side of Harbor Way and the

southern Parcel A interior street abutting the wetland park would be subject to a 3-hour time limit.

The wetland park would be located centrally between the two residential neighborhoods and would consist of a minimum of 4 contiguous acres, with approximately 1.5 to 1.7 acres comprised of vegetated swales, wetland terraces, and a tidal pond connected to the Mare Island Straight by the existing stormdrain outfall pipe as depicted on Figure 1E. The wetland park would be a visual amenity with interpretive features, would provide for passive recreation, and would create a naturalistic drainage system. It would connect visually and functionally with the surrounding residences and the promenade park. An observation area would contain interpretive features explaining the wetlands system, the cleansing of stormwater, and tidal pond/brackish water ecology. The swale system would be surrounded by a series of meadows, usable for informal or passive recreation, and connected by a network of paths and bridges. The open space would provide a variety of spaces for passive recreation. The surrounding residences would be connected to the open space by greenways or paseos. Evergreen planting and berms would screen the residential neighborhoods.

Planting would include trees, shrubs, and grasses along the swales, informal clusters of canopy trees edging the meadows, evergreen screening and street trees along Mare Island Way, Harbor Way and the internal streets of the residential neighborhoods. The swales would range from 10 to 40 feet in width, including vegetated buffer areas adjacent to the swales. At its narrowest between the two neighborhoods, the wetland park would be a minimum of 120 feet wide. Emergency vehicle-only access to serve the northern and southern neighborhoods would be constructed of grasscrete or similar material and would be located as depicted in Figure 1A.

The key components of the wetland park plan would be (a) a corridor of swales and a tidal pond; (b) open meadows for passive and informal use; (c) interpretive elements; (d) paths, bridges, and seating; (e) screening of surrounding development; (f) an at-grade pedestrian and visual link to the promenade park; and (f) tidal function highlighting the connection to the Bay system.

Instead of the two open space areas west of Harbor Way (the promenade park and the jazz festival green) included in the existing approvals, a 3.5 acre public promenade park would be constructed west of Harbor Way across from the wetland park as depicted in Figure 1F. The wetland park would be visually connected to the promenade park with landscaping and paving features. Additionally, the parking along Harbor Way in the area between these two parks would be reduced by 12 spaces to enhance the visual connection. This connection would create a visual corridor from the Mare Island Causeway to the Mare Island Strait. The promenade park also would require reconfiguration of the existing marina parking lots in this area as depicted in Figure 1A. The parking lots in the Northern Waterfront would include landscaping per the Vallejo Waterfront Design Guidelines. Implementation of the proposed changes to the parking in this area may require approval from the Bay Conservation and Development Commission (BCDC).

2. Central Waterfront

A. Existing Approvals for Parcels J and L

Under the existing approvals, Parcel J included 286 residential units, ground floor retail uses, and associated parking.[1] The maximum height limit on Parcel J was 50 feet. Parcel L included the following: (a) on Parcel L1, a 140 unit condominium development with 241 parking spaces and 12,000 gross square feet of retail commercial space; (b) on Parcel L2, a 63,000 gross square foot office/commercial space with 215 parking spaces; (c) on Parcel L3, the Vallejo Station garage with 1,190 parking spaces; (d) on Parcel L4 the 200-room hotel, conference center, restaurant, associated parking and 14,000 square feet of retail frontage on Georgia Street; and (e) on Parcel L5, 50 short-term parking spaces, a 0.5 acre paseo park, and pedestrian access between the Bus Transfer Station and the Baylink Ferry service. Height limits on Parcel L were 65 feet on Mare Island Way, 55 feet on Santa Clara Street, and 45 feet on Parcel L2. The existing approvals anticipated that the Vallejo Station garage would be constructed in one phase.

B. Proposed Modifications for Parcels J and L

Modifications to the approvals for the Central Waterfront include proposed amendments to the PDMP/Design Guidelines regarding architectural articulation and terracing and other design features. In essence, these modifications would require buildings to reflect a pedestrian scale on Mare Island Way, would require highly articulated and terraced buildings as depicted in Figure 2A, would avoid curvilinear buildings, although the use of curvilinear design features would be acceptable, and would require building heights to generally step down in a westerly direction from Santa Clara Street to Mare Island way in accordance with Figures 2B, 2C, and 2D. Other modifications to the PDMP/Design Guidelines would include building height measurement definitions and setback requirements. Additionally, the project sponsors would propose that at least 20% of the surface area of Parcel J and Parcel L (individually) would be public or private open space and, in connection with Unit Plan applications for Parcels J and L, to sponsor at least two public community design workshops regarding architecture.

Specific Parcel J modifications would include: (a) limiting the ground floor retail uses on Parcel J1 to those allowed in Category 1 for the Georgia Street Corridor as specified in the Downtown Specific Plan; (b) limiting the building height on Parcel J1 to 45 feet along Mare Island Way and the Festival Green for a depth of one dwelling unit (a minimum of 30 feet) with the remainder of the building height limited to 55 feet; and (c) limiting the building height on Parcel J2 to 45 feet along Mare Island Way to Capital Street for a depth of one dwelling unit (a minimum of 30 feet) with the remainder of the building height limited to 55 feet. These modifications would result in a minimum building setback of 30 feet along Mare Island Way.

Specific Parcel L modifications would include: (a) limiting the building height on Parcel L1 in accordance with the Zones depicted in figures 2B, 2C and 2D with heights ranging from 35 feet to 70 feet depending on street frontage and requiring a minimum 30 foot

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[1] The parking garage originally planned for Parcel J and analyzed in the EIR was moved to the City Hall parking lot prior to approval of the Projects in November 2005.

building setback in Zone One; (b) limiting the building height on L2 to 45 feet as depicted in figures 2B, 2C, and 2D 2; (c) limiting the building height on L4 to 55 feet as depicted in Figures 2B, 2C, and 2D; (d) requiring a Public Plaza of no less than 1,900 square feet at the corner of Mare Island Way and Georgia Street as depicted in Figure 2E; (e) limiting the ground floor retail uses on Parcel L2 to those allowed in Category 1 for the Georgia Street Corridor in the Downtown Specific Plan; (f) limiting the ground floor retail uses on Parcel L1 to those allowed in Category 2 for the Central Downtown District in the Downtown Specific Plan; (g) limiting the retail uses on Parcel L4 in the arcade area facing Georgia Street for an initial 12 month period to Category 1 uses in the Downtown Specific Plan and thereafter, if the retail space is not fully leased, allowing uses in Category 2 in the Downtown Plan. Additionally, the installation of the northern row of parking along the pedestrian paseo would be delayed until the City determined that the uses required such parking.

The Settlement Agreement acknowledges that the Vallejo Station garage may be constructed in two or more phases. This option is under consideration, but no final decision has been reached and the Settlement Agreement does not contain any commitment or representation with respect to the garage phasing.

C. Existing Approval for Civic Center Drive

The existing approvals would allow for the extension of Civic Center Drive from the extension of Capitol Street to Georgia Street. This extension would provide local circulation and emergency access service around City Hall, the library and new development on Parcel J.

D. Proposed Modification for Civic Center Drive

Under the Settlement Agreement, the City would study the possibility of removing the intersection of Civic Center Drive and Georgia Street. A qualified traffic engineer would be retained to determine whether the level of service as forecast in the EIR can be maintained without the extension of Civic Center Drive. If it is determined that the extension is required to maintain the EIR level of service forecasts, and emergency service access, the extension would be constructed and the traffic study would analyze possible measures to prevent bisecting the Festival Green and the adjacent pedestrian area during non-peak traffic hours.

4. Additional Environmental Measures

The Settlement Agreement requires additional water conservation and green building design measures. Residential indoor water conservation measures would include exceeding existing Building Code and Vallejo Water Division requirements for indoor water conservation by at least 20%. Commercial indoor water conservation measures would include motion sensory devices for all water fixtures. Commercial outdoor measures would include climate sensitive irrigation controls and hydrozone planting. Landscaping installed in the public rights-of-way would use drought tolerant native plants and climate sensitive irrigation and the City would use good faith, best efforts to implement water conservation measures in connection with its ongoing and future maintenance of this landscaping.

The project sponsor would pursue the integration of green building materials, green construction methods, and green site preparation to be included in all Unit Plan applications for the Projects to the extent that these materials and methods integrate with or seamlessly replace more traditional methods and materials.

5. Additional Settlement Agreement Provisions

The Settlement Agreement contains a variety of other provisions related to height definitions, notifications, review processes, the Design Review Board, timing of construction and staging activities, financial obligations, a naming proposal for the wetland park, surcharging Parcel A prior to conveyance of the parcel to the project sponsor, inclusion of Parcels J and L in a proposed property based improvement district, a hotel/conference center marketing and feasibility study, timing of the construction of the bus transfer station, unit plan review procedures, efforts to keep a retail Post Office in the Downtown or Central Waterfront, and certain technical revisions to the PDMP/Design Guidelines. Additionally, the Settlement Agreement contains numerous provisions related to various legal rights, obligations, representations, consequences of various actions, and other such provisions common to and necessary for the implementation of this type of Agreement. These provisions do not implicate any environmental consequences and are not further reviewed in this Addendum.

6. DDA Modifications

The DDA modifications, in addition to implementing certain provisions of the Settlement Agreement, would require that the project sponsor prepare for Agency and City Council consideration an affordable housing program for Parcel T-1.

IV. Environmental Analysis

Following is a brief discussion of each major topic in the EIR in relation to the proposed modifications described above (the proposed modifications). These discussions provide support for preparing an addendum to the EIR. For the text of the mitigation measures referred to below, see the Vallejo Station Project and Waterfront Project Mitigation Monitoring and Reporting Program previously adopted by the City Council and attached as Appendix B.

1. Land Use

The EIR found that the uses proposed by the Projects, transit-related facilities, commercial uses, residential uses, open space improvements, infrastructure improvements would be compatible with the waterfront, downtown, and surrounding areas. No significant impacts or mitigation measures were identified. The proposed modifications would not change any of the types of uses included in the Projects. Consequently, the EIR analysis and conclusions would remain valid for the proposed modifications.

A wetland park would be incorporated into the Parcel A residential development. This use would be compatible with the planned residential development (particularly in light of the design criteria provided in the Settlement Agreement), the adjacent promenade park, the adjacent water-oriented uses, and its location near the Mare Island Strait. The wetland park would be a public amenity. The proposed modifications would specifically

define the types of retail uses permitted in certain locations in the Central Waterfront area. These refinements are intended to ensure that the retail space in the Central Waterfront area would be occupied by active, pedestrian-oriented uses. Consequently, this modification would be consistent with City goals for the waterfront. Neither of these changes would affect the analysis and conclusions contained in the EIR or cause the Projects to result in new significant impacts or substantially more severe environmental impacts than those identified in the EIR.

2. Traffic and Circulation

The EIR contained a comprehensive traffic and circulation analysis documenting existing conditions and services, planned roadway improvements, and the phased accommodation of parking for the Vallejo ferries. Potentially significant impacts identified for the direct and cumulative impacts included impacts to intersection operations (mitigation measures 3.3-1B, 3.3-3A1, 3.3-3A2, 3.3-3A3, 3.3-3A4, 3.3-3A5, 3.3-3B1, 3.3-3B2, 3.3-3B3, 3.3-3B4, 3.3-3B5, 3.3-4A3.3-4B) and construction traffic (mitigation measure 3.3-2A, 3.3-2B). All of the potential traffic and circulation impacts were determined to be reduced to a less than significant level through the imposition of the mitigation measures. The proposed modifications would not change the amount of traffic projected to be generated by the Projects, because there would be no change in the number of allowable units or other development square footage. Consequently, the proposed modifications would not result in any new significant traffic impacts or substantially more severe traffic impacts than those identified in the EIR.

The proposal to study eliminating the extension of Civic Center Drive would not result in any new traffic impacts, because this improvement would be abandoned only if the intersection LOS relied on in the EIR analysis can be maintained without the extension. Given the available intersection capacity during non-peak hours, a proposal to close the extension during non-peak hours would have no significant impacts on the operation of surrounding intersections.

The Settlement Agreement acknowledged the potential for revising the phasing schedule for the Vallejo Station garage. It is possible that the garage would be built in two phases, with the first phase built on the 2.6 acre southerly portion of the 4.6 acre Parcel L-3 site and containing approximately 840 parking spaces. This modification would not adversely impact the provision of parking for the Vallejo ferries, because the top deck of the first phase structure would be used to accommodate additional vehicles until phase two of the garage is complete. Other short-term parking arrangements are available to ensure a minimum of 1200 spaces are provided to support the Baylink Ferry service in the interim

3. Population, Employment and Housing

The EIR evaluated the population, employment and housing changes resulting from implementation of the Projects. No significant impacts or mitigation measures were identified. The proposed modifications would not change the number of units or square footage of other development expected with the Projects. Consequently, the proposed modifications would not change the information or analysis contained in this section of the EIR and no new significant impacts would result.

The residential development on Parcel T-1 would provide the above-described level of affordable housing units. This would increase the City's supply of affordable housing, but would not result in change any to the environmental analysis and conclusions contained in the EIR.

4. Public Services

The EIR evaluated the impact of the Projects on public services, including police, fire, schools, and parks and recreation. No significant impacts or mitigation measures were identified. The proposed modifications would not change the number of units or square footage of other development expected with the Projects. Consequently, the proposed modifications would not change the information or analysis contained in this section of the EIR and no new significant impacts would result. The improvements proposed for the trail along the Causeway and under the Causeway Bridge and the wetland park in Parcel A are significant new public recreational amenities that would result from implementation of the proposed modifications.

5. Utilities

The EIR evaluated the impact of the Projects on water, wastewater, solid waste, and energy supply and services. No project-specific significant impacts were identified for these topics. The EIR identified a significant unavoidable impact associated with cumulative water demand during multiple drought years based on the uncertainty of whether the City will increase its water supply by adding conveyance from Lake Curry. Since certification of the EIR, the City adopted an updated Water Management Plan, which calls for construction of the conveyance facilities for Lake Curry. The proposed modifications would not change the number of units or square footage of other development expected with the Projects. Consequently, the proposed modifications would not change the information or analysis contained in this section of the EIR and no new significant impacts would result.

6 Visual Quality

The EIR determined that the Projects would not have any significant impacts on public scenic vistas and scenic resources, would not substantially degrade the existing visual character or quality of the areas, and would not create significant new sources of light or glare.

The proposed modifications for Parcel A would change the visual character of the development as analyzed in the EIR. Instead of a development that covers the 14.8 acre site with housing, the residential development would be clustered into two neighborhoods and cover 10.8 acres. A 4 acre wetland park would be built between the neighborhoods and would provide a significant visual amenity for the new residents and for visitors to this area.

The view of Parcel A from certain vantage points in the Vallejo Heights neighborhood would continue to include the residential structures, primarily seen as a group of peaked-roof buildings, as described in the EIR. The increase in the height from 40 feet to 45 feet in the northern neighborhood adjacent to the Mare Island Causeway would incrementally

increase the height of the buildings and potentially obstruct portions of the view of the water from some Vallejo Heights vantage points. Heights in the southern neighborhood adjacent to Mare Island Way would decrease from 40 feet to 38 feet, thereby lowering heights closer to the existing neighborhoods. Neither of these minor height changes would result in new significant visual impacts. The EIR acknowledged that views of Parcel A from the Vallejo Heights neighborhood would change from an undeveloped field to an urban housing development and would block some views of waterfront features. Nonetheless, the EIR found the development would be similar in scale and character to surrounding areas and would be consistent with the General Plan and redevelopment plans. Given that the increase in height would be incremental (only 5 feet) and that the visual impacts from nearby areas were acknowledged in the EIR and determined to be less than significant, the change in height would not be considered a new significant impact.

In the Central Waterfront area, the proposed modifications would change the building heights for Parcel J from 50 feet to 45 feet for a setback area along Mare Island Way and the Festival Green. Building height on the remainder of the parcel would be 55 feet. This urban design change, intended to lower the height along certain frontages to emphasize the pedestrian scale of the building, would be a visual amenity along these streets. The five foot increase in height for the remaining portions of the site is an incremental change and would be appropriate in the urban setting. Consequently, this height change would not result in any new significant visual impacts.

On Parcel L, height zones would be created to vary the heights on this parcel from 35 feet to 70 feet. (At one point, the building height would be 72 feet due to the adjacent street grade.) Lower building heights would be along Mare Island Way with greater building heights along Maine Street, Santa Clara Street, and the Vallejo Station Paseo. Although some of the height zones would be greater than the heights for Parcel L anticipated in the EIR, these heights would be appropriate in the urban setting and would create visual interest. The 70 foot height zone would be located away from Mare Island Way and adjacent to an 85 foot height zone established in the Downtown Specific Plan. Thus, the 70 foot height would be an integral part of a height transition from the Downtown to the waterfront. Thus, no new significant impacts would result from the building height changes proposed for Parcel L.

7. Cultural Resources

The EIR examined the Projects' potential to result in impacts to historic and cultural resources. Given the ground disturbing activities associated with implementation of the Projects, the EIR identified a potentially significant impact associated with disturbance or destruction of subsurface archeological resources. Mitigation measures 3.8-A1 and 3.8-A2 would reduce this impact to a less than significant level. The proposed modifications to the Projects would not change any of the information or analysis related to this environmental topic. The mitigation measures listed above would continue to apply to the modified Projects. Consequently, no new significant or substantially more severe impacts than identified in the EIR would result from the proposed modifications.

8. Hazardous Materials

The EIR provides extensive information on the results of hazardous materials investigations for the parcels included in the Projects, the regulatory requirements that would be applicable to the Projects' activities, and comprehensive mitigation measures for potentially significant impacts related to structure demolition and removal (mitigation measures 3.9-1A and 3.9.B) and soil and groundwater contamination (mitigations measures 3-9-2, 3.9-3,3.9-4, 3.9-5, 3.9-6, 3.9-7,3.9-8, 3.9-93.9-10). The EIR concluded that the implementation of these mitigation measures would reduce any potentially significant hazardous materials impacts to a less than significant level.

Although the site plan for Parcel A and the public and Marina parking and open space configuration west of Harbor Way have been revised, the EIR anticipated that these areas would be disturbed for construction. Thus, proposed modifications to the Projects would not change the building removal and ground disturbance required for implementation of the Projects. The mitigation measures listed above would continue to apply to the modified Projects. Consequently, no new significant or substantially more severe impacts than identified in the EIR would result from the proposed modifications.

9. Soils, Geology, and Seismicity

The EIR analyzed the soils, geologic, and seismic characteristics of the Projects' sites. Several site specific geologic and geotechnical investigations were performed and the results and recommendations of those investigations were included in the EIR. The EIR found potentially significant impacts and included mitigations measures to reduce those impacts to a level of insignificance for potentially adverse impacts from ground shaking (mitigation measures 3.10-1A, 3.101B), ground failure (mitigation measures 3.10-2A, 3.10-2B), and unstable geologic and soil conditions (mitigation measures 3.10-3A3.10-3B). The proposed modifications would not change any of the analysis or conclusions in the EIR as the same conditions would be present and the same mitigations required with the proposed modifications.

10. Hydrology and Water Quality

The EIR discussed the hydrologic and water quality characteristics influencing the waterfront area, local surface and groundwater resources, the potential effects of the Projects on hydrology and water quality, and the applicable regulatory requirements. Potential significant impacts and mitigation measures to reduce those impacts to less than significant levels covered water quality during construction (mitigation measures 3.111A, 3.111B), water quality during project operation (mitigation measures 3.11-2A, 3.112B), surface runoff during construction (mitigation measures 3.11-3A, 3.11-3B), surface runoff during project operation (mitigation measure 3.114B), and flooding, erosion, or siltation (mitigation measure 3.11-5B).

The proposed modifications for Parcel A would substantially reduce the developed area of this parcel thereby reducing impervious surface areas and runoff from the site. Additionally, Parcel A would be graded to direct the drainage through the wetland park (first through the grassy swales and then into the wetland pond) rather than only through stormceptors or other means contemplated in the EIR thereby further enhancing stormwater runoff pretreatment. Additionally, the wetland park would serve to contain the potential 100-year flood

event, with overflow during peak 100-year flood occurrence combined with high tide directed to the promenade park.

11. Biological Resources

The EIR described the biological resources that occur within the area of the Projects, reviewed the applicable regulatory requirements, evaluated potential impacts on these recourses and provided mitigation measures. The EIR identified the potential for vegetation and ground clearing activities to affect nesting birds and provided mitigation (mitigation measure 3.12-1) to reduce the impact to a level of insignificance.

The proposed modifications would not change any of the analysis or conclusions in the EIR with respect to biological resources. The proposed wetland park in Parcel A would provide a biological benefit by providing habitat to support wetland vegetation and wildlife species.

12. Air Quality

The EIR evaluated the construction emissions and long-term, operational emissions associated with implementation of the Projects. Construction impacts were determined to be reduced to a level of insignificance through implementation of the BAAQMD dust control measures (mitigation measures 3.13-1A(1) and 3.13-1A(2)). Operational impacts were determined to be reduced to a less than significant level with the imposition of various stationary and area source emission reduction techniques. Additionally, the EIR found that the combined Vallejo Station and Waterfront Project contributions to criteria pollutants would be significant and unavoidable even with the imposition of mitigation measures (mitigation measure 3.13-3B).

The proposed modifications would not change the projected traffic or other operational emissions associated with the Projects. Thus, the analysis and conclusions associated with these potential impacts would not be affected by the proposed modifications. Additionally, generally the same level of construction would be required. There would be a possibility that Civic Center Drive may not be extended, which would reduce construction emissions. There would be a possibility that that the construction of the Vallejo Station garage could occur in two phases, which could reduce emissions during the first phase of construction but may add to emissions in the area later during the construction of the second phase. Although the EIR contained an estimated general schedule for buildout of the Projects (approximately 7 years) and estimated potential construction-related emissions, the EIR relied on the BAAQMD CEQA Guidelines for evaluating construction emission impacts and for mitigating those impacts. In particular, these Guidelines do not require calculation of construction emissions, because these emissions are included in the emission inventories of state and federally required air plans and would not have a significant impact on the attainment and maintenance of ozone ambient air quality standards. These assumptions would remain valid for the construction impacts even with the potential change in schedule.

In Response to Comments on the Revised Draft EIR, the EIR also included, for informational purposes, a conceptual project construction schedule with the

maximum credible daily emissions for representative days over the course of construction (Table CR-3 in the Final EIR, Response to Comments). This table conservatively overestimated daily construction emissions, because it assumed no sharing of construction equipment or crews for activity taking place on several parcels simultaneously. This table confirmed the EIR's conclusion that construction emission impacts would be less than significant. It is important to note that construction on Parcel L (the Vallejo Station site) was projected to occur throughout the time that construction on Parcels A, B, C, J, S and T would also occur. Thus, a significant overlap of construction activity was assumed. Consequently, even if a later decision is made to change the construction schedule for the Vallejo Station garage, the assumptions in Table CR-3 would remain conservative and valid. Moreover, Table CR-3 was not used to establish the construction impacts and required mitigation for the Projects, but was prepared in order to fully respond to material provided in the comments submitted on the RDEIR

13. Noise

The EIR evaluated the Projects' potential noise impacts with respect to construction activities, operational noise, and noise exposure of new uses. `Mitigation measures were provided to reduce potential construction noise to a less than significant impact (mitigation measures 3.14-1A, 3.14-1B). Potential impacts associated with indoor noise levels would be mitigated through the implementation of various design and construction related measures (mitigation measures 3.14-2A, 3.14-2B). The EIR identified potential cumulative noise impacts related to future increased traffic and determined that these impacts would be significant and unavoidable due to the uncertainty in successfully implementing the proposed mitigation (mitigation measure 3.14-3A). The proposed modifications would not change any of these findings or mitigation measures.

With respect to Parcel A, the EIR found that the open space located on both sides of Harbor Way would be shielded from the traffic noise from Mare Island Way and the Causeway. In the proposed modifications to the site plan for Parcel A, the wetland park would be located in the interior of Parcel A and the waterfront park would be in approximately same location as previously analyzed. Both open space areas would be shielded from traffic noise from Mare Island Way. The wetland park would extend to the Mare Island Causeway. Although future cumulative noise levels at peak traffic hours may exceed 70 dBA in the open space closest to the Causeway and parallel to the emergency vehicle access, landscaping would be included along this edge (Figure 1E) and it would not be a primary area for resident or visitor use. The main wetland pond and public uses areas would be located at a substantial distance from the Causeway. Moreover, it is not expected that peak hour traffic times would coincide with the heaviest use of the park. Consequently, no significant noise impacts would occur with the revised site plan for Parcel A.

RESOLUTION NO. _____ N.C.

RESOLUTION OF THE VALLEJO CITY COUNCIL HOLDING ON FIRST READING AN ORDINANCE APPROVING THE AMENDED WATERFRONT PLANNED DEVELOPMENT MASTER PLAN AND WATERFRONT DESIGN GUIDELINES (APPLICATION # 00-0022)

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

WHEREAS, on November 15, 2005, the City Council of the City of Vallejo adopted Ordinance No. 1558 N.C. (2d) approving the Waterfront Planned Development Master Plan and Waterfront Design Guidelines (PDMP/DG); and

WHEREAS, in Resolution No. 05-359, which is incorporated herein by reference as though fully set forth, the City Council found that the PDMP/DG was consistent with the Vallejo General Plan, furthered the stated purpose of the planned development district, conformed with the public convenience, the general welfare and good land use practice, promoted the health, safety, and general welfare, promoted the orderly development of the waterfront properties and preserved property values in the waterfront area; and

WHEREAS, following the City Council's approval of the PDMP/DG and other approvals related to the Vallejo Station Project and the Waterfront Project (collectively, the Projects), which included certification of the Final Environmental Impact Report (EIR) by Resolution No. 05-354, approval of a General Plan Amendment by Resolution No. 05-357, amendment of the Zoning Ordinance by Ordinance No. 1557 N.C.(2d), adoption of the Development Agreement by Ordinance No. 1559 N.C. (2d), and the Redevelopment Agency's (the Agency) approval of the Second Amended and Revised Development And Disposition Agreement (DDA) by Resolution No. 05-361, the Vallejo Waterfront Coalition (Coalition) filed a Petition for a Writ of Mandate challenging these approvals; and

WHEREAS, Callahan/DeSilva Vallejo, LLC (the Project Sponsor), the City, and the Agency engaged in settlement negotiations with the Coalition, which resulted in a Settlement Agreement approved by the City Council on November 28, 2006; and

WHEREAS, consistent with the Settlement Agreement, the Project Sponsor submitted an application requesting the approval of certain amendments to the PDMP/DG. A draft of the proposed amendments to the PDMP/DG was prepared and submitted to the City for review and the application was processed consistent with the provisions of Article 16 of the Vallejo Municipal Code. Following review of the draft, the proposed amendments to the PDMP/DG were revised; and

WHEREAS, the amendments to the PDMP/DG propose, among others, the following significant modifications:

1. The amendments propose revisions to the Parcel A site plan, including, among others, a requirement for a 4-acre wetland park.

2. The amendments propose revisions to certain building height limits and definitions for height measurements in the northern and central waterfront areas.

3. The amendments propose adding provisions related to architectural articulation and terracing.

4. The amendments propose adding certain sidewalk and building setback requirements.

5. The amendments propose adding certain limitations for retail uses in the central waterfront area and propose defining allowable commercial uses in the northern and southern waterfront areas.

6. The amendments propose adding a requirement for review of the architectural elements of all Unit Plans by the Design Review Board.

7. The amendments propose revisions related to Design Review Board determinations of feasibility and practicality with respect to certain requirements.

8. The Amendments propose to incorporate certain exhibits from the Settlement Agreement into the PDMP/DG.

9. The amendments propose eliminating the plan for Civic Center Drive if future traffic studies determine that the street is not necessary.

10. The amendments include a reorganization of the PDMP/DG and certain edits to improve the usability of the PDMP/DG.

WHEREAS, the potential environmental effects of the proposed amendments to the PDMP/DG have been assessed in the EIR and Addendum No. 1 prepared for the EIR. The City Council has reviewed the EIR and the Addendum No. 1 to the EIR and adopts the findings and conclusions contained in the Addendum and, in accordance with Public Resources Code section 21166, determines that there are no substantial changes proposed in the Projects, no substantial changes in the circumstances under which the Projects would be undertaken, and no other new information that would require major revisions to the EIR; and

WHEREAS, on January 17, 2007 the Vallejo Planning Commission held a public hearing to consider the proposed amendment and voted 6 to 0 to recommend approval of the revised PDMP to the City Council;

WHEREAS, after hearing all qualified and interested persons and receiving and considering all relevant evidence, the City Council finds and determines as follows:

1. The notice of the public hearing was given for the time and in the manner as prescribed by law.

2. The findings contained in City Council Resolution No. 05-359 N.C. with respect to the PDMP/DG are incorporated herein by reference as though fully set forth.

3. The proposed amendments to the PDMP/DG are consistent with the objectives, policies, general land uses, and programs specified in the Vallejo General Plan, because the amendments will promote high quality design, including height and setback requirements, in the waterfront area and will promote appropriate retail uses in central waterfront area, both of which will contribute to the City's goals for revitalizing the waterfront with high quality, pedestrian-oriented development.

4. The proposed PDMP/DG amendments conform with the public convenience, the general welfare, and good land use practice, in that these amendments preserve the public benefits of the Vallejo Station and Waterfront Projects and add requirements that further define the provisions of the PDMP/DG related to design, open space, height limits, and retail uses in the waterfront area, all of which will contribute to the quality of the Projects and the compatibly of the Projects with the surrounding area and the City's goals.

5. The proposed PDMP/DG amendments will not be detrimental to the health, safety and general welfare, nor will the amendments adversely affect the orderly development of the Waterfront Properties or the preservation of property values in the waterfront area, in that the amendments will preserve the public benefits of the Vallejo Station Project and Waterfront Project as set forth in City Council Resolution No. 05-359 N.C. and will promote the high quality of the design of, and retail uses occupying, the Projects.

6. NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council hereby approves the proposed amendments to the Waterfront PDMP/DG and directs the holding of the first reading of the Ordinance attached as Exhibit A approving the Planned Development Master Plan #00-0022.

ATTACHMENT B
EXHIBIT A

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF VALLEJO APPROVING AMENDMENTS TO PLANNED DEVELOPMENT MASTER PLAN #00-0022 TO IMPLEMENT THE REQUIREMENTS OF THE SETTLEMENT AGREEMENT WITH THE VALLEJO WATERFRONT COALITION.

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

SECTION 1. Findings and Determination.

The City Council hereby finds and determines that:

A. Pursuant to Chapter 16.116 of the Vallejo Municipal Code, the City of Vallejo may, after notice and public hearing, adopt a Planned Development Master Plan ("PDMP") by Ordinance. The revised PDMP for the Vallejo Station Project and Waterfront Project and Design Guidelines (Exhibit A1) is available and on file with the Community Development Department and the Development Services Department.

B. By separate Resolution No. __ , the City Council has approved the addendum to the Vallejo Station Project and Waterfront Project Environmental Impact Report which Resolution No.__ incorporated herein by reference.

C. By separate Resolution No. __, the City Council has approved this Ordinance and has found that:

1. The revised PDMP is consistent with the goals and policies of the Vallejo General Plan.

2. The revised PDMP furthers the stated purpose of the planned development district.

3. The revised PDMP is in conformity with public convenience, the general welfare, and good land use practice.

4. The revised PDMP will not be detrimental to health, safety, and general welfare.

5. The PDMP will not adversely affect the orderly development or the preservation of property values.

SECTION 2. Approval Revised Planned Development Master Plan PDMP #00-0022.

Based on the findings herein and in the resolutions recited above, the City Council hereby approves revised Planned Development Master Plan (including the Waterfront Design Guidelines) PDMP #00-0022, including approximately 92 acres of land for the Vallejo Station Project and Waterfront Project as set forth in Resolution No. __ adopted by the City Council on _____, and incorporated by this reference.

SECTION 3. Effective Date.

The effective date of this ordinance shall be thirty (30) days after the final passage.

Attachment B
Exhibit A-1

Vallejo Waterfront Planned Development Master Plan and Design Guidelines (Revised) given to City Council under separate cover. Document is available in the City of Vallejo Planning Division for public review.

RESOLUTION NO. _____ N.C.

RESOLUTION OF THE VALLEJO CITY COUNCIL ADOPTING AN ORDINANCE APPROVING THE FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT #DA-05-0008 (Callahan/DeSilva)

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

WHEREAS, on November 15, 2005, the City Council of the City of Vallejo adopted Ordinance No. 1559 N.C. (2d) approving the Development Agreement (the Initial Development Agreement) by and between the City of Vallejo and Callahan/DeSilva Vallejo, LLC (the Project Sponsor) for the Vallejo Waterfront Project; and

WHEREAS, in Resolution No. 05-361 N.C., which is incorporated herein by reference as though fully set forth, the City Council found that the Initial Development Agreement was consistent with the Vallejo General Plan, was compatible with the uses authorized in, and the regulations prescribed for, the applicable land use district, was in conformity with the public convenience, the general welfare and good land use practice, would not be detrimental to the health, safety, and general welfare or adversely affect the orderly development of the Waterfront Project properties or the preservation of property values in the waterfront area; and

WHEREAS, following the City Council's approval of the Initial Development Agreement and other approvals related to the Vallejo Station Project and the Waterfront Project (collectively, the Project), which included certification of the Final Environmental Impact Report (EIR) by Resolution No. 05-354, approval of a General Plan Amendment by Resolution No. 05-357, amendment of the Zoning Ordinance by Ordinance No. 1557 N.C.(2d), adoption of the Waterfront Planned Development Master Plan including the Waterfront Design Guidelines (PDMP/DG) by Ordinance No. 1558 N.C.(2d), and the Redevelopment Agency's (the Agency) approval of the Second Amended and Revised Disposition and Development Agreement (DDA) the Vallejo Waterfront Coalition (Coalition) filed a Petition for a Writ of Mandate challenging these approvals; and

WHEREAS, the Project Sponsor, the City, and the Agency engaged in settlement negotiations with the Coalition, which resulted in a Settlement Agreement approved by the City Council on November 28, 2006; and

WHEREAS, consistent with the Settlement Agreement, the Project Sponsor submitted an application requesting the approval of certain amendments to the PDMP/DG (PDMP/DG Amendments) and an application requesting. the approval of an amendment to the Development Agreement for the Vallejo Waterfront Project. A draft First Amended and Restated Development Agreement was prepared and submitted to the City for review and the application was processed consistent with the provisions of Article 17 of the Vallejo Municipal Code (Land Development, Development Agreements); and

WHEREAS, following review and negotiation, the draft First Amended and Restated Development Agreement was revised. The proposed agreement entitled, "First Amended and Restated Development Agreement By and Between the City of Vallejo and Callahan/DeSilva

Vallejo, LLC for Vallejo Waterfront Project" proposes, among others, the following amendments:

1. Specifies that the Projects must be developed in accordance with the PDMP/DG as proposed to be amended by the PDMP/DG Amendments.

2. Provides that its term will expire on the fifteenth anniversary of the effectiveness of the First Amended and Restated Development Agreement (rather than the fifteenth anniversary of the effectiveness of the Initial Development Agreement).

3. Adds the Design Review Ordinances as Applicable Law under the agreement and adds that certain approvals shall be processed through the Design Review Board and City Council.

4. Adds to the list of items enumerated as a conflicting City Law an enactment that would limit or control the sale or rental proceeds that may be charged or received for the sale or rental of residential units or commercial space, and adds a provision prohibiting the City from applying any new inclusionary housing ordinance to the Project.

5. Adds a requirement that any Landscaping Lighting and Maintenance District must conform with certain provisions of the DDA.

6. Adds certain City obligations under the DDA to the DA.

WHEREAS, consistent with the Settlement Agreement, the City, the Agency and the Project Sponsor have also prepared specified amendments to the DDA (DDA Amendments) that will be considered for approval by the City Council and the Agency concurrently with consideration of approval of the proposed First Amended and Restated Development Agreement, and that would, among other matters, add a requirement for the for the parties to prepare and present for consideration by the City Council and Redevelopment Agency a meaningful affordable housing program related to the development of Parcel T1 within the Waterfront Project; and

WHEREAS, the potential environmental effects of the Initial Development Agreement and the First Amended and Restated Development Agreement have been assessed in the EIR and Addendum No. 1 prepared for the EIR. The City Council has reviewed the EIR and Addendum No. 1 to the EIR and adopts the findings and conclusions contained in the Addendum and, in accordance with Public Resources Code section 21166, determines that there are no substantial changes proposed in the Projects, no substantial changes in the circumstances under which the Projects would be undertaken, and no other new information that would require major revisions to the EIR; and

WHEREAS, on January 17, 2007 the Vallejo Planning Commission held a public hearing on the proposed amendments and voted 6 – 0 to recommend approval to the City Council; and

WHEREAS, after hearing all qualified and interested persons and receiving and considering all relevant evidence, the City Council finds and determines as follows:

1. The notice of the public hearing was given for the time and in the manner as prescribed by law.

2. The findings contained in City Council Resolution No. 05-360 N.C. with respect to the Initial Development Agreement are incorporated herein by reference as though fully set forth.

3. As proposed, the First Amended and Restated Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the Vallejo General Plan, because the modifications do not change or affect the land uses, programs, and other requirements approved under the Initial Development Agreement.

4. As proposed, the First Amended and Restated Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Waterfront Properties are located, because the modifications do not change or affect the land uses approved under the Initial Development Agreement.

5. As proposed, the First Amended and Restated Development Agreement is in conformity with the public convenience, the general welfare, and good land use practice, in that it preserves the public benefits contained in the Initial Development Agreement and adds a requirement for conformance with the newly enacted Design Review Ordinance and processing of certain development applications through the Design Review Board and City Council as called for in the Design Review Ordinance, which will provide for public review and input and ensure that the design of the individual Project components will reflect the requirements of the PDMP/DG as proposed to be amended by the PDMP/DG Amendments.

6. As proposed, the First Amended and Restated Development Agreement will not be detrimental to the health, safety and general welfare, nor will it adversely affect the orderly development of the Waterfront Properties or the preservation of property values in the waterfront area, in that it will preserve the public benefits and requirements for compliance with applicable City law and regulations provided for in the Initial Development Agreement and adds the requirement to comply with the Design Review Ordinance. Although the First Amended and Restated Development Agreement adds certain limitations with respect to affordable housing, these limitations must be considered in light of the concomitant new requirement in the DDA for the provision of affordable units in connection with the development on Parcel T1.

7. NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby approves the First Amended and Restated Development Agreement #05-0008, substantially in the form dated February 27, 2007, and directs the holding of the first reading of the Ordinance attached as Exhibit A.

ATTACHMENT C
EXHIBIT A

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF VALLEJO APPROVING THE FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT #05-0008 BY AND BETWEEN THE CITY OF VALLEJO AND CALLAHAN/DESILVA VALLEJO, LLC TO PRESERVE THE WATERFRONT AND REVITALIZE THE DOWNTOWN

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

SECTION 1. Findings and Determination.

The City Council hereby finds and determines that:

A. Pursuant to Chapter 17.14 of the Vallejo Municipal Code, the City of Vallejo may, after notice and public hearing, approve a Development Agreement.

B. Development Agreement #05-0008 ("Development Agreement" – See Exhibit A1) by and between the City of Vallejo and Callahan/DeSilva Vallejo, LLC sets forth terms and provisions for the development of certain properties included in the Vallejo Station Project and Waterfront Project areas. The Development Agreement is available and on file with the Community Development Department and the Development Services Department.

C. By separate resolutions and ordinances, the City Council has approved General Plan Amendments, a Mixed Use Planned Development zoning, and a Planned Development Master Plan for the properties included in Development Agreement #05-0008.

D. By separate resolution, the City Council has approved an Addendum to the Vallejo Station Project and Waterfront Project Environmental Impact Report, which Resolution No. __ is incorporated herein by reference.

E. By separate Resolution No. ___, the City Council has found that the First Amended and Restated Development Agreement #05-0008 is consistent with the land use designations, goals, and policies of the Vallejo General Plan, has made other findings, and has approved this Ordinance.

SECTION 2. Approval of Development Agreement.

Based on the findings herein and in the resolutions included in the above recitals, the City Council hereby approves Development Agreement #DA05-0008.

SECTION 3. Effective Date.

The effective date of this ordinance shall be thirty (30) days after the final passage.

City Council Hearing Version
February 27, 2007

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FIRST AMENDED AND RESTATED

DEVELOPMENT AGREEMENT

By and Between

THE CITY OF VALLEJO

And

CALLAHAN / DeSILVA VALLEJO, LLC

For

VALLEJO WATERFRONT PROJECT

City of Vallejo, California

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FIRST AMENDED AND RESTATED

DEVELOPMENT AGREEMENT

CITY OF VALLEJO

WATERFRONT/DOWNTOWN PROJECT

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Development Agreement") ~~is~~, initially made and entered in the City of Vallejo as of December 15, 2005, as amended and restated as of April 12, 2007, is entered into by and between the CITY OF VALLEJO, a Municipal Corporation ("City"), and CALLAHAN / DeSILVA VALLEJO, LLC, a California limited liability company ("Developer"), pursuant to the authority of Sections 65864 et seq. of the Government Code and Chapter 17.10 of the Vallejo Municipal Code.

DEFINITIONS

The following capitalized terms are used in this Development Agreement:

"Affiliate" means any entity controlling, controlled by or under common control with Developer, or any entity in which Developer, directly or indirectly, through one ore more intermediaries, is a partner, shareholder, member, beneficiary or otherwise an owner.

"Agency" means the Redevelopment Agency of the City of Vallejo.

"Applicable Law" is defined in Section 2.2 hereof.

"CEQA" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and its state and local implementing guidelines.

"City" means the City of Vallejo.

"City Law" is defined in Section 2.3.

"Completed Building" is defined in Section 1.5.3.

"DDA" is defined in Recital C.

"Design Review Board" means the City Design Review Board created pursuant to the Design Review Ordinances.

"Design Review Ordinances" means Ordinance No. N.C. (2d) adopted on , 2007 adding Chapter 2.39 to the Vallejo Municipal Code to create the Design Review Board, and any related ordinance(s) heretofore or hereafter adopted regarding the appeal of Design Review Board decisions and regarding Unit Plans for the Property, but only so long as any such

ordinance is consistent with the process set forth in Section 304 of DDA for review and processing of Unit Plans for major developments within the Project and the Property.

"Developer" means the entity more fully described in Section 1.1.2 hereof, and includes permitted and approved transferees and assignees who qualify as such under this Development Agreement.

"Developer Parcels" has the meaning given in the DDA.

"Development Agreement" means ~~this~~the Initial Development Agreement, as ~~may be~~amended and restated by the First Amendment, and as may be subsequently amended from time to time.

"Development Agreement Statutes" means California Government Code Section 65864 et seq. relating to development agreements.

~~"Effective Date" of this Development Agreement is defined in Section 1.3.~~

"EIR" is defined in Recital D (1).

"Environmental Laws" means all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., the Solid Water Disposal Act, 42 U.S.C. § 6901 et seq., the Hazardous Substance Account Act, California Health and Safety Code, § 25300 et seq., the Hazardous Water Control Law, California Health and Safety Code §25100 et seq., and the Porter-Cologne Water Quality Control Act, California Water Code, § 13000 et seq.

"Existing Approvals" is defined in Recital D.

"First Amendment" means the first amendment and restatement of this Development Agreement, as further defined and described in Recital P.

"First Amendment Effective Date" means April 12, 2007, the effective date of the First Amendment of this Development Agreement, as further described in Recital P.

"Initial Development Agreement" means the initial approved and effective version of this Development Agreement, as further defined and described in Recital P.

"Initial Effective Date, means December 15, 2005, the effective date of the Initial Development Agreement, as further described in Recital P.

"Initial Recording Area" is defined in Section 1.4.

"Master Plan" is defined in Recital D (4).

"Mortgage" is defined in Section 9.1.

"Mortgagee" is defined in Section 9.1.

"Permitted Assignee" is defined in Section 8.1.

"Permitted Delay" is defined in Section 4.3.

"Project" is defined in Recital F.

"Project Approvals" means, collectively, the Existing Approvals and the Subsequent Approvals.

"Property" is defined in Section 1.2, and shown on the map set forth in Exhibit A.

"Section 404 Permit" means the permit granted by the U.S. Army Corps of Engineers with respect to portions of the Waterfront Area, as more fully described and defined in Section 309 of the DDA.

"Schedule of Performance" means the anticipated schedule for development of the Project. The Schedule of Performance consists of that portion of Attachment No. 3 of the DDA (as amended from time to time) covering the Developer Parcels.

"Subsequent Approvals" is defined in Section 2.11.

"Subsequent Recording Area" is defined in Section 1.4.

"Term" is defined in Section 1.5.

"Unit Plan" means a unit plan for development of specified improvements within the Property that is applied for, reviewed, and processed in accordance with Section 304 of the DDA, and with the Applicable Law, including, without limitation, Section 16.116.070 et seq. of the Vallejo Municipal Code and the Design Review Ordinances.

"Waterfront Area" is defined in Recital A.

If any capitalized terms contained in this Development Agreement are not defined above, then any such terms shall have the meaning otherwise ascribed to them in this Development Agreement.

RECITALS

A. Over the past nine years, City, Agency and Developer have cooperated in a comprehensive public planning process for the redevelopment and revitalization of the public and private spaces in the vicinity of the Vallejo waterfront and downtown area, including

development of the Vallejo Station multimodal waterfront transportation facility and other public and private activity linkages to the broader downtown area. This effort has culminated in the prior or concurrent approval and effectiveness of a series of planning documents to guide the future redevelopment and revitalization of the Vallejo Waterfront Area (the "Waterfront Area"), as more fully described in Recital D below, and as referred to in this Development Agreement as the Existing Approvals.

B. The Property that is the subject of this Development Agreement constitutes an integral element of the Waterfront Area, and its redevelopment consistent with the Existing Approvals and this Development Agreement is essential to the overall redevelopment and revitalization of the Waterfront Area as envisioned by City, Agency and Developer.

C. Agency and Developer have entered into a Disposition and Development Agreement initially executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended as of October 7, 2003 and August 24, 2004, ~~and as further fully~~ amended and restated for a second time as of October 27, ~~2005~~2005, and as amended and restated for a third time as of February 27, 2007 (as it now exists or may hereafter be amended from time to time, the "DDA"), which describes the terms and conditions for Developer's acquisition of the Property (in fee or by ground lease) from Agency.

D. The following development approvals, entitlements, policies and findings have been adopted by City with respect to the Waterfront Area and applied to the Property and the Project (as defined in Recital F below):

(1) The final Environmental Impact Report ("EIR") for the DDA and Existing Approvals was prepared (SCH #2000052073) and certified by the City on October 25, 2005. As required by CEQA, the City adopted written findings and a Mitigation Monitoring and Reporting Program ("MMRP") on October 25, 2005 pursuant to Resolution No. 05-354. An Addendum to the EIR, dated December 5, 2006, was prepared and reviewed by the City in connection with the first amendment and restatement of this Development Agreement and related actions, and is deemed part of the EIR for purposes of this Development Agreement.

(2) The City amended the General Plan with respect to the Waterfront Area pursuant to Resolution No. 05-357, adopted on October 27, 2005.

(3) The City amended the Zoning Ordinance with respect to the Waterfront Area pursuant to Ordinance No. 1557 N.C. (2d), adopted on November 15, 2005.

(4) The City adopted the Waterfront Planned Development Master Plan (the "Master Plan"), including attached and incorporated Waterfront Design Guidelines, pursuant to Ordinance No. 1558 N.C. (2d), adopted on November 15, ~~2005.~~2005, as amended by Ordinance No. ____ N.C. (2d), adopted on February 27, 2007.

(5) The City Council approved this Development Agreement as more fully set forth in Recital P below.

The approvals and development policies described in this Recital D (including but not limited to all conditions of approval and the EIR MMRP), together with the Section 404 Permit, are collectively referred to herein as the "Existing Approvals."

E. A portion of the Property is presently included in the ~~Vallejo Central~~Waterfront Redevelopment Project Area, and a portion of the Property is included in the Marina Vista Redevelopment Project Area. The Property is subject to the Redevelopment Plans for those projects areas, ~~and upon~~which, pursuant to the merger of the Vallejo Central Redevelopment Project Area with the Marina Vista Redevelopment Project Area and the Waterfront Redevelopment Project Area~~, if such action occurs as currently proposed and~~ as described in Section 102 of the DDA, ~~then the Property will be subject to the~~have been amended and combined in the form of a merged Redevelopment Plan~~ as applicable~~.

F. Developer proposes the development of the Property for a mix of residential, commercial, open space and other uses on the Property in accordance with the Existing Approvals, entailing front-end investment in the maintenance, planning and development of the Property to achieve the goals of the Existing Approvals, as further described and conditioned in this Development Agreement ("Project").

G. The City Council has found that Development Agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and assure that appropriate measures to enhance and protect the environment are achieved.

H. California Government Code Section 65864 et seq. and Title 17, Part II of the City of Vallejo Municipal Code authorize the City to enter into an agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. City acknowledges that Developer's interest in the Property pursuant to the DDA constitutes a legal or equitable interest in real property.

I. City desires the timely, efficient, orderly and proper development of the Project in furtherance of the goals of the DDA and the Existing Approvals for the Property.

J. The City Council has found that this Development Agreement is consistent with the City's General Plan, as amended to date, and it has been reviewed and evaluated in accordance with Title 17, Part II of the City of Vallejo Municipal Code.

K. It is the intent of City and Developer to establish certain conditions and requirements related to review and development of the Project which are or will be the subject of subsequent development applications and land use entitlements for the Project as well as this Development Agreement.

L. Because of the logistics, magnitude of the expenditure and considerable lead time prerequisite to planning and developing the Project, Developer requires assurances that the

Project can proceed without disruption caused by a change in City's planning policies and requirements except as provided in this Development Agreement, which assurances will thereby reduce the actual or perceived risk of planning for and proceeding with development of the Project.

M. City has determined that by entering into this Development Agreement (1) City will promote orderly growth and quality development of the Waterfront Area in accordance with the goals and policies set forth in the Existing Approvals, and (2) City will benefit from increased employment, commercial, housing and recreational opportunities created by the Project for residents of City.

N. The terms and conditions of this Development Agreement have undergone review by City staff, its Planning Commission and its City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the Vallejo General Plan and, further, the City Council finds that the economic interests of City's citizens and the public health, safety and welfare will be best served by entering into this Development Agreement.

O. City and Developer have reached mutual agreement and desire to voluntarily enter into this Development Agreement to facilitate development of the Project subject to conditions and requirements set forth herein.

P. On November 15, 2005, the City Council (the "City Council") of the City of Vallejo adopted Ordinance No. 1559 N.C. (2d), approving this Development Agreement in its initial form (the "Initial Development Agreement"). ~~The~~ Ordinance No. 1559 and the Initial Development Agreement took effect on December 15, ~~2005~~ 2005 (the "Initial Effective Date"). On March 13, 2007, the City Council adopted Ordinance No. ____ N.C. (2d), approving the first amendment and restatement of this Development Agreement (the "First Amendment"). Ordinance No. ____ and the First Amendment of this Development Agreement took effect on April 12, 2007 (the "First Amendment Effective Date").

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

~~ARTICLE I~~

ARTICLE I
GENERAL PROVISIONS

1.1 Parties.

1.1.1 The City.

The City is a municipal corporation. The office of the City is located at 555 Santa Clara Street, Vallejo, California 94590. "City" as used in this Development Agreement, includes the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

1.1.2 The Developer.

Developer is Callahan/DeSilva Vallejo, LLC, a California limited liability company. The principal office of Developer is 11555 Dublin Boulevard, Dublin, California 94568. The qualifications and identity of the Developer are of particular concern to the City and it is because of such qualifications and identity that the City has entered into this Development Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Development Agreement, except as permitted under Article VIII hereof.

The parties hereby agree that, as of the Initial Effective Date ~~of this Development Agreement~~and the First Amendment Effective Date, the Developer has an equitable interest in the Property described in Section 1.2 and Exhibit A pursuant to the DDA.

Developer represents and warrants:

(a) that as of the Initial Effective Date ~~of this Development Agreement~~and the First Amendment Effective Date, Developer is: (i) duly organized and validly existing under the laws of the State of California; (ii) qualified and authorized to do business in the State of California and has duly complied with all requirements pertaining thereto; and (iii) in good standing and has all necessary powers under the laws of the State of California to own property and in all other respects enter into and perform the undertakings and obligations of this Development Agreement;

(b) that no approvals or consents of any persons are necessary for the execution, delivery or performance of this Development Agreement by Developer, except as have been obtained;

(c) that the execution and delivery of this Development Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary actions and approvals required under any management and operating agreement for the limited liability company constituting Developer hereunder; and

(d) that this Development Agreement is a valid obligation of Developer enforceable in accordance with its terms.

1.1.3 Relationship of City and Developer.

It is understood that this Development Agreement is a contract that has been negotiated and voluntarily entered into by City and Developer and that the Developer is an independent contractor and not an agent of City.

City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection therewith shall be construed as making City and Developer joint venturers or partners.

1.2 Description of Property.

The property which is the subject of this Development Agreement (the "Property") is shown on the map attached hereto as Exhibit A. The Property consists of all of the Developer Parcels described in Section 104.1 of the DDA. The DDA establishes a procedure for preparation of legal descriptions of the Developer Parcels comprising the Property, which legal descriptions shall be attached ~~to~~and incorporated in this Agreement as ~~Exhibit B~~exhibits upon their preparation in accordance with the terms of the DDA.

1.3 ~~Effective Date.~~Effectiveness of Development Agreement and First Amendment.

This Development Agreement became effective on the Initial Effective Date, and the First Amendment of this Agreement shall become effective ~~upon the date that the ordinance approving this Agreement becomes effective, as~~on the First Amendment Effective Date, as further recited in Recital P ~~(the "Effective Date")~~. Pending the First Amendment Effective Date and the effectiveness of the First Amendment, this Development Agreement in the form of the Initial Development Agreement shall remain in effect and control the rights and obligations of the parties.

1.4 Recording.

Within ten (10) days after the First Amendment Effective Date, the City Clerk shall cause recordation of the First Amendment of this Development Agreement against all land then owned by the Agency or the City and containing any portions of the Property (the "Initial Recording Area"). Exhibit C of this Development Agreement sets forth the legal description of the Initial Recording Area. The parties anticipate that the Agency, the City or the Developer may not hold title to all of the Property on the First Amendment Effective Date. In order to make clear that the rights and obligations under this Development Agreement apply to, and run with, later acquired parts of the Property, either party may record this Development Agreement, or a memorandum thereof, against any lands that are acquired after the First Amendment Effective Date by the Agency, the City, or the Developer and that contain any portion of the Property (collectively, the "Subsequent Recording Area"), and the other party shall cooperate in such recording, and shall execute, acknowledge and deliver such additional instruments and documents as may be reasonably requested to facilitate such recording. Upon determination of the precise boundaries of the various Developer Parcels comprising the Property (as further described in Section 1.2), the parties shall reasonably cooperate, through execution of quit claim deeds or other appropriate documentation, to remove the lien of this Development Agreement from those portions of the Initial Recording Area or the Subsequent Recording Area, as applicable, that are determined not to constitute a portion of the Property.

1.5 Term.

1.5.1 Subject to the provisions of Section 1.5.2, the term of this Development Agreement (the "Term") ~~shall commence upon~~commenced on the Initial Effective Date and ~~continue for a period of fifteen (15) years or until~~shall expire on the fifteenth (15th) anniversary of the First Amendment Effective Date or when the DDA is terminated in its entirety, whichever occurs first; provided, however, that the Project Approvals shall survive the end of the Term, as

provided in Section 2.21. The Term of this Development Agreement and any subdivision map or other Project Approvals shall be extended by any period of time during which a development moratorium (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents or substantially delays the construction of the Project or a lawsuit involving any such Project Approvals or permits is pending. The Term of this Development Agreement and any subdivision map or other Project Approvals shall not include, and shall be extended by, any period of Permitted Delay as defined in Section 4.3.

1.5.2 In the event that the DDA has not been terminated in its entirety upon the fifteenth (15th) anniversary of the First Amendment Effective Date, and the period for Developer completion of any construction with respect to the Property or any portion thereof under the DDA Schedule of Performance has not expired, the parties shall meet and confer in good faith with the intent of extending the Term of this Development Agreement for the period remaining under the DDA Schedule of Performance for Developer completion of construction with respect to those portions of the Property for which the construction completion period has not expired.

1.5.3 Upon the issuance of a certificate of occupancy for the last residential unit in a building (the "Completed Building"), the parties and Developer shall enter into a memorandum of agreement providing that (a) this Development Agreement has been terminated with respect to the Completed Building for which a certificate of occupancy has been issued, and the City shall cause this Development Agreement to no longer be recorded against the Completed Building and the portion of the Property upon which the Completed Building is located.

~~ARTICLE II~~

ARTICLE II
DEVELOPMENT OF THE PROPERTY

2.1 Use of the Property, Vested Rights and Applicable Law.

2.1.1 Subject to Agreement.

The Property is hereby made subject to the provisions of this Development Agreement. All development of, or on, the Property, or any portion thereof, including the Project, shall be undertaken only in compliance with the Project Approvals, the Applicable Law, the DDA, and the provisions of this Development Agreement.

2.1.2 Vested Rights.

Developer shall have a vested right to develop the Property in accordance with the Project Approvals and this Development Agreement.

2.1.3 Permitted Uses.

The permitted uses of the Property, the maximum density or intensity of use, the maximum height and size of proposed buildings, the minimum development standards, the

design criteria, open space requirements, provisions for reservation or dedication of land for public purposes, and requirements for infrastructure and public improvements shall be governed by the Project Approvals and the Applicable Law, defined in Section 2.2 below.

2.1.4 Mandatory Requirements.

As a condition to the development and use of the Property, Developer shall design and construct public infrastructure to be provided by Developer in accordance with the requirements of the DDA, the Project Approvals, and Applicable Law. City or Agency shall design and construct public infrastructure to be provided by City or Agency in accordance with the requirements of the DDA, the Project Approvals, and Applicable Law.

2.1.5 Project Development.

The parties agree that development of the Project shall be in accordance with the Project Approvals as may be amended from time to time and the terms and conditions of this Development Agreement. In the event of an express conflict between this Development Agreement and the Project Approvals, this Development Agreement shall control.

2.2 Applicable Law.

Except as otherwise provided in Sections 2.4, 2.5, 2.6 and 2.8, those ordinances, resolutions, rules, regulations, standards, official policies, conditions, standards and specifications applicable to the Project ("Applicable Law") shall be: ~~those~~

2.2.1 Those in effect on the Initial Effective Date ~~("Applicable Law");~~ and

2.2.2 The Design Review Ordinances.

2.3 No Conflicting Enactments.

Except as and to the extent required by state or federal law, and subject to the provisions of Sections 2.4, 2.5, 2.6 and 2.8, the City shall not impose on the Project any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "City Law") that is in conflict with the Applicable Law, this Development Agreement or the Project Approvals or that reduces the development rights or assurances provided by this Development Agreement. Without limiting the generality of the foregoing, any City Law enacted or adopted after the Initial Effective Date shall be deemed to conflict with this Development Agreement or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

2.3.1 Reduce the maximum number of residential units permitted to be developed on the Property;

2.3.2 Change any land use designation or permitted use of the Property;

2.3.3 Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;

2.3.4 Limit or control the location, configuration or size of lots, buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or this Development Agreement;

2.3.5 Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth in this Development Agreement, the Project Approvals, or the DDA, including the Schedule of Performance;

2.3.6 Require the issuance of additional permits or approvals by the City other than those required by Applicable Law;

2.3.7 Vary the mix of development product from that described in the Project Approvals; ~~or~~

2.3.8 Reduce the square footage of non-residential development permitted to be developed on the Property~~.~~; or

2.3.9 Limit or control the sale or rental proceeds that may be charged or received for the sale or rental of residential units or commercial space within the Project and the Property.

2.4 Applicable Building and Construction Standards.

All building and construction standards, and as amended from time to time, including but not limited to the Uniform Building Code, Uniform Plumbing Code, Uniform Swimming Pool Code, Uniform Electrical Code and Uniform Mechanical Code, Uniform Fire Code, State Historic Building Code, Uniform Abatement of Dangerous Buildings Code, Uniform Housing Code, Chapter 12.07 of the Vallejo Municipal Code, and the Seismic Hazard Identification and Mitigation Program (Chapter 12.50 of the Vallejo Municipal Code), shall be applicable to the Property, whether as to existing or future structures, and Developer shall develop the Project in accordance with such codes as and when adopted by the City. Notwithstanding the above, if a subsequently adopted uniform code or uniform code update permits application of an earlier version of such uniform code to the Project or portion thereof, then such earlier permitted version of the uniform code shall, at the election of Developer, apply to the Project or portion thereof.

2.5 Compliance With Other Governmental Requirements.

2.5.1 During the Term, Developer, at no cost to City, shall comply with lawful requirements of, and obtain all permits and approvals required by other public, regional, State and Federal agencies having jurisdiction over Developer's activities in furtherance of this Development Agreement.

2.5.2 As provided in California Government Code § 65869.5, this Development Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations In the event changes in the law prevent or preclude compliance with one or more provisions of this Development Agreement, the parties shall meet and confer in good faith in order to determine whether such provisions of this Development Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with changes in the law, and City and Developer shall agree to such action as may be reasonably required. This Development Agreement and the Project Approvals shall remain in full force and effect unless and until amended in accordance with the requirements of this Development Agreement, and, in any event, this Development Agreement and the Project Approvals shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations. Nothing in this Development Agreement shall preclude the City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such State or Federal laws or regulations. Notwithstanding the foregoing, if changes in the law preclude or substantially limit or delay performance in a manner that makes the Project economically infeasible, the party adversely affected, in its sole and absolute discretion, may terminate this Development Agreement (with respect to the entire Property or a specified portion thereof) by providing written notice of such termination to the other party. Changes in the law may include, but are not limited to, changes in laws, regulations, plans or policies of special districts or other governmental entities other than the City or the Agency (to the extent not inconsistent with the DDA).

2.5.3 Developer shall pay all required fees when due to Federal, State, regional, or local governmental agencies and acknowledges that City does not control the amount of any such fees.

2.5.4 City shall cooperate with Developer in Developer's effort to obtain permits and approvals from Federal, State, regional and local governmental agencies, provided that same does not impose any costs on or require the City to incur any costs, without compensation or reimbursement, or require the City to amend any of the City's policy, regulations or ordinances.

2.6 Taxes, Assessment, Fees and Exactions.

2.6.1 Except as otherwise provided in the following sentence, City may impose and Developer agrees to pay any new, increased or modified taxes, assessments, impact fees, other fees, or other monetary and non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Ministerial Approval or Subsequent Discretionary Approval or otherwise, in accordance with the laws then in effect, but only if such taxes, assessments, fees or other monetary and non-monetary exactions are equally imposed and have a uniform and proportionate effect on a broadly-based class of land, projects or taxpayers, as applicable, within the jurisdiction of City and whose purpose and effect does not fall disproportionately on Developer or the Property.

2.6.2 The City may charge and Developer agrees to pay all reasonable processing fees including application and inspection and monitoring fees, for land use approvals,

grading and building permits and other permits and entitlements, which are in force and effect on a City-wide basis (except as limited by other development agreements or other vesting mechanisms) at the time those permits, approvals or entitlements are applied for on any or all portions of the Project, and which are intended to cover the actual costs of processing the foregoing.

2.6.3 Nothing herein shall be construed to limit Developer from exercising whatever rights it otherwise may have with respect to the imposition of taxes, assessments, impact fees, other fees, or monetary and non-monetary exactions, including the right to protest or otherwise object to any such imposition, whether before the City or any other applicable taxing or governmental authority.

2.7 Federal or State Actions.

To the extent that any actions of Federal or State agencies (or actions of other governmental agencies, including City, required by Federal or State agencies or actions of City taken in good faith in order to prevent adverse impacts upon City by actions of Federal, State or other governmental agencies) have the effect of preventing, delaying or modifying development of the Project or any portion thereof, City shall not in any manner be liable for any such prevention, delay or modification of said development. Such actions include, but are not limited to, flood plain or wetlands designations and actions of City or other governmental agencies as a result thereof and the imposition of air quality or transportation measures or sanctions and actions of City or other governmental agencies as a result thereof. As a condition to being able to proceed with development, Developer may be required, at its cost, subject to the rights of Developer in Section 2.5, without cost to or obligation on the part of City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of Federal, State or other governmental agencies (or action of City taken in order to prevent adverse impacts upon City by actions of Federal, State or other governmental agencies). Any such actions described in this paragraph which prevent or delay development of the Project shall constitute a Permitted Delay as defined in Section 4.3 hereof. The imposition of taxes, fees or other charges or costs mandated by such Federal or State actions, which do not materially add to the cost of developing the Project and which do not otherwise prevent, delay or modify the Project shall not be deemed actions which prevent, delay or modify development of the Project for purposes of the foregoing provisions of this paragraph.

2.8 City's Police Power.

2.8.1 The parties acknowledge that the intent of the parties is that this Development Agreement be construed in a manner which protects the vested rights granted herein to the maximum extent allowed by law. The parties further acknowledge and agree that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Development Agreement are intended to reserve to the City all of its police power which cannot be so limited. This Development Agreement shall be construed to reserve to the City all such power and authority which cannot be restricted by contract. Notwithstanding the foregoing reservation of the City, it is the intent of the City and Developer that this Development Agreement shall be construed to provide Developer with the

maximum rights affordable by law, including but not limited to, the Development Agreement Statutes and the Subdivision Map Act, except as expressly provided elsewhere in this Development Agreement.

2.8.2 Notwithstanding any other provision of this Development Agreement, the following regulations and provisions shall apply to the development of the Property:

(a) Processing fees and charges of every kind and nature imposed by the City to cover the actual costs to the City of processing applications for Project Approvals or for monitoring compliance with any Project Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties.

(c) Regulations governing construction standards and specifications including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the City at the time of permit application.

(d) City laws and regulations which may be in conflict with the Project Approvals but which are reasonably necessary to protect the public health and safety, provided such City laws and regulations are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties and that no such code or standard has the effect of preventing or limiting construction of the Project and would result in any significant delay in the build-out of the Project.

(e) New rules, regulations, policies, standards and specifications (including permit requirements) applicable to the Property, which do not conflict with the Applicable Law or Project Approvals, provided such new rules, regulations, policies, standards and specifications are uniformly applied to all substantially similar types of development projects and properties, and do not materially impact the Project.

2.8.3~~2.9~~ Notwithstanding any other provision of this Development Agreement, no new City Law (as defined in Section 2.3), including, without limitation, any inclusionary housing ordinance, shall be applicable to the Project and the Property if such new City Law would have the direct or indirect effect of limiting or controlling the sale or rental proceeds that may be charged or received for the sale or rental of residential units or commercial space within the Project and the Property.

2.9 Project Standards.

The rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those set forth in the Applicable Law. Rules, regulations, policies, standards and specifications applicable to the Project and not addressed in the Applicable Law shall be those in force and effect on a City-wide

basis at the time of the applicable permit approval. For purposes of this Section 2.9, the determination of a conflict shall be governed by the same principles set forth in Section 2.3.

2.10 Infrastructure Standards.

All streets, roads, utilities, drainage systems, traffic control signs, markings and signal systems, streetscape and street lighting, shall be designed and constructed to the engineering, design and construction standards as set forth in the Applicable Law and the Project Approvals. Standards not addressed in the Applicable Law shall be those existing on a City-wide basis at the time of the applicable permit approval. Such standards shall include those construction standards contained in applicable sections of the City of Vallejo Municipal Code, the Standard Specifications and Standard Details referenced therein, the Uniform Building Code adopted by the City, and to the extent applicable for use by the City in connection with the approval of drainage facilities, standard specifications formally adopted by the Vallejo Sanitation and Flood Control District as of the Initial Effective Date. As used in this Section 2.10, "streetscape" shall include landscaping irrigation systems, plantings, special paving materials, walls, fences and other features intended to enhance the aesthetic quality of the public streets, grounds and access-ways.

2.11 Subsequent Approvals.

2.11.1 Applications for additional land use approvals, entitlements, and permits or for other project entitlement including without limitation requested changes to applicable General Plan and Zoning Ordinance provisions, are anticipated to be submitted to implement, operate, and modify the Project ("Subsequent Approvals"). The Subsequent Approvals consist of Subsequent Ministerial Approvals and Subsequent Discretionary Approvals. In connection with any Subsequent Approval, the City shall exercise its discretion in accordance with the Project Approvals and as provided by this Development Agreement, including the reservations of authority set forth in Section 2.8.

2.11.2 Subsequent Ministerial Approvals ("Subsequent Ministerial Approvals") are permits or approvals that are required by Applicable Law and that are to be issued upon compliance with uniform, objective standards and regulations. They include, but are not limited to, applications for (i) road construction permits or authorizations; (ii) grading and excavation permits (including, without limitation, any grading permit intended to implement the terms of the Section 404 Permit); (iii) building permits, including electrical, plumbing, mechanical, Title 24 Electrical, and Title 24 Handicap permits or approvals; (iv) certificates of occupancy; (v) encroachment permits; (vi) water connection permits; and (vii) any other similar permits required for the development and operation of the Project.

2.11.3 All other Subsequent Approvals, including without limitation, amendments of the Project Approvals, site development plan approvals, improvement agreements, Unit Plans, use permits, lot line adjustments, subdivision maps, preliminary and final development plans, rezonings, development agreements, permits that are not Subsequent Ministerial Approvals, resubdivisions, and any amendments to, or repealing of, any of the foregoing, are Subsequent Discretionary Approvals ("Subsequent Discretionary Approvals").

2.12 Processing Applications for Subsequent Approvals.

2.12.1 Developer acknowledges that the City cannot begin processing Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to the City in a timely manner any and all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to the City in a timely manner all such documents, applications, plans and other necessary required materials as set forth in the Applicable Law. It is the express intent of Developer and the City to cooperate and diligently work to obtain any and all Subsequent Approvals.

2.12.2 Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, the City shall, to the full extent allowed by law, promptly and diligently, subject to the City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's Subsequent Approval applications including, without limitation: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any Subsequent Approval application. The City shall use its best efforts to ensure that adequate staff is available, and subject to Developer's approval and at Developer's cost, additional staff, and overtime staff assistance or staff consultants as may be necessary, to timely process Subsequent Approval applications on an expedited, concurrent schedule.

2.12.3 With the Project Approvals, the City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, the City shall not use its authority in considering any application for a Subsequent Ministerial Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent, delay or frustrate the further development of the Project as set forth in the Project Approvals. Instead, the Subsequent Ministerial Approvals shall be deemed to be tools to implement those final policy decisions and shall be issued by the City so long as they comply with this Development Agreement and the Project Approvals. Nothing herein shall limit the ability of the City to require the necessary reports, analyses or studies to assist in determining that the requested Subsequent Ministerial Approval is consistent with this Development Agreement and the Project Approvals. If the City determines that an application for a Subsequent Ministerial Approval is not consistent with this Development Agreement or the Project Approvals and should be processed as an application for a Subsequent Discretionary Approval rather than a Subsequent Ministerial Approval, the City shall specify in writing the reasons for such determination and may propose a modification which would be processed as a Subsequent Ministerial Approval. Developer shall then either modify the application to conform to this Development Agreement and the Project Approvals, as the case may be, or the City shall process the application as an application for a Subsequent Discretionary Approval; provided, however, that Developer shall have the right to dispute the City's determination pursuant to this Section.

2.12.4 Applications for Subsequent Discretionary Approvals shall be processed and considered in a manner consistent with the vested rights granted by this Agreement.

2.12.5 Notwithstanding any administrative or judicial proceedings, initiative or referendum concerning the Project Approvals, the City shall process the Developer's applications for Subsequent Approvals as provided for herein to the fullest extent allowed by law and Developer may proceed with development pursuant to the Project Approvals to the fullest extent allowed by law.

2.13 Administration of Subsequent Approvals.

2.13.1 Subsequent Ministerial Approvals shall be reviewed and processed by the City in accordance with Applicable Law. If the City denies any application for a Subsequent Ministerial Approval, the City must specify in writing the reasons for such denial and may suggest a modification which would be approved. Any such specified modifications must be consistent with the Project Approvals and Applicable Law, and the City shall approve the application if it is subsequently resubmitted for City review and addresses the reason for the denial in a manner that is consistent with the Project Approvals and Applicable Law. Developer may resubmit the application at anytime, and resubmission restrictions in other City Laws shall not apply.

2.13.2 Applications for Subsequent Discretionary Approvals shall be reviewed and processed by the City in accordance with Applicable Law. If the City denies any application for a Subsequent Discretionary Approval, the City must specify in writing the reasons for such denial and may suggest a modification which would be approved. Any such specified modification must be consistent with this Development Agreement and Applicable Law, and the City shall consider the application if it is subsequently resubmitted and addresses the reason for the denial in a manner that is consistent with this Development Agreement and Applicable Law. Developer may resubmit the application at anytime, and resubmission restrictions in other City Laws shall not apply.

2.13.3 In addition, applications for any Subsequent Discretionary Approval that constitutes a Unit Plan approval for a major development project (as determined by the City's Development Services Director) within the Property shall be reviewed and processed through the City's Design Review Board and the City Council in the manner and within the time periods specified in Section 304 of the DDA, unless otherwise agreed by the Developer and the City.

2.14 Future Use of EIR.

The parties understand that the EIR, including any subsequent or supplemental EIR, is intended to be used in connection with each of the Existing Approvals and Subsequent Approvals needed for the Project. Consistent with CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the extent allowed by law.

2.15 Development Timing and Restrictions.

The parties acknowledge that Developer cannot at this time predict with certainty when or the rate at which phases of the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, interest rates, competition, completion of remediation and other factors. The Schedule of Performance reflects City's, Agency's, and Developer's best efforts to anticipate the likely phasing of the Project, based upon the parties' information as of the date of execution of this Development Agreement. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of City and Developer to hereby acknowledge and provide for the right of Developer to develop the Project at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Development Agreement (including without limitation infrastructure phasing applicable to the Project, and the provisions of Sections 2.1, 2.2 and 2.3, above). City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statutes (California Government Code Section 65864, et seq.) and Title 17, Part II of the City of Vallejo Municipal Code and this Development Agreement. Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and with the Project Approvals provided that Developer agrees to comply with the Schedule of Performance.

Off-site improvements required may be specifically tied to certain phases of the Project. The schedule for provisions of these off-site improvements, as they relate to a particular phase, shall be governed by the Project Approvals and the DDA, as applicable.

Pursuant to the DDA, the Agency and Developer shall administer certain phasing and financial requirements pertaining to vertical development and other components of the Project in implementation of, and consistent with, the Project Approvals and this Agreement.

2.16 Undergrounding of Utilities.

All existing above-ground utilities on the Property shall be placed underground, and all new utilities on the Property will be placed underground, at the Developer's sole cost and in accordance with City development standards and the requirements of the applicable utility companies and to the extent feasible.

2.17 ADA Compliance.

Developer shall comply with the requirements of the Americans with Disabilities Act (ADA) and all other requirements of applicable federal and state laws with respect to its development of the Project as applicable to Developer.

2.18 Prevailing Wages.

Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of Developer or its contractors to pay prevailing wages if and to the extent required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulation of the Department of Industrial Relations in connection with construction of the improvements on the Property. The indemnity provided for in this Section 2.18 is expressly limited as follows: (i) the indemnity does not include any improvements where the City has represented in a writing to Developer that such improvements are not, or should not be considered, public works under Labor Code Section 1720 et seq.; and (ii) the indemnity does not include any improvements where the City contracted for the work directly.

2.19 Initiatives and Referenda.

2.19.1 If any City Law is enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with the Project Approvals, Applicable Law or this Development Agreement or reduce the development rights provided by this Development Agreement, such City Law shall not apply to the Property or Project. The parties, however, acknowledge that the City's approval of this Agreement is a legislative action subject to referendum.

2.19.2 Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted by the City shall apply to the Property or Project. Developer agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or impose any other limitation that may affect the Project.

2.19.3 The City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect.

2.19.4 The City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot, shall not adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Development Agreement or the Project Approvals.

2.20 Progress Meetings.

City and Developer shall have regular meetings during the Term of this Development Agreement to discuss the progress of the development and construction of the Project. Such meetings shall be attended by representatives of the parties with experience and expertise in the relevant disciplines to the stage of the development and construction process.

2.21 Life of Project Approvals.

Unless otherwise expressly specified in any Project Approval, the terms of (a) any future tentative map (including vesting maps, map amendments and lot line adjustments) which may be approved for the Project (as provided for in the Subdivision Map Act, Government Code Sections 66410 et seq.), or (b) any other Project Approval, shall automatically be extended for the longer of the duration of this Development Agreement (including any extensions provided for under Section 1.5) or the term otherwise applicable to such Project Approval if this Development Agreement is no longer in effect.

~~ARTICLE III~~

ARTICLE III
OBLIGATIONS OF THE PARTIES

3.1 Developer Obligations.

In addition to those obligations of Developer under the Existing Approvals described in Recital D, Developer shall have the following obligations:

3.1.1 Development of the Property.

In consideration of City entering into this Development Agreement, Developer has agreed that if Developer commences development of the Property (and proceeds to develop the Property), such development shall be in conformance with all of the terms, covenants and requirements of this Development Agreement, the DDA, and the Project Approvals, and Developer shall perform those specific obligations and provide those specific contributions identified in the DDA and the conditions of approval and exhibits to the Project Approvals. Developer and its successors and assigns, as applicable, shall pay when due any and all fees, impact fees and costs, which are imposed pursuant to this Development Agreement or are otherwise lawfully imposed on all or any portion of the Project, whether imposed by City or other agencies, which may include, but are not limited to, fees to help pay for off-site improvements of benefit to the Project or the Property.

3.1.2 Effects of Litigation.

In the event that litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement or a substantial benefit to Developer under the Applicable Law, then Developer shall have no further obligations

whatsoever under this Development Agreement except as set forth in Section 4.8 hereof. ~~Subject to provisions of Section 6.4.2, City may tender the defense of any such litigation to Developer and Developer's counsel, in which case Developer shall bear all costs of such litigation, including City's legal and court costs in connection therewith; otherwise, each party shall bear its own respective costs, if any, arising from any such defense.~~

3.1.3 **[deliberately omitted]**

3.1.4 Formation and Responsibility of Neighborhood Associations.

Unless otherwise required by the conditions of approval for the Project Approvals, if City and Developer mutually determine that a neighborhood association should be formed for a portion of the Project or such association is required by Applicable Law, Developer shall be responsible for the formation of such association to maintain neighborhood facilities and private open space and to assure uniform exterior maintenance and appearance of the residential units.

3.1.5 Maintenance of Public Areas and Open Space.

(a) City shall assume responsibility for the maintenance of all parks and open space after such areas have been dedicated by Developer. City will accept offers of dedication of open space to be left in its natural condition, provided that City is reasonably satisfied as to the size and configuration of the parcel, and the level of cost or potential liability, if any, associated with such dedication.

(b) Developer consents to the formation, and shall participate in, and take actions to assist in the formation of a Landscaping, Lighting and Maintenance District ("LLMD") for maintenance of public open space areas in the Waterfront Area in the manner set forth in the DDA. City agrees that any LLMD affecting the Property or any portion thereof shall be formed or modified in a manner consistent with the conditions and standards for an LLMD set forth in the DDA (with particular reference to Section I.D of the Method of Financing, Attachment No. 6 to the DDA).

3.1.6 Historic Preservation.

Developer's obligations, if any, with respect to buildings or facilities of historic significance are set forth in the Existing Approvals. Provided Developer is in compliance with the Existing Approvals concerning historic preservation, City shall not impose any additional requirements for historic preservation of buildings or facilities on the Project. City agrees not to apply for, sponsor or endorse any application on the part of City or any other party for historic preservation other than as set forth in the Existing Approvals unless Developer expressly consents thereto.

3.1.7 Infrastructure Improvement.

Developer, subject to Permitted Delays and other extensions of the Schedule of Performance, will construct and install all infrastructure required to be constructed and installed

by Developer in accordance with the Project Approvals and consistent with this Development Agreement.

3.2 Acceptance of Public Roads.

Upon the satisfactory construction in accordance with all applicable City standards, as reasonably determined by City, City shall accept ownership of the public roads identified in the Project Approvals.

3.3 **[Deliberately omitted]**

3.4 Community Facilities District.

Subject to applicable legal requirements, upon the request of the Developer, the City shall consider, in good faith, the formation of one or more assessment districts, community facilities districts, or other similar public financing districts (collectively, "Public Financing Districts") for the purpose of issuing bonded indebtedness or otherwise obtaining assessments or special taxes to pay the costs of design and development of on-site public improvements (such as streets and infrastructure within the Property to be constructed by the Developer and dedicated to the City or other public entity) and off-site public improvements normally required by the City to be provided by the property owner in connection with private development to the maximum extent permitted by law. Such good faith consideration shall include scheduling and conduct of all hearings, elections and other proceedings necessary for the formation of such requested Public Financing District(s) and the issuance of bonded indebtedness or other indebtedness of any such formed Public Financing District(s). The costs of formation and issuance of indebtedness of such Public Financing District(s) shall be borne by the Developer (or financed through such indebtedness), and the obligations of such Public Financing District(s) shall be payable solely from assessments or special taxes imposed upon all or a portion of the Property following conveyance to the Developer, and not from any funds, revenues or properties of the Agency, the City, or any other public entity without the express prior consent of the Agency, the City or other public entity, as applicable, in their sole discretion.

3.5 Relocation or Realignment of Public Roads.

City shall cooperate with Developer, at no cost to City, to take all steps necessary to relocate or realign public roads to conform to the locations approved by City in the course of the development of the Property in accordance with this Development Agreement. The cost of any relocation or realignment made at Developer's sole request shall be paid by Developer. The costs for realignment and relocation of Harbor Way shall be allocated and paid as provided in Section II.C.1 of the Scope of Development attached as Attachment No. 4 to the DDA.

3.6 Eminent Domain Powers.

City agrees to cooperate with Developer in implementing all of the conditions of the Project Approvals, including, but not limited to, the consideration of the use of its eminent domain powers in connection with public rights-of-way and public improvements; provided, however, that the use of eminent domain shall be in the sole and absolute discretion of the City

and subject to all applicable legal requirements. The City's obligation under this section shall not relieve the Agency of any obligation under the DDA with respect to consideration of use of the Agency's eminent domain power.

3.7 City Commitment to Cooperate.

City agrees to assist Developer and use its best efforts to assist, at no cost to City, the Developer in obtaining all easements and rights of way required to develop the Project, including but not limited to ingress/egress, utilities, demolition/construction, flood control, support, slope, and rail easements and rights of way, whether from the City, or third parties.

City shall grant such public utility easements over property owned by City as are reasonably necessary to implement the Project and the improvement of the City/Agency Parcels (as defined and described in Section 104 of the DDA) in accordance with this Development Agreement, the DDA, and the Project Approvals.

City, as owner of applicable portions of the Site (as defined and described in Sections 101 and 104 of the DDA) and at no cost to City, shall reasonably cooperate with and assist Developer, as applicant for various subdivisions and/or lot line adjustments contemplated by this Development Agreement, the DDA and the Project Approvals, and shall execute such documents and consents and take such actions in its capacity as property owner as are reasonably required to enable Developer to apply for and obtain approval, filing, and recordation of such subdivisions and/or lot line adjustments; provided, however, that nothing in this provision shall affect the City's rights and obligations, acting in its municipal regulatory capacity, to review and approve or disapprove any subdivision or lot line adjustment application in the manner otherwise provided in this Development Agreement.

3.8 Credit for Park Fees.

The DDA requires Developer to advance costs (~~the~~ "defined in Section I.H of the Method of Finance, Attachment No. 6 of the DDA and referred to below in this section as the "Total Developer ~~Park Cost Advances~~Public Parks and Open Space Contribution") for the design and construction of certain park and open space improvements on publicly-owned land within the Waterfront Area (referred to in the DDA as the "Site"). Subject to review and approval by the City of the actual amounts expended by Developer, Developer shall be entitled, and City shall grant Developer credit against City park impact fees otherwise due pursuant to Vallejo Municipal Code Chapter 3.18 (the "City Park Fees"), with respect to residential development on the Property, in an amount equal to the amount of the Total Developer ~~Park Cost Advances~~Public Parks and Open Space Contribution made by Developer and not previously credited against the payment of such City Park Fees. To the extent that the provisions of this Section 3.8 are inconsistent with the requirements of Chapter 3.18 of the Vallejo Municipal Code, this Section 3.8 shall be deemed to control.

3.9 Conveyance of City Parcels

By not later than the dates set forth in the Schedule of Performance, City shall convey to the Agency any portions of the Property then owned by City, so that the Agency can then meet

its obligations under the DDA to convey the Property to Developer at the times specified in the DDA.

3.10 City DDA Obligations

In addition to the obligations of the City specifically set forth elsewhere in this Development Agreement, the City shall perform and observe the City DDA Obligations (as defined below) in the same manner and to the same extent as if the City DDA Obligations were set forth in full in this Development Agreement as obligations of the City.

As used herein, "City DDA Obligations" means:

3.10.1 All obligations specified in the DDA that City has specifically acknowledged and accepted, as indicated on the signature page of the DDA;

3.10.2 All obligations in the DDA that the Agency covenants to cause the City to perform or observe; and

3.10.3 All obligations of the City specified in the DDA that the City has independently covenanted to perform pursuant to the Settlement Agreement entered into among the City, the Agency, the Developer, and the Vallejo Waterfront Coalition as of November 28, 2006.

This section shall not be construed to abrogate the City's discretion to make independent legislative determinations or findings when required or to ensure a particular result. The City DDA Obligations are hereby incorporated in this Development Agreement by this reference.

ARTICLE IV

AMENDMENT OF DEVELOPMENT ~~AMENDMENT OF DEVELOPMENT~~ AGREEMENT AND EXISTING APPROVALS

4.1 Amendment of Development Agreement By Mutual Consent.

This Development Agreement may be amended in writing from time to time by mutual consent of the parties hereto or their successors-in-interest or assigns and in accordance with the provisions of City of Vallejo Municipal Code Chapter 17.10. Limited time extensions (not including extensions to the ~~term~~Term) not exceeding one hundred eighty (180) days in the aggregate for all such extensions, for compliance with the terms and conditions set forth herein, may be granted or denied by the City Manager (or his/her designee) in his or her sole discretion.

4.2 Insubstantial Amendments to Development Agreement.

In accordance with the provisions of Chapter 17 of the Vallejo Municipal Code, as may be amended from time to time, any amendment to this Development Agreement which, in the context of the overall Project contemplated by this Development Agreement, does not

substantially affect (i) the ~~term~~Term of this Development Agreement, (ii) permitted uses of the Property, (iii) provisions of the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Property or the maximum height or size of proposed buildings, or (vi) monetary contributions by Developer, shall be deemed an "Insubstantial Amendment" and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. Such Insubstantial Amendment may be approved by City resolution.

4.3 Permitted Delays.

In the event of changes in conditions, changes in local, state or federal laws (including changes referred to in Section 2.7 above) or regulations (other than changes expressly permitted or contemplated by this Development Agreement), delays due to strikes, inability to obtain materials, delays caused by governmental agencies in issuing permits and approvals, a development moratorium (including, but not limited to, a water or sewer moratorium) or other actions by public agencies that would prohibit development of the Property, delays in the completion of environmental remediation related to the Property, civil commotion, fire, acts of God, war, lockouts, riots, floods, earthquakes, epidemic, quarantine, freight embargoes, failure of contractors to perform, or the filing of any court action to set aside or modify this Development Agreement or the Project Approvals, or other circumstances described in this Development Agreement as giving rise to a Permitted Delay and which cause substantially and materially interferes with carrying out the Project, as the Project has been approved, or with the ability of either party to perform its obligations under this Development Agreement (each such cause individually a "Permitted Delay"), then, except as to acts or conditions to which this Section 4.3 is expressly not applicable under other provisions of this Development Agreement and except as to acts or conditions caused by Developer, if and to the extent that any such cause referred to above in this Section 4.3 has the effect of delaying Developer's completion of any act required hereunder beyond a date specified for such act or beyond the ~~term~~Term of this Development Agreement, then upon written notice to the other party, the time for such act to be completed or the term of this Development Agreement, whichever is applicable, shall be extended for such period of time as the Permitted Delay shall exist but in any event not longer than for such period of time during which Developer is undertaking reasonable and diligent efforts to correct such Permitted Delay.

4.4 Requirement for Writing.

No modification, amendment or other change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Development Agreement and is signed by duly authorized representatives of both parties or successors.

4.5 Amendments to Development Agreement Statutes.

This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Statutes, as those provisions existed at the date of execution of this Development Agreement. No amendment or addition to those provisions which would

materially affect the interpretation or enforceability of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the parties mutually agree in writing to amend this Development Agreement to permit such applicability.

4.6 Amendment of ~~Existing~~Project Approvals.

To the extent permitted by state and federal law, any Project Approval may, from time to time, be amended or modified in the following manner:

4.6.1 Administrative Amendments.

Upon the written request of Developer for an amendment or modification to a Project Approval, the Director of Development Services or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Development Agreement and Applicable Law. If the Director of Development Services or his/her designee finds that the proposed amendment or modification is minor in light of the Project as a whole, consistent with this Development Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the applicable environmental document, the amendment shall be determined to be an "Administrative Amendment" and the Director of Development Services or his/her designee may, except to the extent otherwise required by law, approve the Administrative Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures or other improvements that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the legal description of a parcel shall be treated as Administrative Amendments.

4.6.2 Non-Administrative Amendments.

Any request of Developer for an amendment or modification to a Project Approval (including an amendment to this Development Agreement) which is determined to not be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Development Agreement.

4.7 Incorporation of Project Amendments into this Development Agreement.

Upon approval or adoption of a Project Approval, or an amendment of a Project Approval, such action shall automatically be deemed to be incorporated into the Project and the Applicable Law and vested under this Development Agreement without any further procedure to amend this Development Agreement.

4.8 Effect of Termination on Developer's Obligations.

4.8.1 Notwithstanding any other provision hereof to the contrary, termination of this Development Agreement or termination of the rights of Developer hereunder as to the Property, or any part thereof, shall not affect any requirement to comply with the Project Approvals or any payments then due and owing to City, nor shall it affect the covenants of Developer specified in Section 4.8.2 below, to continue after the termination of this Development Agreement. Developer understands and agrees that the Project Approvals may be substantially modified in light of the circumstances resulting from the termination of this Development Agreement or Developer's rights hereunder and Developer shall have no rights to challenge said modification by reason of this Development Agreement other than the rights, if any, Developer would have in the absence of this Development Agreement.

4.8.2 Notwithstanding anything in this Development Agreement to the contrary, the following provisions of this Development Agreement shall survive and remain in effect following termination or cancellation of this Development Agreement for so long as necessary to give them full force and effect with respect to claims or rights of City arising prior to termination or cancellation:

(a) This Section 4.8 (Developer's obligations upon termination or cancellation);

(b) Section 6.1 (remedies; limitation on damages and exceptions thereto; accrued obligations); and

(c) Section 10.1 (Indemnification).

~~ARTICLE V~~

ARTICLE V
ANNUAL REVIEW

5.1 Time of Review.

The annual review date for this Development Agreement shall be initiated during the month of May of each year of the term of this Development Agreement, commencing with May ~~2007~~2008. City shall make a good faith effort every year to notify Developer at least 10 days in advance of the date for Developer's request for annual review pursuant to Section 5.2 and any evidence required by City to demonstrate Developer's good faith compliance with this Development Agreement.

5.2 Developer to Initiate.

Developer shall initiate the annual review required by City of Vallejo Municipal Code Chapters 17.20 by submitting a written request at least sixty (60) days prior to the review date to

the Director of Development Services. The Developer shall also provide evidence as determined necessary by the Director of Development Services to demonstrate good faith compliance with the provisions of this Development Agreement. However, failure to initiate the annual review within thirty (30) days of receipt of written notice to do so from City shall not constitute a default by Developer under this Development Agreement, unless City has provided actual notice and opportunity to cure and Developer has failed to so cure.

5.3 Good Faith Compliance.

The annual review required by California Government Code, Section 65865.1, shall be conducted as provided herein. The Director of Development Services shall review Developer's submission to ascertain whether Developer has complied in good faith with the terms of this Development Agreement. If the Director of Development Services finds good faith compliance by Developer with the terms of this Development Agreement, the Director of Development Services shall so notify Developer and the planning commission in writing and the review for that period shall be concluded. If the Director of Development Services is not satisfied that the Developer is performing in accordance with the material terms and conditions of this Development Agreement, the Director of Development Services shall refer the matter to the planning commission for a decision and notify Developer in writing at least ten (10) days in advance of the time at which the matter will be considered by the planning commission.

The planning commission shall conduct a hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Development Agreement. The findings of the planning commission on whether Developer has complied with this Development Agreement for the period under review shall be based upon substantial evidence in the record. If the planning commission determines that, based upon substantial evidence, Developer has complied in good faith with the terms and conditions of this Development Agreement, the review for that period shall be concluded. If the planning commission determines that, based upon substantial evidence, Developer has not complied in good faith with the terms and conditions of this Development Agreement, the planning commission shall forward its report and recommendation to the City Council.

The City Council shall notify the Developer in writing of its intention to conduct a hearing on whether Developer has complied in good faith with the terms and conditions of this Development Agreement and whether the Development Agreement should be modified or terminated. The notice shall include the information specified in Chapter 17.20 et seq. of the Vallejo Municipal Code, including the time and place of the hearing, a copy of the planning commission's report and recommendation, and any other information the City Council considers necessary to inform Developer of the nature of the proceeding. Developer shall be given an opportunity to be heard at the hearing. If the City Council determines that Developer has complied in good faith with the terms and conditions of this Development Agreement, the review for that period shall be concluded. If, however, the City Council determines, based upon substantial evidence in the record, that there are significant questions as to whether Developer has complied in good faith with the terms and conditions of this Development Agreement, the City Council may continue the hearing and shall notify Developer of City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further

consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of the Development Agreement and to take those actions it deems appropriate, in accordance with California Government Code Section 65865.1.

5.4 No Waiver.

Failure of City to conduct an annual review shall not constitute a waiver by City of its rights to otherwise enforce the provisions of this Development Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

~~ARTICLE VI~~

ARTICLE VI
DEFAULT, REMEDIES AND TERMINATION

6.1 Remedies for Breach.

City and Developer acknowledge that the purpose of this Development Agreement is to carry out the parties' objectives as set forth in the Recitals hereof. City and Developer agree that to determine a sum of money which would adequately compensate either party for choices they have made which would be foreclosed should the Project not be completed pursuant to and as contemplated by this Development Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Developer agree that in the event of a breach of this Development Agreement (following an arbitration determination if arbitration is expressly permitted by other provisions of this Development Agreement and is invoked pursuant to Section 6.3), the only remedies available to the non-breaching party shall be: (1) suits for specific performance to remedy a specific breach, (2) suits for declaratory or injunctive relief, (3) suits for mandamus under Code of Civil Procedure Section 1085, or special writs, (4) termination of this Development Agreement, or (5) limited actions as follows: Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to either party. This exclusion on damages shall not preclude actions by a party to enforce payments of monies due, or the performance of obligations requiring the expenditures of money under the terms of this Development Agreement as set forth in subsections (1) and (2), below, of this Section 6.1. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Monetary recovery may be had for failure to complete the following actions that are required upon completion of specified components of the Project:

(1) payments required to be made under the Project Approvals, as applicable; and

(2) any other payments of funds then due and owing by Developer to City.

6.2 Notice of Breach.

Prior to the initiation of any action for relief specified in Section 6.1 above because of an alleged breach of this Development Agreement, the party claiming breach shall deliver to the other party a written notice of breach (the "Notice of Breach"). The Notice of Breach shall specify the reasons for the allegation of breach with reasonable particularity. The so-called breaching party shall have thirty (30) days to either: (a) use good faith efforts to cure the breach or, if such cure is of the nature to take longer than 30 days, to take reasonable actions to commence curing the breach during such thirty (30) day period; or (b) if in the determination of the so-called breaching party, such event does not constitute a breach of this Development Agreement, the so-called breaching party, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the party claiming the breach a "Notice of Non-Breach" which sets forth with reasonable particularity the reasons that a breach has not occurred. Failure to respond within the thirty (30) days shall not be deemed an admission of the breach, but the party alleging the breach may proceed to pursue its remedies hereunder.

6.3 Arbitration.

Upon agreement by both Parties, any legal action shall be submitted to nonbinding arbitration before a mutually acceptable retired Superior Court or Appellate Court judge. If the Parties cannot agree on the selection of a retired Superior Court or Appellate Court judge, then they shall each select a retired Superior Court or Appellate Court judge, and the two (2) selected judges will jointly select a third retired Superior Court or Appellate Court judge to serve as the arbitrator. The arbitrator shall issue such procedural and remedial orders as he or she may deem appropriate. The arbitrator's fees shall be shared equally between the City and Developer.

6.4 Cooperation in the Event of Initiative or Legal Challenge.

6.4.1 Initiative.

Should a non-City Council initiative measure or measures be enacted which could affect the Project:

(a) Developer and City shall meet and confer in good faith to mutually determine the proper course of action; and

(b) In the event City and Developer jointly determine to challenge such initiative measure, Developer shall provide for any challenge to such initiative measure at its sole cost and expense, and any such court action shall constitute a Permitted Delay pursuant to this Development Agreement; and

(c) In the event that a court determination has the effect of preventing, delaying or modifying the development of the Project as set forth above, City and Developer shall meet and confer in good faith to determine if there are alternative means of achieving the mutual goals and objectives of this Development Agreement, in light of such court action.

6.4.2 Other Legal Challenge.

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Development Agreement, the ~~parties hereby agree to cooperate in defending said action with Developer's counsel acting as lead counsel. Developer shall bear all costs of such defense including City's legal and court costs, provided that the parties meet and confer prior to Developer assuming such costs, and mutually agree upon a litigation strategy, including settlement and appeal.~~ effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Development Agreement and/or the power of the City to enter into this Agreement or perform its obligations hereunder, either the City or the Developer may, but shall have no obligation to defend such action. Upon commencement of such action, the City and the Developer shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

6.5 Applicable Law/Venue/Attorneys' Fees and Costs.

This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Any legal actions under this Development Agreement shall be brought only in the Superior Court of the County of Solano, State of California. Should any legal action or arbitration be brought by either party because of breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorney's fees or arbitration costs and such other costs as may be found by the court or arbitrator.

6.6 Termination by Mutual Consent.

This Development Agreement may be voluntarily terminated in whole or in part only by the mutual consent of the parties or their successors in interest, in the sole and absolute discretion of each as to its consent, in accordance with the provision of City of Vallejo Municipal Code Chapter 17.16 except as otherwise provided in this Development Agreement.

6.7 Effect of DDA Termination.

Upon termination of the DDA with respect to any portion of the Property, this Development Agreement shall automatically be terminated with respect to the portion of the Property for which the DDA has been terminated and shall remain in effect with respect to the portion of the Property, if any, for which the DDA has not been terminated. Notwithstanding any termination of the Development Agreement pursuant to this Section 6.7, any Project Approvals shall remain in effect with respect to the Property.

~~ARTICLE VII~~

ARTICLE VII
ESTOPPEL CERTIFICATE

7.1 Estoppel Certificate.

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (a) this Development Agreement is in full force and effect and a binding obligation of the parties, (b) this Development Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults. The party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and "Mortgagees" (defined in Section 9.1). The request shall clearly indicate that failure of the receiving party to respond within the thirty (30) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of Developer to execute an estoppel certificate shall not be deemed a default, provided that in the event that Developer does not respond within the required thirty (30) day period, City may send a second and final request to Developer and failure of Developer to respond within fifteen (15) days from receipt thereof (but only if City's request contains a clear statement that failure of Developer to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by Developer of the estoppel certificate and may be relied upon as such by City, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of City to execute an estoppel certificate shall not be deemed a default, provided that in the event that City fails to respond within the required thirty (30) day period, Developer may send a second and final request to City, with a copy to the City Manager and City Attorney, and failure of City to respond in fifteen (15) days from receipt thereof (but only if Developer's request contains a clear statement that failure of City to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by City of the estoppel certificate and may be relied upon as such by Developer, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees.

~~ARTICLE VIII~~

ARTICLE VIII
TRANSFERS, ASSIGNMENTS

8.1 Limitations on Right to Assign Development Agreement.

8.1.1 Because of the necessity to coordinate development of the Property pursuant to the DDA and the Project Approvals, particularly with respect to the provision of public infrastructure and public services, certain restrictions on the right of the Developer to assign or transfer its interest under this Development Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and

public benefits of the Project Approvals and this Development Agreement with respect to the Property. Developer agrees to and accepts the restrictions herein set forth in this Article VIII as reasonable and as a material inducement to City to enter into this Development Agreement. For purposes of this Article VIII, Developer may transfer ownership interests in Developer without City's consent as long as following such transfer Callahan/DeSilva Vallejo, LLC, the DeSilva Group, Inc., DeSilva Group, LLC, Callahan Property Company, and/or any holding company of the foregoing entities remain in control of all decision making with respect to, and the management of the development of, the Property and the Project in accordance with this Development Agreement, whether by contract or otherwise. Developer shall notify City of any transfer of ownership of Callahan/ DeSilva Vallejo, LLC, which notice shall contain a certification from a responsible officer of Developer, its parent company or the holding company of Developer and its parent company that such transfer conforms to the requirements of this Article VIII.

8.1.2 In connection with the transfer or assignment by Developer of its interests under this Development Agreement with respect to all or any portion of the Property (other than a transfer as set forth in Section 8.1.1 above), Developer and the assignee shall enter into a written agreement (the "Assignment of Development Agreement") regarding the respective interests, rights and obligations of Developer and the assignee in and under this Development Agreement. Further, in connection with such Assignment of Development Agreement in connection with a transfer of the entire remainder of the Property, City shall confirm in writing that no default by Developer under the DDA or the Development Agreement shall be deemed a default of the assignee with respect to the portion of the Property transferred to such assignee, which confirmation shall not be a waiver of any default by Developer that has not been cured prior to such assignment. Such Assignment of Development Agreement may (i) release Developer from obligations under this Development Agreement that pertain to that portion of the Property being transferred, as described in the Assignment of Development Agreement, provided that the assignee expressly assumes such obligations, and (ii) address any other matter deemed by Developer to be necessary or appropriate in connection with the assignment.

Developer shall seek City's prior written consent to any Assignment of Development Agreement. Failure by City to respond within forty-five (45) days to any written request made by Developer for such consent shall be deemed to be City's approval of the Assignment of Development Agreement in question. Developer shall furnish such additional information as City Manager, City Council or any designee may reasonably request and City shall proceed to consider and act upon Developer's request for City consent to the proposed assignment. City shall be under no obligation to consent to any such proposed assignment if Developer is in material default of this Development Agreement or the DDA, and is not diligently curing any such default. Otherwise, City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such assignee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such assignee. A denial by City of the request based upon late, inaccurate or insufficient information furnished by Developer shall not be deemed unreasonable. If denial is based upon such grounds, Developer may cure such deficiency and reinstate its request providing such information, thereby starting the initial forty-five (45) day period anew. In addition, the City shall consent to an assignment of this Development Agreement if and to the extent the Agency has consented to an assignment of the DDA with respect to the Property (or a portion thereof).

Notwithstanding any other provision of this Section 8.1, no assignment under this Development Agreement otherwise permitted pursuant to this Section 8.1 shall be deemed effective unless and until a comparable assignment under the DDA as been effectuated.

Any Assignment of Development Agreement shall be binding on Developer, City and the assignee. Upon recordation of any Assignment of Development Agreement in the Official Records of Solano County, Developer shall automatically be released from those obligations expressly assumed by the assignee therein.

Developer shall be free from any and all liabilities accruing on or after the date of any assignment with respect to those obligations assumed by an assignee pursuant to an Assignment of Development Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Development Agreement shall be attributed to Developer, nor may Developer's remaining rights hereunder be cancelled or diminished in any way by any breach or default by any such person. No breach or default by Developer under the DDA or this Development Agreement shall be attributed to an assignee under an Assignment of Development Agreement, provided that the foregoing shall not be deemed a waiver by City of any default of Developer that is not cured as of the date of such assignment.

Upon compliance with this Section 8.1.2 by Developer and the assignee, such assignee shall be deemed a "Permitted Assignee." The subsequent assignment or transfer of Developer's interests under this Development Agreement with respect to all or any portion of the Property by a Permitted Assignee shall also be subject to the requirements of this Article VIII.

8.1.3 City shall administer the provisions of this Article VIII through its City Manager or his/her designee. Developer shall notify the City Manager in writing pursuant to this Article VIII of its request for City consent to any assignment of its interests under the Development Agreement under this Article VIII requiring such consent, together with supporting information and satisfaction of the conditions set forth in Sections 8.1.1 and/or 8.1.2 above, together with the clear notice that failure of City to respond within forty-five (45) days of receipt thereof shall be deemed approval.

8.2 Release Upon Transfer.

Except as provided in Section 10.1 hereof, Developer shall be released from its obligations accruing on or after the date of any sale, transfer or assignment under this Development Agreement with respect to that portion of the Property sold, transferred or assigned as permitted under Section 8.1. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 12.2 below, nor shall such failure negate, modify or otherwise affect the liability of any transfer pursuant to the provisions of this Development Agreement. No breach or default by any person or entity succeeding to any portion of Developer's interest with respect to the transferred or assigned rights and/or obligations shall be attributable to Developer, nor may Developer's rights hereunder be cancelled or diminished in any way by any default or breach by any such person or entity.

~~ARTICLE IX~~

ARTICLE IX
MORTGAGEE PROTECTION

9.1 Mortgage Protection.

This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording of this Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement (including but not limited to City's remedies to terminate the rights of Developer (and its successors and assigns) under this Development Agreement, to terminate this Development Agreement, and to seek other relief as provided in this Development Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

9.2 Mortgagee Not Obligated.

Notwithstanding the provisions of Section 9.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or otherwise under the ~~Existing~~Project Approvals.

9.3 Notice of Default to Mortgagee.

If City receives a written notice from a Mortgagee or from Developer or any Permitted Assignee requesting a copy of any notice of default given Developer or a designated Permitted Assignee hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City the Developer has committed an event of default, and if City makes a determination of default hereunder, City shall if so requested by such Mortgagee likewise serve at such Mortgagee's cost (or Developer's cost) notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice.

9.4 No Supersedure.

Nothing in this Article IX shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this Article IX constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 9.3.

~~ARTICLE X~~

ARTICLE X
INDEMNIFICATION; INSURANCE

10.1 No Duty of City; Hold Harmless.

It is specifically understood and agreed by the parties that the development on the Property contemplated by this Development Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements on the Property except as otherwise expressly set forth herein in Articles VIII and IX, and that Developer shall have full power over and exclusive control of the Property herein described subject only to the limitations and obligations of Developer under this Development Agreement.

Developer hereby agrees to and shall hold City and its elected and appointed representatives, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's operations of the Property under this Development Agreement, excepting suits and actions brought by Developer for default of the Development Agreement or to the extent arising from the intentional acts, negligence or willful misconduct of City, its elected and appointed representatives, officers, agents, employees, contractors or subcontractors, or of a third party.

This indemnification and hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this Section 10.1, regardless of whether or not City prepared, supplied or approved plans or specifications for the Project, but does not apply to damages and claims for damages caused by City or arising with respect to public improvements and facilities after City has accepted responsibility for such public improvements and facilities.

10.2 Insurance Requirements.

At all times during the Term of and consistent with the DDA, Developer shall provide, maintain and keep in full force and effect, the insurance required therein. Upon the termination of the DDA, the parties shall meet and confer in good faith to determine the appropriate level of insurance to be maintained by Developer during periods of construction of the Project.

~~ARTICLE XI~~

ARTICLE XI
NOTICES

11.1 Notices.

Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if: (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express or DHL to the offices of City and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched within the San Francisco Bay Area by certified mail, postage prepaid, to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by notice as provided in this Section.

CITY:

City Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

With copies to:

City Attorney
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

~~Director of Community~~Economic Development Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

Director of Development Services
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

McDonough, Holland & Allen
555 Capitol Mall, 9th Floor
Sacramento, CA 95814
Attn: Iris P. Yang

DEVELOPER:

Callahan / DeSilva Vallejo, LLC
11555 Dublin Boulevard
Dublin, CA 94568
Attn: James Summers

With a copy to: John T. Nagle, Esq.
Goldfarb & Lipman
1300 Clay Street, 9th Floor
Oakland, CA 94612

~~ARTICLE XII~~

ARTICLE XII
MISCELLANEOUS

12.1 Severability.

Except as otherwise provided herein, if any provision(s) of this Development Agreement is (are) held invalid, the remainder of this Development Agreement shall not be affected except as necessarily required by the determination of invalidity, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

12.2 Agreement Runs with the Land.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devises, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City-owned or Agency-owned property, (a) is for the benefit of such properties and is a burden upon such property, (b) runs with such properties, (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest in such properties. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

12.3 Nondiscrimination.

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the development of the Property in furtherance of this Development Agreement. The foregoing covenant shall run with the land.

12.4 Developer Right to Rebuild.

City agrees that Developer may renovate or rebuild the Project within the Term of this Development Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Development Agreement, and shall comply with the Applicable Law, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

12.5 Headings.

Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

12.6 Agreement is Entire Understanding.

This Development Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of Articles I through XII, including the Recitals, and Exhibits A, B and C, all inclusive, attached hereto and incorporated by reference herein, which constitute the entire understanding and agreement of the parties. The exhibits are as follows:

Exhibit A Map of Property
Exhibit B Legal Description of ~~PropertyExhibit C Legal Description of~~ Initial Recording Area

12.7 Recordation of Termination.

Upon completion of performance of the parties or termination of this Development Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of Solano County, California.

12.8 Subdivision Maps.

A subdivision, as defined in Government Code Section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Development Agreement Statutes.

By execution below, the parties hereby approve the First Amendment of this Development Agreement as of March 13, 2007. The parties further acknowledge and agree that the First Amendment of this Development Agreement shall be binding on the parties as of the First Amendment Effective Date; provided, however, that if the First Amendment of this Development Agreement is determined to be invalid, void, ineffective, or otherwise unenforceable by a final non-appealable judgment of a court of competent jurisdiction, this Development Agreement in the form of the Initial Development Agreement, shall thereupon be deemed to be in effect and binding upon the parties as of the effective date of such final non-appealable judgment. Nothing in the First Amendment of this Development Agreement shall modify or affect the Initial Effective Date of this Agreement of December 15, 2005.

CITY:

CITY OF VALLEJO

By: _____

~~Robert Nichelini~~
Joseph M. Tanner
~~Acting~~ City Manager

ATTEST:

By: _____
Allison Villarante
City Clerk

APPROVED AS TO FORM:

By: _____
Frederick G. Soley
City Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:

By: _____
Will Venski
Risk Manager

DEVELOPER:

CALLAHAN / DeSILVA VALLEJO, LLC, a California limited liability company

By: The DeSilva Group, Inc.
a California corporation, Member

By: _____
~~James B. Summers~~
Ernest D. Lampkin
Vice President

By: Joseph W. Callahan, Jr.,
an individual, Member

By: _____
Joseph W. Callahan, Jr.

STATE OF CALIFORNIA)
)ss
COUNTY OF)

On ____________________, before me, ____________________, personally appeared ______________________________ personally known to me (or 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.

WITNESS my hand and official seal.

____

STATE OF CALIFORNIA)
)ss
COUNTY OF)

On ____________________, before me, ____________________, personally appeared ______________________________ personally known to me (or 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.

WITNESS my hand and official seal.

____

STATE OF CALIFORNIA)
)ss
COUNTY OF)

On ____________________, before me, ____________________, personally appeared ______________________________ personally known to me (or 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.

WITNESS my hand and official seal.

____

EXHIBIT A

MAP OF THE PROPERTY

This Exhibit A consists of three sub-maps showing the various portions of the Property as follows:

Northern Waterfront Area Map

The portion of the Property shown on the Northern Waterfront Area Map consists of Parcel A1 (including A Street), Parcel A2 (including B Street and C Street), Parcel B1, Parcel B2, and Parcel C1.

Central Waterfront Area Map

The portion of the Property shown on the Central Waterfront Area Map consists of Parcel J1, Parcel J2, Parcel L1, Parcel L2, and Parcel L4.

Southern Waterfront Area Map

The portion of the Property shown on the Southern Waterfront Area Map consists of Parcel S, Parcel T1, Parcel T2, and Parcel T3.

EXHIBIT B

~~LEGAL DESCRIPTION OF THE PROPERTY~~

~~[To Be Subsequently Inserted In Accordance With Section 1.2]~~EXHIBIT C

LEGAL DESCRIPTION OF THE INITIAL RECORDING AREA

PUBLIC
Agenda No. HEARING B

COUNCIL COMMUNICATION

Date: February 27, 2007

TO: Honorable Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager/Community Development
Brian Dolan, Development Services Director BD

SUBJECT: CONSIDERATION OF A RESOLUTION AND ORDINANCE TO AMEND TITLE 16 OF THE VALLEJO MUNICIPAL CODE RELATED TO THE CREATION OF THE DESIGN REVIEW BOARD

BACKGROUND AND DISCUSSION

The Downtown Vallejo Specific Plan and the Vallejo Waterfront Planned Development Master Plan ("collectively referred to as the "Plans"), both adopted by the City Council in Fall 2005, contain measures requiring the establishment of a Design Review Board (DRB). The City Council adopted an ordinance creating the DRB and describing its form and duties on January 23, 2007. This follow-up ordinance proposes revisions to several Chapters of Title 16, the Vallejo Zoning Ordinance, in order to fully implement the DRB ordinance and the Plans.

The new Design Review Board was created and established by an ordinance adding Chapter 2.39 to the Vallejo Municipal Code. At the recommendation of the City Attorney, several chapters of Title 16 are proposed to be revised to assure consistency with, and implementation of, the DRB ordinance and the Plans. These changes address procedural matters of appeals from design review decisions, actions on exception permits, and actions on unit plans. The draft ordinance (Attachment B) describes the proposed administrative processes.

The Planning Commission held a public hearing to consider the proposed changes on January 23, 2007. Following the hearing and discussion, the Commissioners voted unanimously to recommend that the City Council approve the amendments to Title 16 without change.

RECOMMENDATION

The proposed changes to Chapter 16 of the V.M.C. to implement the Design Review Board ordinance as required by the Plans. These specific changes to Title 16 are necessary because the Design Review Board process utilizes the Planned Development Unit Plan process, which currently exists within Title 16.

ENVIRONMENTAL REVIEW

Staff has concluded that adoption of the proposed Ordinance is not a "project" under the California Environmental Quality Act (CEQA), pursuant to sections 15060 (c) (3) and 15378 (b) (5) of Title 14 of the California Code of Regulations, as the action is considered an administrative or organizational activity that will not result in direct or indirect physical changes to the environment. Further, even if the adoption of the Ordinance were considered a project, it would be exempt under CEQA, pursuant to section 15061 (b) (3) of Title 14 of the California Code of Regulations, because it can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment.

PROPOSED ACTION

Adopt a resolution holding on first reading an ordinance amending several chapters of Title 16 of the Vallejo Municipal Code related to the establishment for the DRB and the implementation of the Plans.

ATTACHED

a. Draft Council Resolution
b. Draft Ordinance amending Title 16
c. Planning Commission Resolution, January 23, 2007

CONTACT PERSON:

Brian Dolan, Development Services Director – 649-5458
bdolan@ci.vallejo.ca.us

K:\PUBLIC\AI\PL\Title 16 amendment (Nagel).doc

RESOLUTION

A RESOLUTION OF THE VALLEJO CITY COUNCIL ADOPTING AMENDMENTS TO TITLE 16 OF THE VALLEJO MUNICIPAL CODE RELATED TO THE CREATION OF THE DESIGN REVIEW BOARD

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

WHEREAS, on September 20, 2005, the City Council adopted the Downtown Vallejo Specific Plan and Design Guidelines; and

WHEREAS, on October 25, 2005, the City Council adopted the Vallejo Waterfront Master Plan, including Design Guidelines; and

WHEREAS, the above Plans and Design Guidelines are intended to establish the nature, character, and intensity of development within each Plan's boundaries; and

WHEREAS, the above Plans and Design Guidelines provide the guiding principles, visions, policies, development standards, and design criteria in order to define the physical framework of these areas, give detailed design direction, and facilitate the evaluation of public improvements and private development; and

WHEREAS, both of the above Plans proposed the creation of a Design Review Board to ensure a comprehensive review process for all projects in the Downtown and Waterfront areas; and

WHEREAS, the City Council adopted an ordinance establishing the Design Review Board on January 23, 2007; and

WHEREAS, the City Attorney has determined that several chapters of Title 16, the Vallejo Zoning Ordinance, should be revised to fully implement the above Plans and Design Guidelines and the Design Review Board Ordinance; and

WHEREAS, the proposed changes are administrative and are meant to insure clarity and consistency within the Municipal Code and with the adopted Waterfront and Downtown Plans and Design Guidlines; and

WHEREAS, on January 23, 2007, the Vallejo Planning Commission voted unanimously to recommend that the City Council adopt the proposed amendments without change; and

WHEREAS, the City Council finds that the notice of the public hearing was given for the time and in the manner prescribed by law; and

WHEREAS, all interested persons filed written comments at or before the hearing, all persons desiring to be heard were given an opportunity to be heard in this matter, and all such verbal and written testimony was considered by the City Council; and

NOW, THEREFORE, IT IS FOUND AND DETERMINED that:

(1) the proposed Ordinance is consistent with intent of the Vallejo General Plan, the implementation of the Vallejo Waterfront Master Plan and the Downtown Vallejo Specific Plan and with the Ordinance creating the Design Review Board; and

(2) the adoption of this proposed Ordinance is not a project under California Environmental Quality Act ("CEQA") pursuant to sections 15060 (c)(3) and 15378 (b)(5) of Title 14 of the California Code of Regulations as the action is considered an administrative or organization activity that will not result in direct or indirect physical changes to the environment.; and

(3) if the adoption of this proposed Ordinance is found to be a project under CEQA, then in view of the fact that the Design Review Board is to review and act on existing types of discretionary planning applications, the adoption of this proposed Ordinance is exempt from the CEQA based on the general rule stated in section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vallejo holds on first reading an Ordinance amending Title 16 of the Vallejo Municipal Code.

K/Public/AI/PL/Title 16 Amendment Reso

ORDINANCE NO. _____N.C. 2nd

AN ORDINANCE OF THE CITY OF VALLEJO AMENDING TITLE 16 OF THE VALLEJO MUNICIPAL CODE TO CLARIFY PROVISIONS RELATED TO THE DESIGN REVIEW BOARD

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

SECTION 1. The Vallejo Municipal Code is hereby amended by adding a new section 16.102.040 to chapter 16.102, which is to read as follows:

"16.102.040 Appeal from design review board decision.

A. The applicant or any party adversely affected by the decision of the design review board may, within ten days after the rendition of the decision of the design review board, appeal in writing to the city council by filing a written appeal with the city clerk. Such written appeal shall state the reason or reasons for the appeal and why the applicant believes he or she is adversely affected by the decision of the design review board. Such appeal shall not be timely filed unless it is actually received by the city clerk or designee no later than the close of business on the tenth calendar day after the rendition of the decision of the design review board. If such date falls on a weekend or city holiday, then the deadline shall be extended until the next regular business day.

B. Notice of the appeal, including the date and time of the city council's consideration of the appeal, shall be sent by the city clerk to all property owners within two hundred or five hundred feet of the project boundary, whichever was the original notification boundary.

C. The city council may affirm, reverse or modify any decision of the design review board which is appealed. The city council may summarily reject any appeal upon determination that the appellant is not adversely affected by a decision under appeal.

D. These provisions shall be communicated to the applicant as part of the planning division staff report. In addition, these provisions shall be noted on the design review board meeting agenda and shall constitute notice to all concerned of these appeal provisions."

SECTION 2. The Vallejo Municipal Code is hereby amended by adding a new section 16.102.050 to chapter 16.102, which is to read as follows:

"16.102.050 Appeal from planning manager's decision regarding design guidelines.

A. The applicant or any party adversely affected by an administrative decision of the planning manager rendered under authority conferred by downtown Vallejo specific plan or planned development master plan #00-0022 may, within ten days after rendition of such decision, appeal in writing to the design review board. Such written appeal shall state the reason or reasons for the appeal and why the appellant believes he or she is adversely affected by the administrative decision. Such appeal shall not be timely filed unless it is actually received by the development services director or designee no later than the close of business on the tenth calendar day after the rendition of the decision of the planning manager. If such date falls on a weekend or city holiday, then the deadline shall be extended until the next regular business day.

B. Notice of the appeal, including the date and time of the design review board's consideration of the appeal, shall be sent by the development services director to all property owners within two hundred or five hundred feet of the project boundary, whichever was the original notification boundary. For decisions that did not require noticing, the appeal notification boundary shall be two hundred feet.

C. The design review board may affirm, reverse or modify any decision of the planning manager which is appealed. The design review board may summarily reject any appeal upon determination that the appellant is not adversely affected by a decision under appeal.

D. These provisions shall be communicated to the applicant as part of the planning division staff report and determination."

SECTION 3. The Vallejo Municipal Code is hereby amended by adding a new section 16.80.105 to chapter 16.80, which is to read as follows:

"16.80.105 Downtown exception permits.

Exception permits for the projects within the districts specified in the downtown Vallejo specific plan shall be prepared consistent with the policies, standards and implementation program in the downtown Vallejo specific plan and shall be reviewed for approval by either the design review board or development services director as set forth in said plan."

SECTION 4. The Vallejo Municipal Code is hereby amended by adding a new section 16.116.076 to chapter 16.116, which is to read as follows:

"16.116.076 Downtown unit plans.

Unit plans for the projects within the districts specified in the downtown Vallejo specific plan shall be prepared consistent with the policies, standards and

implementation program in the downtown Vallejo specific plan and shall be reviewed for approval by either the design review board or planning manager as set forth in said plan."

SECTION 5 The Vallejo Municipal Code is hereby amended by adding a new section 16.116.077 to Chapter 16.116 to read as follows:

"16.116.077 Waterfront Project unit plans.

Unit plans for the projects within the districts specified in the waterfront and Vallejo station project planned development master plan and accompanying waterfront design guidelines (collectively, the "Waterfront PDMP/Design Guidelines") for the waterfront area (the "waterfront area") shall be prepared consistent with the waterfront PDMP/design guidelines, the disposition and development agreement (the "DDA") between the redevelopment agency of the City of Vallejo (the "agency") and the developer of the waterfront area (the "developer"), and the development agreement between the City and the developer. Pursuant to the DDA, the redevelopment agency and the developer are obligated to timely appeal decisions of the design review board regarding unit plans for major projects, as determined by the development services director, to the city council."

SECTION 6. 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, inspective of the fact that one or more portions may be declared invalid.

SECTION 7. Effective Date

This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage.

Attachment C

RESOLUTION PC-07-01

A RESOLUTION OF THE VALLEJO PLANNING COMMISSION RECOMMENDING CITY COUNCIL ADOPTION OF AMENDMENTS TO TITLE 16 OF THE VALLEJO MUNICIPAL CODE RELATED TO THE CREATION OF THE DESIGN REVIEW BOARD

BE IT RESOLVED by the Planning Commission of the City of Vallejo as follows:

WHEREAS, on September 20, 2005, the City Council adopted the Downtown Vallejo Specific Plan and Design Guidelines; and

WHEREAS, on October 25, 2005, the City Council adopted the Vallejo Waterfront Master Plan, including Design Guidelines; and

WHEREAS, the above Plans and Design Guidelines are intended to establish the nature, character, and intensity of development within each Plan's boundaries; and

WHEREAS, the above Plans and Design Guidelines provide the guiding principles, visions, policies, development standards, and design criteria in order to define the physical framework of these areas, give detailed design direction, and facilitate the evaluation of public improvements and private development; and

WHEREAS, both of the above Plans propose the creation of a Design Review Board to ensure a comprehensive review process for all projects in the Downtown and Waterfront areas; and

WHEREAS, the City Council introduced a draft ordinance to establish the Design Review Board on December 19, 2006; and

WHEREAS, the City Attorney has determined that several chapters of Title 16, the Vallejo Zoning Ordinance, should be revised to fully implement the Design Review Board Ordinance; and

WHEREAS, the proposed changes are administrative and are meant to insure clarity and consistency within the Municipal Code and with the adopted Waterfront and Downtown Plans; and

WHEREAS, the Planning Commission finds that the notice of the public hearing was given for the time and in the manner prescribed by law; and

WHEREAS, all interested persons filed written comments at or before the hearing, all persons desiring to be heard were given an opportunity to be heard in this matter, and all such verbal and written testimony was considered by the Planning Commission; and

WHEREAS, the Planning Commission finds that the proposed Ordinance is consistent with intent of the Vallejo General Plan, the implementation of the Vallejo Waterfront Master Plan and the Downtown Vallejo Specific Plan and with the draft ordinance creating the Design Review Board; and

NOW, THEREFORE, IT IS FOUND AND THAT DETERMINED that:

(1) the adoption of this proposed Ordinance is not a project under California Environmental Quality Act ("CEQA") pursuant to sections 15060 (c)(3) and 15378 (b)(5) of Title 14 of the California Code of Regulations as the action is considered an administrative or organization activity that will not result in direct or indirect physical changes to the environment.; and

(2) if the adoption of this proposed Ordinance is found to be a project under CEQA, then in view of the fact that the Design Review Board is to review and act on existing types of discretionary planning applications the adoption of this proposed Ordinance is exempt from the CEQA based on the general rule stated in section 15061 (b)(3) of Title 14 of the California Code of Regulations that CEQA applies only to projects that have the potential for causing a significant effect on the environment and the adoption of this Ordinance will not cause a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the City Council adopt the proposed amendments to title 16 of the Vallejo Municipal Code.

K:/Public/AI/PL/Title 16 PC Resolution

ADMIN A

CITY OF VALLEJO

Agenda Item No.

COUNCIL COMMUNICATION

Date: February 27, 2007

TO: Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager / Community Development
Susan McCue, Economic Development Program Manager

SUBJECT: CONSIDERATION OF CITY OF VALLEJO REAL PROPERTY ASSET MANAGEMENT POLICY

BACKGROUND & DISCUSSION

The purpose of the Real Property Asset Management Policy is to define the process by which the City of Vallejo will manage real property assets, including interests owned and/or controlled by the City. The Real Property Asset Management Policy applies to all real estate assets owned and/or controlled by the City of Vallejo, including but not limited to, City owned and occupied structures, owned properties licensed or leased to third parties (tenants) and vacant parcels. Sections of the Vallejo Municipal Code which deal with real estate transactions will be updated to conform to the Real Property Asset Management Policy. The Real Property Asset Management Policy will be periodically reviewed and modified as needed.

The City hired its first Asset Manager in the Community Development Department in March 2006. Since that time the Asset Manager has focused on the identification of properties, lease issues that require resolution, revenue opportunities, documentation of City-wide property assets, and the development of the City's first Real Estate Asset Management Policy.

On October 3, 2006 the City Council conducted a study session and provided input to staff regarding a draft policy. Staff has attempted to incorporate that input, including:

- ✓ Definition of City real property asset objectives
- ✓ Development of an asset management framework
- ✓ Transactional authority
- ✓ Assure on-going transparency
- ✓ Codify in Municipal Ordinance

The Asset Management Policy provides the flexibility to respond to the myriad of property issues that arise, including lease expirations, tenant defaults, assignments, amendments to leases, lease extensions/ holdovers, changes in terms, lease buy-outs (early termination), changes in ownership, sub-leasing, capital improvements (by tenant/by owner.

The City's real estate portfolio contains:

Estimated value of improved and vacant City-owned property	$300-400 Million
[redacted]	[redacted]
FY 2006/07 estimated lease revenue	$700,000 (does not include Marine World Revenue Sharing Agreement or Marina berth rentals)
[redacted]	[redacted]

The Asset Management Policy also requires that City property shall meet one or more of the following objectives:

1. Support the municipal functions of the City of Vallejo
2. Generate revenue that is sustainable
3. Mitigate on-going expense to the City whenever possible
4. Support development of appropriate infrastructure in Vallejo, i.e., parking, roads, sewer and landscaping
5. Contribute to the City's tax revenue base
6. Support a specific social service, historical legacy or affordable housing need of the community

Another important element of the proposed policy includes guidance on staff authority to administer real estate matters. The proposed Asset Management Policy would:

1. Delegate authority from the City Council to the City Manager and City Attorney to approve specific real estate-related agreements and contracts necessary to conduct the day-to-day management of the real property portfolio in a timely and efficient manner.
2. Require City Council approval for all purchase and sale decisions and lease agreements with a fixed term of more than three years or a leasehold value of more than $25,000.
3. Require the City Manager to obtain City Council approval of all proposed real property transactions at below market rent or with property expense and/or capital investment partially or fully funded by the City of Vallejo.

Transparency and reporting to the City Council is another issue addressed in the proposed policy. The policy would require:

1. Reporting on City real estate activities to the City Council.
2. Description of the current disposition strategy for each City asset and which objectives are being achieved.

If the Asset Management Policy is approved by the City Council, staff intends to return to the City Council by June 30, 2007 with a recommendation for the disposition of underperforming real estate assets.

RECOMMENDATION

Approve the Real Property Asset Management Policy.

ENVIRONMENTAL REVIEW

Not Applicable.

PROPOSED ACTION

Adopt the resolution holding on first reading an ordinance adding Section 3.20.260 to the Vallejo Municipal Code and adoption of the Real Property Asset Management Policy dated February 27, 2007.

DOCUMENTS AVAILABLE FOR REVIEW

Attachment A - Resolution holding on first reading the amendment to the Vallejo Municipal Code, Section 3.20.260
Attachment B - Ordinance to the Vallejo Municipal Code adding Section 3.20.229
Attachment C - Real Property Asset Management Policy
Attachment D - Resolution No. 73-816

CONTACT: Susan McCue, Economic Development Program Manager
553-7283 / smccue@ci.vallejo.ca.us

Steve England, Real Estate and Asset Manager
649-4848 / sengland@ci.vallejo.ca.us

RESOLUTION NO. _____ N.C.

RESOLUTION HOLDING ON FIRST READING AN ORDINANCE ADDING SECTION 3.20.229 TO THE VALLEJO MUNICIPAL CODE AND ADOPTING A REAL PROPERTY ASSET MANAGEMENT POLICY

BE IT RESOLVED by the City of Vallejo as follows:

WHEREAS, the City has implemented an Asset Management function that provides oversight and strategic planning for leased and owned real property. Staff has prepared an amendment to the Vallejo Municipal Code that references the Real Property and Asset Management Policy that will used as a framework for decision making, transaction analysis, strategic planning and the day-to-day management and reporting on real property matters; and

WHEREAS, the draft of the Real Property Asset Management Policy was reviewed in a study session with the City Council where staff was directed to return with the proposed amendment to the Vallejo Municipal Code and a Real Property Asset Management Policy; and

WHEREAS, the amendment to the Vallejo Municipal Code and the adoption of a Real Property Asset Management Policy will provide a strategic framework for future real property decisions and assure the necessary transparency when dealing with real property assets.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vallejo hereby holds on first reading an Ordinance adding section 3.20.229 to the Vallejo Municipal Code.

BE IT FURTHER RESOLVED that the City Council hereby approves and adopts of the Real Property Asset Management Policy, dated February 27, 2007, to become effective concurrently with the above Ordinance.

BE IT FURTHER RESOLVED that the City Council hereby rescinds Resolutions No. 73-816 N.C. and 01-275 N.C.

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

AN ORDINANCE OF THE CITY OF VALLEJO ADDING A SECTION 3.20.229 TO THE VALLEJO MUNICIPAL CODE RELATING TO THE CREATION OF A REAL PROPERTY ASSET MANAGEMENT POLICY

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

SECTION 1. Section 3.20.229 is hereby added to the Vallejo Municipal Code, which is to read as follows:

"**3.20.229 Real Property Asset Management Policy.**

The city manager or his or her authorized representative shall prepare and recommend to the city council rules and regulations governing the management, leasing and sale of the city's real property. Said rules and regulations shall be adopted by resolution of the city council."

SECTION 2. **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 3. **Effective Date.**

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

Real Property Asset Management Policy

City of Vallejo

Economic Development Division

February 27, 2007

Approved by the
Vallejo City Council;
Resolution No. _____ N.C.
Adopted _____, 2007

Revised February 16, 2007

TABLE OF CONTENTS

Real Property Asset Management Policy

1. Purpose

The purpose of the real property asset management policy is to define the City method by which the City of Vallejo will manage its real estate assets, including real property interests owned and/or controlled by the City of Vallejo.

2. Scope of Policy

The Real Property Asset Management Policy applies to all real estate assets owned and/or controlled by the City of Vallejo, including but not limited to: City owned and occupied structures, owned properties licensed or leased to third parties, properties leased by the City from third parties, State Lands Trust Properties, Watershed and multi-party joint venture interests

3. Profile of City of Vallejo-owned Real Property

The City of Vallejo owns and controls a portfolio of real estate properties located throughout the City, including State Land Trust parcels primarily associated with shoreline and tidelands properties. Properties include unimproved land, vacant and occupied buildings, temporary buildings, shelters, corporation yards, transportation and energy production facilities, restaurant, entertainment, golf, marina and harbor, wetlands, parks, office space, historically significant properties, telecommunications facilities, infrastructure facilities, and shoreline and tidelands properties held in trust by the City of Vallejo on behalf of the State Lands Commission.

Real Property Data Estimates:

A.	Land Area of City of Vallejo[1]	30.2 Square Miles
B.	Value of the City's Real Estate[2]	$300-400,000,000
C.	Land Only Allocation[2]	$140 to 200,000,000
D.	Improved Buildings[3, 4]	1,800,000 Square Feet
E.	Lease Revenue[5]	$700,000
F.	Leased Properties[6]	100 +/-
G.	Annual Cell Site Revenue (paid by Carriers)	$240,000
H.	Cell Sites Leased[7]	10
I.	Vacant/Unimproved Land Parcels[8, 9]	80 +/-

Notes:
1. Used for benchmarking comparisons
2. 2001 Appraisals escalated to 2006 (estimates only)
3. Owned and/or leased buildings and structures (incomplete list, work in progress)
4. Lenar controlled Mare Island properties not included in the above totals
5. Rent receivables forecasted for 2006, not including Six Flags revenue sharing or marina berth rentals.
6. Properties leased by City, Subleased, Leased to City, GVRD, Telecom Cell Sites
7. Cell sites on towers, PG & E power line easements, on buildings (25 year terms with escalation)
8. Vacant land includes; un-improved lots, fractional parcels, easements (identification is a work in progress)
9. The above data does not include State Land Trust property or Watershed properties such as; Lake Madigan, Frey, Green Valley, Lake Curry rights (identification of all holdings a work in progress)

4. Public Policy Objectives regarding the use of real property assets

4.1 City properties are currently used in various ways, that include but are not limited to; public assembly, administration, public safety, public health, education, Corporation Yard (shops), storage, private purposes, recreation, entertainment, passive and active parks, open space, marinas, lakes, waterways, bus stops, streets, infrastructure, water and utilities, landscape easements, telecommunications, public housing and properties the City leases as a Tenant. City-owned properties are also leased, subleased, licensed or permitted to third parties. The real estate may be used currently, or needed in the future, by the City for some public function or future planned use. In other cases the real estate is not part of a plan, has no use to the City improved or un-improved and should be identified as a candidate for disposition.

4.2 Use of the City real property regardless of the type of real property asset shall meet one or more of the following non-prioritized objectives:

1) Support the municipal functions of the City of Vallejo
2) Generate revenue that is sustainable
3) Mitigate on-going expense to the City whenever possible
4) Supports development of appropriate Infrastructure in Vallejo (i.e., parking, roads, sewer, and landscaping)
5) Contribute to the City's Tax revenue base
6) Support a specific social service, historical legacy or affordable housing needs of he community that supports the City's mission statement / goals and objectives.

5. Types of Transactions

5.1 The following list describes the various transactions that the City would consider in the management of its assets. The transactions described are driven by a portfolio management plan that seeks to balance the cost of holding non-revenue producing properties versus revenue generating properties.

1) Acquisitions of real property, improved and land;
2) Disposition of real property and/or partial interests
3) Leasing/ sub-leasing property as Landlord or the City as a Tenant
4) Land Leases with improvements by third party(s)
5) Revenue Sharing Agreements
6) Operating Agreements with third parties
7) Granting Easements and/or Encroachments on land owned or controlled by the City
8) Licensing Agreements (real and personal property), i.e., vending carts
9) Granting of options, additional term, transfer rights, sale of business, assignment of lease, early termination, or any other right that may have

create economic benefit to the tenant by use of City owned or controlled property.

10) Order of an appraisal from a California Certified Appraiser with appropriate qualifying credentials for the specific property. Property transactions in excess of $3,000,000 shall be reviewed by a MAI designated appraiser unless directed otherwise by the City Manager.

6. Analysis of Transactions

Transactions shall be analyzed to assure transparency relative to the public stewardship of City real property assets that are being executed by City Staff and to ensure that the City Council fully understands the short and long term impact that a real estate decision has on the City.

6.1 Analysis of real property transactions shall include, but is not limited to the following considerations:

1) Market analysis necessary to benchmark rates, price and terms of transaction
2) Title Report (preliminary and full title report)
3) Credit Check of third party through a nationally recognized credit verification organization such as Dunn and Bradstreet (D&B) Reports, Inc. or other comparable credit organization.
4) Review of bid estimates provided by tenant organization to ascertain reasonableness of project costs and/ or tenant improvements
5) Preparation of a cash flow project showing the financial benefits to the City over the initial term of the Agreement or Lease

7. Use of Brokers and Agents:

Use of brokers and agents to market, acquire, dispose of and lease properties owned or controlled by the City shall be used at the discretion of the City Manager. In the event a broker is used to acquire, sell or lease a property, it is the policy of the City to document the terms and the conditions of an "Exclusive or Non-exclusive Authorization to; Acquire, Sell or to Lease Property". All brokerage agreements should be treated as being negotiable for the purposes of this policy.

Essential terms of these agreements shall specifically include the following language and sections describing the terms of brokerage agreements:

1) Parties to the Agreement
2) Property Description
3) Price and Terms of the transaction
4) Extension of initial listing (extension of marketing period)
5) Commission Schedule and Payment Schedule (see Appendix B)
6) Lease terms of more than three (3) years
7) Month-To-Month tenancy commission statement and terms

8) Determination for the payment of a commission (s)
9) Extension of term or additional space leased or added to listing
10) Purchase of property by tenant
11) Obligation to pay commission (agree in advance who is to pay broker and how payment will be funded)
12) Cooperation by parties "Client/ Broker" to achieve objective
13) Non-discrimination language in the Agreement
14) Client Representations; owner of record, no other person or entity has rights over property, no delinquencies or defaults, not subject to court jurisdiction, both parties have made no promises or representations not included in the agreement
15) Disclosures, expert matters and responsibilities of client and brokers
16) Defense, Indemnity and Hold Harmless Clause
17) Dual Agency Disclosure and Authorization Clause
18) Mediation and Disputes
19) General Provisions clause and statements

8. Responsibilities of Stakeholders

The following section defines roles within the City government necessary for the successful management of real property assets. Software for the management and accounting of real estate assets should be obtained and integrated with the GIS database and the resources deployed to maintain a fully functional Asset Management and Accounting System that serves the needs of all City stakeholders.

1) *Asset Management Program in the Economic Development Division:* The Real Property and Asset Manager shall lead this program. The asset management program will encompass all real property owned, leased, managed, controlled or having an interest in by Agreement. The purpose of the Asset Management program is to provide a proactive program of City sponsored stewardship for the real property assets of the City of Vallejo which includes the integration of property planning and day-to-day operations into the decision process.

2) *City Attorney's Office*: The City Attorney's Office shall provide support to the function of Real Property and Asset Management in all matters effecting the management of City real estate matters. Supplemental legal services shall be provided to augment the City Attorney's services as required. Real Property and Asset Management transactions and activities shall be in conformance with rules and regulations governing the City of Vallejo.

3) *Development Services Group:* All projects on City property shall conform to the City's General Plan, Zoning Regulations and Planning Guidelines, and building code requirements.

4) *Housing & Community Development Division:* This division shall be included in the disposition of residential properties to ensure affordable housing development providers are provided the opportunity to acquire the property.

5) *Public Works Department:* The Pubic Works department shall provide facilities and property management support and maintenance services for properties within the City's real estate portfolio, i.e., cleaning, landscaping, heating, air condition and plumbing, electrical maintenance, fire alarm, security, landscaping, grounds, electrical maintenance, roof and structure repair.

6) *Risk Management Division:* Risk Management shall be included in the review of all transactions affecting the properties, tenants, operations or the construction or demolition of improvements Liability and Property Insurance shall be maintained by the City or through tenant leases, as well as assuring that the City, Council, Staff are indemnified and named as additionally insured..

7) *Finance Department:* The Finance Department shall ensure that account methodology and processes shall be made sufficient to fully support and account for the city's real estate assets, e.g. budget tracking, accounts receivable/ payables, aging report, real property inventory system, fixed asset accounting, surplus property inventory, financial policies and guidelines.

8) *Information Services Division:* Provide technology and software platforms that support that will emphasize efficient asset management of the City's portfolio e.g., research databases, access to financial database, GIS, VEDIS Mapping, Title Records, Market Data, linkages to various City data sources ...

9) *City Clerk's Office:* File and maintain all agreements in accordance with established city policies and procedures, public record requirements and in compliance with all laws.

10. Approval and Authority

10.1. All purchases and sales of real estate and the execution of all lease agreements are governed by the provisions of Chapter 3.20 of the Vallejo Municipal Code, except that the City Manager, or his or her designee, shall have the authority to approve, subject to the City Attorney's review and approval to form the following real estate transactions:

1) Lease renewals and rate adjustments up or down that affect no more than twenty percent (20%) of the current rental rate and impact the lease term for a period of no greater than three years.

2) Leases or sub-leases of three years or less with no automatic options to extend the term or with a leasehold value of $25,000.00 or less.

3) Termination of lease or sub-leases based upon original term (not a forced action).

4) Initiate unlawful detainer actions, foreclosures, requests for reconveyance when promissory notes are paid in fuller and other administrative note management responsibilities of a minor nature]

5) Regarding Agency or Non-Profit real property transactions with tenant expectations for below market rent, property expense and/or capital investment partially or fully funded by the City of Vallejo, the City Manager must have City Council approval of all business terms.

6) Lease Assignments to qualified third parties, name changes (lessee entity), approval of sale of business to a new operator (subject to City licensing, planning and permitting processes).

7) Tenant improvements affecting less than twenty percent (20%) of the space (subject to City licensing, planning and permitting processes).

8) Disposition of surplus non-strategic improved or un-improved property valued at $500,000 or less for a single asset or group of asset.

9) Licenses for temporary use of City-owned properties for permitted uses (1 year or less with provisions to renew annually with 30 day notice to cancel at City's option).

10) Emergency Actions that are required to repair, replace or taken to reduce life threatening situations (public safety), structure (s) or City infrastructure pursuant to the Vallejo Municipal Code 3.20.080.

11) Commission rates and schedules for brokers for their participation in Sales and Purchase Agreements and Leasing activities (pre-approved in agreements by the City Manager).

12) Assignments and name changes, Renewal of lease based upon stated terms of lease, CPI adjustments, tenant improvements, exercising previously approved options to renew, terminations, lot line adjustments, easements agreements and encroachment permits.

10.2 Real estate transactions, including but not limited leases, sales of surplus property and acquisitions of property are projects under the California Environmental Quality Act ("CEQA"), (California Public Resources Code Sections 210000 et seq.). All determinations about real estate transactions under this Policy shall comply with CEQA.

11. Real Property and Asset Management Reporting

11.1. The City Manager shall prepare a Real Property Activity Report and activities to the City Council no later than July 31st of each year. The content of the report will included the following:

1) Portfolio Statistics (acres, square feet, occupancy, revenue, vacant parcels, and capital projects);
2) Updated Portfolio Management Plan;
3) Leases Executed or Renewed;
4) Leases on Month – to – Month;
5) Licenses (new and existing);
6) Leases Terminated;
7) Agency and Non-Profit Leases;
8) Properties Acquired;
9) Properties Sold;
10) Planned activities for the up-coming (6) months; and
11) Report on any outstanding or anticipated litigation

11.2. The disposition strategy for each real estate asset shall be identified and which policy objectives are being met by the strategy.

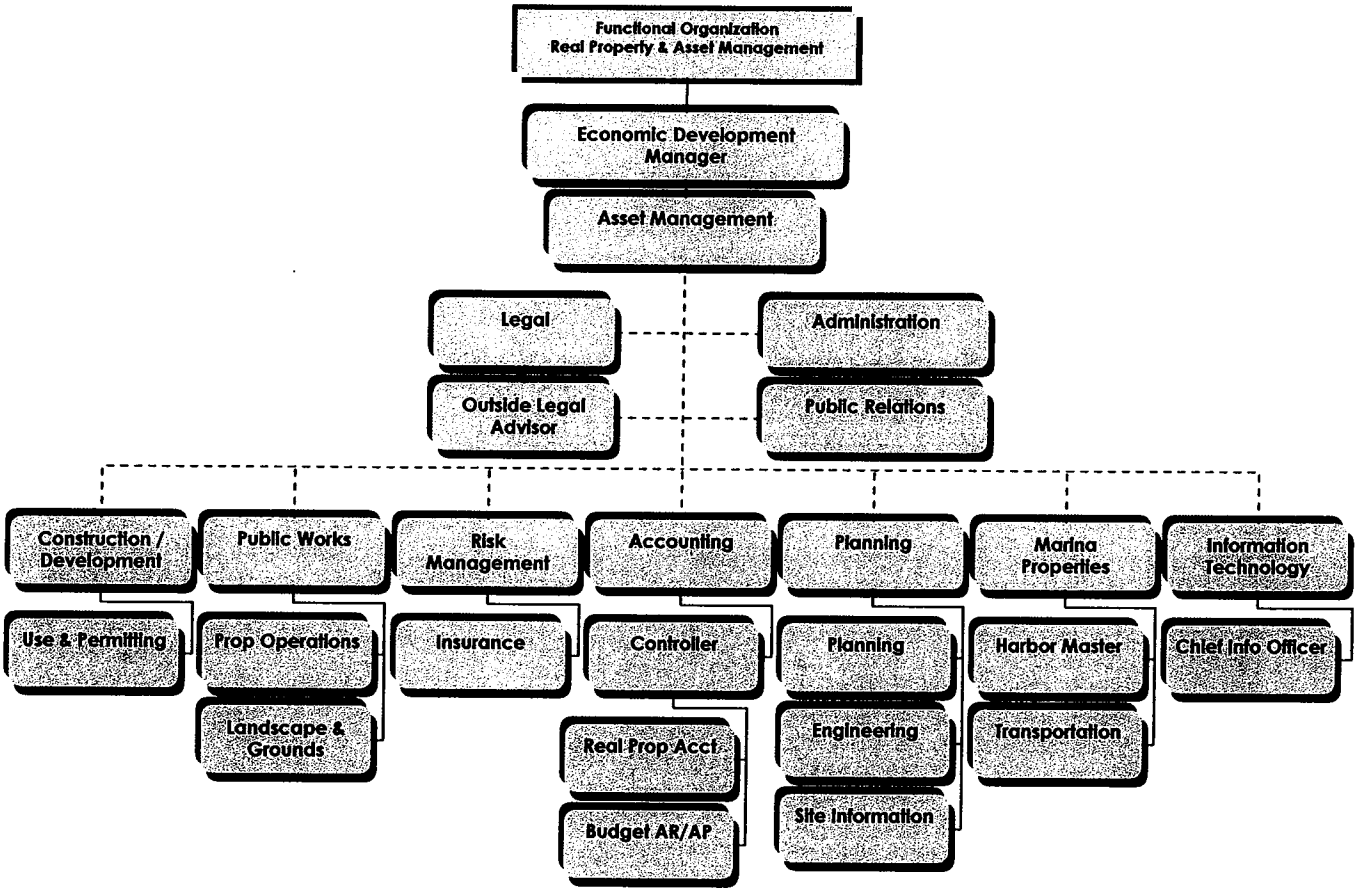
12. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Policy is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Policy. The City Council hereby declares that it would have adopted this policy and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Exhibit I

Real Property and Asset Management Function Organization Chart (2006)

The functional organization chart below represents the various stakeholders within the City of Vallejo that have impact and share accountability for the management of the City's real estate assets. It is the intent of this policy to maximize the use of the City's real estate assets through improved management processes, stewardship, and fiscal transparency. The achievement of this goal can only be achieved by the various City Departments noted below working productively to produce sustainable results.



Appendix A

Definitions

Appraisals: The determination of what constitutes a fair price; valuation, estimation of worth, the preparation of a report representing the method of determining the value.

Asset Accounting and Finance: The systematic and accurate accounting of income and expenses for properties and interests identified in the property listing. The accounting should be of such material substance that timely reports reflect the current status of all properties owned and/or leased by the City of Vallejo, including but not limited to; revenues (accounts receivables and aging report), expenses (accounts payable), capital projects (WIP), budget to actual reporting, real property inventory, fixed asset inventory and any other specialized reports or subsidiary reports required to manage the real estate portfolio in a manner consistent with best practices used in portfolio management and accounting.

Authority to Act: Any agreement between the City and a third party must be executed pursuant to the authority granted in Chapter 3.20 of the Vallejo Municipal Code and this Policy.

Brokers and Agents: An agent who acts as an intermediary or negotiator, between prospective buyers and sellers; a person employed to make bargains and contracts between other persons in matters of trade, commerce, and navigation. The procuring party who introduced parties in a transaction will generally be due a brokerage fee for their action, however limited or immaterial. Leasing commissions will represent shall be included in cash flow projections over the term of the initial lease in the analysis of transaction benefits to the City and economic impact.

Business Agreements: Are primarily business arrangements that involve the use of a City asset. The rental/ lease payment for the Business Agreement should be market-driven and periodically adjusted. These agreements are frequently assigned a program manager.

Capital Projects: A comprehensive approach for the management of capital projects from inception through close-out including but not limited to the following; project conceptual plans, preliminary estimates, schedule, design, estimates, value engineering, design review, permits, construction bids, award, construction, change orders, field orders, inspection, commissioning, acceptance, as-built drawings, occupancy permit, accounting and job close out. The steps for capital projects, although somewhat scalable are required for successful completion of any project, by-passing steps will only compromise the success of the project.

Collaborative Agreements: Generally these are partnership arrangements whereby the lessee/designed contactor works with the City in the operation of a facility or delivery of a service. These agreements should be associated with a strategic outcome that may, if appropriate, justify the collection of below market rents/leases or the City's direct support of the service. All collaborative agreements must be assigned a program manager to fix accountability for specific performance of the agreement(s).

Consultants: Firm's and individuals who sell their time, expertise and contacts to assist a principal in diagnosing and solving problems, supplementing the lack of staff resources or fulfilling a staff position on a long term basis. Consultants generally are employed on a rate per hour basis, and at times for a fixed fee. Agreeing on terms, scope of work (SOW), Limiting Conditions, Reimbursable Expenses, Project Schedule and expected Deliverable (agreed upon completed product to be delivered at the conclusion of the contract).

Lease: A contract by which a rightful possessor of real property coveys the right to use and occupy that property in exchange for consideration, usually rent. Such a conveyance plus all covenants attached to it. The written instrument memorializing such conveyances and convents. The piece of real property is so conveyed. Lease forms; assignable lease, commercial lease, concurrent lease, consumer lease, durable lease, finance lease, full-service lease, graduated lease, gross lease, ground lease, leveraged lease, master lease, month-to-month lease, oil and gas lease, and sandwich lease.

Market Research: An in-depth study of a specific market, property, rental rates, sales comparables, demographics and economics locally or regionally. Multiple sources should be used to confirm data, conformation of data received, use statistical methods to sort and analyze, normal time that material was gathered versus newer data, place precise limits on the data being collected and assure that data is comparable data. Attempt to determine why data was gathered originally, for what purpose, what time period and assumptions used to define data sets. Beware of canned reports that are free or available on the Web, these may be of low value in assessing a market or establishing value.

Measurement Standard: Standards for the measurement of real property area maintained by the American Standards Testing and Materials (ASTM), standard methodology for measurement is ASTM document E 1836-96 (up-dated) Standard Classification for Building area Measurement (also administered through the Building Owners and Managers Association International (BOMA and International Facilities Management Association (IFMA); Gross Area, Rentable Area, Usable Area, Assignable Area are the common measurement terms used in leases to identify the demised space.

Non-Profit Organizations: The City from time to time will elect to make available City property for the exclusive use of a community based service. The use of the space, condition and level of maintenance agreed upon shall be monitored and tracked by the designated program manager and/or asset manager.

Personal Property: Any movable or intangible thing that is subject to ownership and not classified as real property.

Portfolio Tracking: Methodology and supporting systems to maintain record keeping necessary to account for real estate assets in the form of leased and owned properties, vacant parcels and partial interests. Tracking may be a paper based system, spreadsheet or commercially available software program. Any method used should have defined reports, input/output quality assurance, and be routinely used and reviewed in the day-to-day management of the portfolio to assure compliance, contractual performance, to maximize cash flow to the City and to mitigate risk.

Possessor Interest Tax: A taxable possessory interest (PI) is created when a private party is granted use of real property owned by a non-taxable entity. The key criteria that must exist to have a taxable possessory interest is the right to passion of the real property owned by the non-taxable entity. The possession must be independent, durable, and exclusive of rights of others. It must be a private benefit to the possessor above which is granted to the general public (i.e., commercial office, restaurants, retail stores, uncertified non-profits, etc....).

Possessory interests include such property as; boat slips on public lakes, marinas or rivers, mini-storage facilities, private walkways, airplane tie-downs, telecommunication antennas and equipment houses, cattle grazing rights on Federal, State and City land, tenant concessionaires at conventions or fairs, cabins on U.S. Forest lands, public golf courses leased to private operators, ski resorts, airline and cargo space at airports, container operators at major harbors, the right to grow crops by land owned by community colleges, the right to have vending machines located on government owned buildings.

Real Property: Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements).

Repairs and Maintenance: Routine repair of property architectural elements, systems, components, grounds, including but not limited to roof, structure, landscaping, parking surfaces, fire and security systems, sewage, domestic water and ingress/ egress pathways.

Tax Properties: Properties that have been improved and entered into the County Assessors Property Tax records, including those properties eligible to pay Possessor interest Tax.

Telecommunications: Antenna sites, microwave towers and dishes, cell sites, underground communications, video, digital and optical cables/ fiber, supporting infrastructure, back-up and emergency service equipment, including but not limited to

street and building "points-of-presence". "POP's, "point-of-entry"(POE's), "network operations control centers" "NOC's" , aquatic cable crossings, buried conduit and building networks including local area networks (LANS), WiFi/ Max WiFi transmitter/ receiver installations. All of these installations may require licensing, long term leases, easements and/ or permission to encroach on an existing easement (s).

Third Party Agreements: Any agreement between the owner/ Lessor with a party disassociated with the ownership whereby a contract is agreed upon for specific services, performance over a specified period of time.

Use Agreements: A Use Agreement grant a privilege or right (exclusive or non-exclusive) to a party to conduct commercial or non-commercial business activity at a defined site or area. These agreements are typically for a fixed term, but may have options to extend the initial term.

Appendix B

1. Lease Commission Schedule and Payment (example only)

Amount of commission (always subject to negotiations): The commission is based upon the value of the rent to be paid by the tenant, rent being defined as the dollar value of consideration paid by the tenant for the benefit of the Owner of the property. In consideration of being the procuring party through a pre-existing agreement (listing), the owner has agreed to pay commissions to a Broker(s) for services provided. Size of the tenant, Gross (full serviced) or Net (Tenant pays expenses), who pays the broker's commission and the market for a specific property (difficulty), terms of payment and month-to-month tenancies are variables in setting the commission rate. The full amount if the leasing commission is generally due upon tenant occupancy or at the time of the first rental payment. Care must be taken not to give away exclusive "listings" present or future, commissions on future renewals or option extensions (always requested by brokers). Costs associated with brokerage commissions should be included in staff reports and included in the cash flow analysis and City budgeting.

Typical Lease Commission Schedule:

Gross Lease		Net Lease
6% of the rent for the first 12 months		7% of the rent for the first 12 months
6% of the rent for the second 12 months		7% of the rent the second 12 months
6% of the rent for the third 12 months		6% of the rent for the third 12 months
4% of the rent for the fourth 12 months		5% of the rent for the fourth 12 months
4% of the rent for the fifth 12 months		5% of the rent for the fifth 12 months
3% of the rent for the next 60 months		4% of the rent for the next 60 months
2% of the rent for the balance of the term		3% of the rent for the balance of the term

2. Purchase and Sales Agreements (example only)

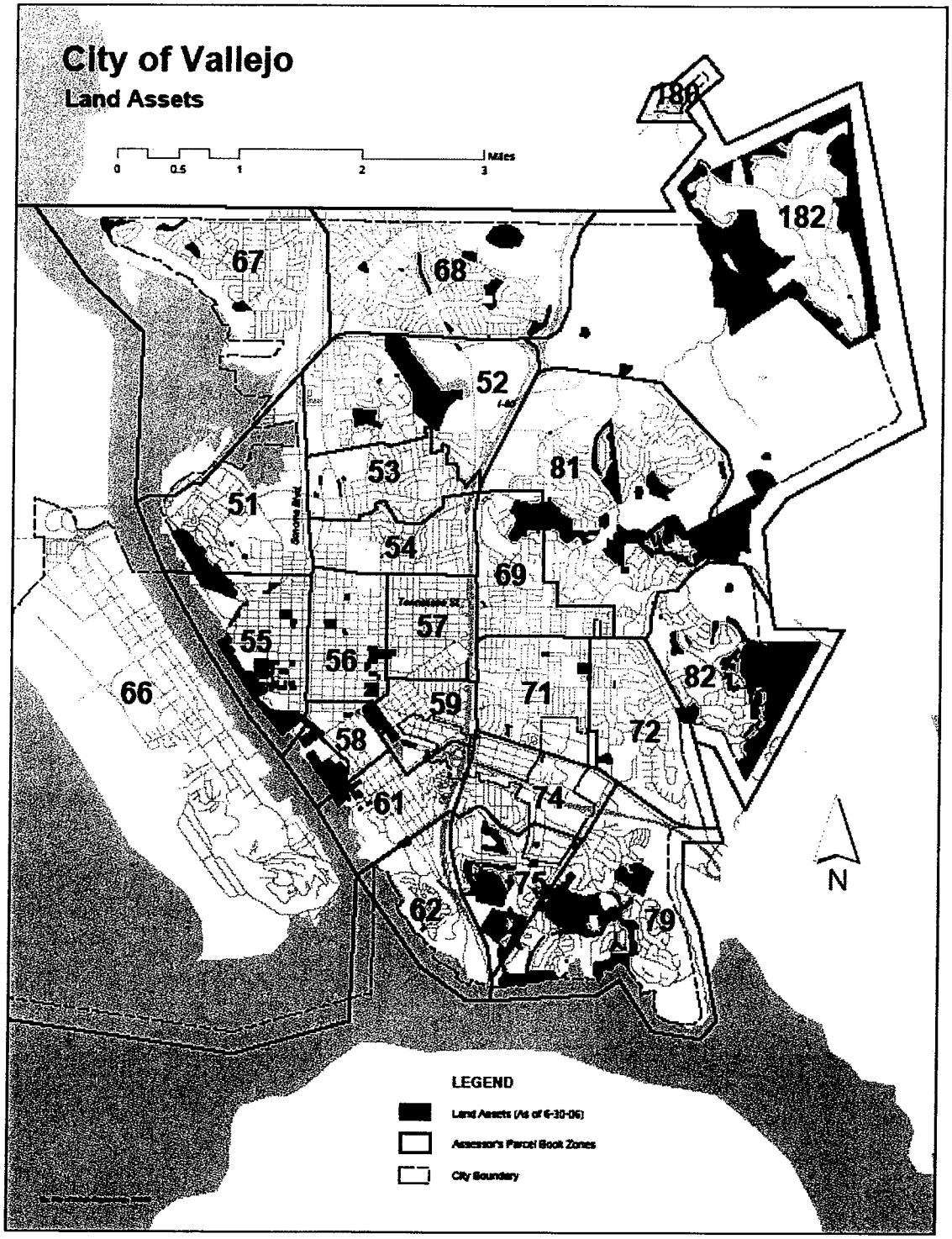
The Purchase and Sale Agreement used to buy and sell property is a detail document that requires adherence by all parties. The Broker is the primary driver in satisfying all of the requirements addressed by the State of California in the conveying real property. A typical range of Broker (s) Commission is between 2 – 6% of the sale price achieved. The lease/ sales commission is based upon many variables: terms of sale, financing, down payments, Title Report, property tax, closing costs, possession, document delivery, contingencies, inspections, pest report, personal property, lease review, permits, zoning, escrow, warranties and guaranties, specific performance, liquidated damages,

Government Acts and Regulations, dispute resolution, Broker's disclosure, maintenance provisions, risk management considerations, tax deferred exchanges, estoppel certification, condition of property, assignments, hazardous

substances, tests, indemnifications, encumbrances, encroachments and pending litigation. Costs associated with brokerage commissions should be included in staff reports and included in the cash flow analysis and City budgeting for all transactions.

Appendix C

City of Vallejo Map (geographic boundaries)



RESOLUTION NO. 73-816 N.C.

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

STATEMENT OF POLICY REGARDING FINDER'S FEE TO BE PAID BY THE CITY OF VALLEJO FOR PARTICIPATION OF RECOGNIZED AGENTS AND REAL ESTATE BROKERS IN THE LEASE OR SALE OF CITY OF VALLEJO LAND.

1. Agent or Broker shall show the prospective developer the project area and explain the zoning, proposed uses, parcels available, and parcels sold and under option and to whom.

2. Agent or Broker must make known and introduce to the City Manager, the prospective developer and specifically describe the approximate location, size and type of development in which the prospective developer is interested. The City Manager must receive a written statement in which the developer designates the Agent or Broker as his agent in the proposed transaction. The Agent or Broker must be prepared to furnish to the City Manager a site development plan, architectural rendering, a financial statement of the prospective developer in an acceptable form, and a development time table.

3. The City of Vallejo reserves the right to cancel the eligibility of an Agent or Broker to collect a finder's fee if a lease or sales agreement to his prospect has not been consumated within a period of one (1) year from the date he made known to the City of Vallejo the name of his prospect. (Eligibility may be extended for additional one (1) year periods by the City of Vallejo at its option providing the City of Vallejo receives a written progress report showing negotiations are still pending.)

4. Finder's fee will be paid only on consummation of sale and when escrow is closed. The City of Vallejo shall have the right to reject any prospective developer.

5. The Broker or Agent and the City of Vallejo will jointly handle the details of the transaction. Agent or Broker will handle sales agreement, the opening of escrow and all documentation necessary for the completion of sale in cooperation with the City of Vallejo.

6. The City of Vallejo will cooperate with the Agent or Broker by making available to him maps and other printed material which may be helpful.

7. The City of Vallejo assumes no additional expense except the Finder's Fee as stipulated under Paragraph 8, of this policy.

8. FINDER'S FEE SCHEDULE:

a. SALES PRICE

Finder's fee will be computed on the total sales price multiplied by the applicable percentage rate as follows:

$ 1	to	$ 50,000	5%
$ 50,001	to	$ 75,000	4½%
$ 75,001	to	$100,000	4%
$100,001	to	$125,000	3½%
$125,001 or more			3%

b. LEASE VALUE

Finder's Fee will be computed on the total net value of the lease as determined by multiplying the term of the lease by the annual rental and applying the following schedule:

5% on the value up to $50,000 plus

4½% on the next $25,000 plus

4% on the next $25,000 plus

3½% on the next $25,000 plus

3% on the balance.

c. In each case in which the City Council and the agent or Broker agree to negotiate the amount and terms of Finder's Fee, the City Council may negotiate and prescribe a fee and/or terms that may differ from the fees and/or terms prescribed above.

9. The City of Vallejo reserves the right to lease or sell to prospects who have previously contacted the City of Vallejo without payment of Finder's Fee.

BE IT FURTHER RESOLVED , that Resolution No. 70-660 N.C., adopted by the City Council October 13, 1970 is hereby repealed.

ADOPTED by the Council of the City of Vallejo at a regular meeting held December 3, 1973, by the following vote:

AYES: Councilmen Asera, Bertuzzi, Cunningham, Douglas and Dubnoff

NOES: None

ABSENT: Councilmen Curtola and Sibley

Florence E. Douglas
FLORENCE E. DOUGLAS, MAYOR

ATTEST: Helen G. Seeber
HELEN G. SEEBER, CITY CLERK

RESOLUTION NO. 01-275 N.C.

BE IT RESOLVED by the Vallejo City Council as follows:

WHEREAS, the City of Vallejo owns certain real property; and

WHEREAS, some of the real property is unimproved, vacant land; and

WHEREAS, City staff has been approached to license or lease said property on a short term basis; and

WHEREAS, in January 1998, the City Council authorized the City Manager to enter into short term subleases or sublicenses agreements for property on Mare Island for up to five years; and

WHEREAS, the authorization for City-owned property would be similar;

NOW, THEREFORE, BE IT RESOLVED that the Vallejo City Council hereby authorizes the City Manager or his designee to administratively enter into a license or lease agreement of up to three years for City-owned property.

ADOPTED by the Council of the City of Vallejo at a regular meeting held on June 19, 2001 by the following vote:

AYES: Mayor Intintoli, Councilmembers Cloutier, Davis, Donahue, Pitts, Rey and Schivley

NOES: None

ABSENT: None

//s//
ANTHONY J. INTINTOLI, JR., Mayor

ATTEST: //s//
ALLISON VILLARANTE, City Clerk

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ADMIN B

CITY OF VALLEJO

Agenda Item No.

COUNCIL COMMUNICATION

Date February 27, 2007

TO: Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager / Community Development

SUBJECT: CONSIDERATION OF MARE ISLAND EARLY TRASNFER PROCESSING AGREEMENT BETWEEN THE CITY OF VALLEJO AND WESTON SOLUTIONS

BACKGROUND & DISCUSSION

On January 9, 2007 the City Council approved an Exclusive Right to Negotiate Agreement (ERN) between the City of Vallejo and Touro University regarding North Mare Island. One element of the ERN was agreement on the business terms of a proposed agreement between the City of Vallejo and Weston Solutions regarding work necessary to negotiate and complete the transfer of all remaining Navy–owned parcels on Mare Island to the City of Vallejo. As anticipated in the January 9, 2007 staff report, these business terms have been expanded into a formal agreement between the City and Weston Solutions for the City Council's consideration.

The proposed Early Transfer Processing Agreement between the City of Vallejo and Weston Solutions is attached (see Attachment B). As detailed in the agreement, Weston would take the lead on behalf of the City in negotiating the terms of the Final Early Transfer for all parcels (including North Island parcels subject to the ERN between the City and Touro, Lennar Mare Island (LMI) parcels subject to the Acquisition Agreement between the City and LMI that have yet to be transferred by the Navy and future City-owned park parcels at the south end of Mare Island). This structure would ensure that all remaining Navy-owned parcels would be included in the Final Early Transfer and one contractor (Weston solutions) would be engaged with the Navy and regulatory agencies on the transfer of all parcels. This structure would meet the interests of the Navy and the regulatory agencies.

Touro would fund its proportionate share of substantiated North Island prior and future Final Early Transfer negotiation costs and Weston would fund the balance of these Final Early Transfer negotiation costs for parcels south of G Street, pursuant to a separate agreement with LMI. The Navy would fund the cleanup costs upon the execution of the agreements that would govern the transfer and environmental remediation.

The proposed Early Transfer Processing Agreement addresses a proposed schedule for the early transfer process, communication between the parties and the anticipated agreements that would govern the transfer and environmental remediation (e.g. consent agreement, environmental services cooperative agreement and Mare Island Remediation Agreement). The proposed resolution addresses in detail the reason for pursuing this agreement with

Weston Solutions and lays the foundation for expeditiously negotiating the early transfer agreements referenced above. The early transfer agreements would require future City Council approval.

Fiscal Impact

Touro would be responsible for payment of North Island related costs incurred by Weston during the negotiation of these agreements. These payments would be made by the City and reimbursed by Touro. A structure was established in the ERN in which Touro has agreed to provide security to the City to ensure funds are in place for these payments.

RECOMMENDATION

Staff recommends approval of the Early Transfer Processing Agreement.

ALTERNATIVES CONSIDERED

The primary alternative to pursuing a final Early Transfer of remaining Navy-owned parcels is to wait for the Navy to perform environmental remediation of the property. The timeframe for this clean-up would be uncertain. This approach could significantly delay the acquisition and reuse of these parcels (including property south of G Street and approximately 90 acres of property on North Mare Island).

PROPOSED ACTION

Approve the attached resolution authorizing the City Manager to execute an Early Transfer Processing Agreement between the City of Vallejo and Weston Solutions in substantially the same form as the attached agreement, authorizing the City Manager to execute amendments that do not modify the financial impact of the agreement on the City or the intent of the agreement, with any changes in a form approved by the City Attorney.

DOCUMENTS ATTACHED

Attachment A - Resolution
Attachment B – Proposed Early Transfer Processing Agreement between the City of Vallejo and Weston Solutions

CONTACT

Craig Whittom, Assistant City Manager / Community Development
707-648-4579 or cwhittom@ci.vallejo.ca.us

ATTACHMENT A

RESOLUTION NO. _____ N. C.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO FINDING THAT WESTON SOLUTIONS, INC IS UNIQUELY QUALIFIED TO PROVIDE SPECIAL SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE EARLY TRANSFER PROCESSING AGREEMENT

WHEREAS, the Mare Island Naval Shipyard was ordered closed in July 1993 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended. Subsequent to that order, on July 26, 1994, the City approved the Mare Island Final Reuse Plan, which divided Mare Island into thirteen Reuse Areas; and

WHEREAS, City also has adopted the Mare Island Specific Plan to govern land use policy and development processes for Mare Island. The City approved a Specific Plan Amendment No. 1 for Mare Island and related environmental analysis, including a Subsequent Environment Impact Report, both of which were released for public comment in early 2005, and approved on or about December 6, 2005; and

WHEREAS, Weston has been performing extensive and complex environmental remediation services on Mare Island, both for the City and under direct contract for the US Navy since 1999. A sample listing of such services include:

a. the installation of a geosynthetic cap and closure of a 72 acre landfill involving wetlands mitigation;
b. the geophysical surveying and anomaly investigation of the Western Magazine Area and IR Site 05 for the removal of buried munitions;
c. the removal of metals-contaminated soil from the former Marine Corps Firing Range located within 1,00 feet of the newly constructed homes;
d. the location and removal of 1,291 live Munitions and Explosives of Concern (MEC) and 618 radiological items present at Historical Outfall Site 4S, including the removal of over 20,000 cubic yards of lead-impacted soil and the mechanical sifting of over 30,000 cubic yards of soil;
e. the performance of a digital geophysical mapping survey to locate potential MEC items in the former Production Manufacturing Area (PMA) and South Shore Areas (SSA);
f. the negotiation of a conceptual site model with the regulatory agencies to support future munitions remediation of the PMA and SSA areas;
g. the excavation and removal of PCB and metals-contaminated soil at the former Defense Reutilization and Marketing Office (DRMO) Yard, and the performance of confirmation sampling to verify the removal of all soils exceeding the site cleanup goals;
h. the performance of a radiological survey and the removal of material over 500 acres of dredge ponds in support of a finding of suitability for early transfer for

the Western Early Transfer Parcel, using a variety of technological methods to locate and remove radioactive strontium and radium buttons from the dredge ponds;

i. the processing of over 4,500 cubic yards of dredge spoils from the dredge ponds, resulting in the removal of 53,803 MEC items, 47,527 MEC-scrap items, 424 radiological items and 642,000 lbs of metallic debris; and

WHEREAS, in 2002, Weston negotiated an EDC transfer of the Western Early Transfer Parcel (WETP) on Mare Island on behalf of the City of Vallejo, which consisted of 3,200 acres, and in conjunction therewith, performed environmental cleanup activities within the WETP to allow the transfer to proceed; and

WHEREAS, Weston was selected by the City of Vallejo and the Navy under an Environmental Services Cooperative Agreement (ESCA) to remediate the Area H-1 landfill and surrounding disposal sites, Western Magazine Area (WMA), and IR-05, which areas are all adjacent to the WETP; and

WHEREAS, Weston has obtained approval for the final remedy for Area H-1 and expects implementation of the approved remedy to be completed in 2007, and the remedial investigation phase and munitions removal work at the WMA and IR-05 to be completed in the near future; and

WHEREAS, in May of 2006, Weston was selected by Lennar Mare Island, LLC ("LMI"), through a competitive bid process, to assist the City with negotiations with the Navy for the early transfer of the North Island parcel, and from May 2006 through August 2006, Weston performed various studies and other analytical work in support of the City's efforts to complete the transfer of the North Island parcel; and

WHEREAS, Weston is uniquely qualified to perform the special services identified in the Early Transfer Processing Agreement (ETPA) due to its long history of performing work on Mare Island; its experience in working with the Navy and its knowledge of Navy practices and procedures; and its expertise in environmental remediation, which will be a critical aspect of the EDC; and

WHEREAS, Weston is uniquely qualified to perform the environmental remediation services that will be required pursuant to the contemplated Environmental Services Agreement ("ESCA") between the City and the Navy, and that will be assumed by Weston pursuant to a Mare Island Remediation Agreement ("MIRA"), due primarily to its expertise in environmental remediation and its familiarity with the areas to be covered by the ESCA from prior work for the City and Navy on Mare Island, as described above; and

WHEREAS, Weston is currently performing environmental remediation work on Mare Island under existing agreements with LMI, and since hazardous material contamination problems often impact multiple parcels and tend not to observe property boundary lines, the introduction of a second environmental contractor on Mare Island would potentially delay and increase the cost of environmental remediation work due to conflicts regarding

the scope of remediation responsibility, particularly if the contractors are performing remediation work in close proximity to each other; and

WHEREAS, the process of competitively bidding the work to be performed pursuant to the MIRA, when compared to the process of negotiating the MIRA with Weston would delay the anticipated early transfer and environmental remediation, thereby lengthening the overall time for redevelopment of the EDC parcels, and further would increase the costs of such services, due in part, to the costs and time for a new environmental remediation contractor to mobilize, and most importantly, to develop the knowledge base necessary to effectively and efficiently perform the remediation work; and

WHEREAS, while performing work on Mare Island during the past eight years, Weston has developed and maintained excellent working relationships with key regulatory agencies (such as the California Department of Toxic Substances Control, California Department of Fish and Game, U.S. EPA Region IX, California Regional Water Quality Control Board and the U.S. Fish and Wildlife Service), the City of Vallejo, the U. S. Navy, the California State Lands Commission, the Mare Island Restoration Advisory Board and other stakeholder groups; and

WHEREAS, Weston's demonstrated ability to work effectively and cooperatively with key regulatory agencies, the City, LMI, the U.S. Navy and other stakeholders at Mare Island will result in the acceleration of site remediation and closure for the remaining EDC parcels, thereby furthering the timely reuse of the remaining EDC parcels by the City and private developers; and

WHEREAS, Vallejo Municipal Code section 3.20.080 which identifies certain exceptions to the City's competitive bidding requirements does not preclude the City from utilizing exceptions to the City's bidding requirements that are recognized or established by the judiciary. In particular, section 3.20.080 does not preclude the City from negotiating the ETPA or the MIRA with Weston in order to obtain the best economic result for the public in the least amount of time; and

WHEREAS, City and Weston now desire to enter into an Early Transfer Processing Agreement, whereby Weston will assume responsibility for negotiating the EDC of all remaining EDC Parcels with the Navy and performing other related tasks and functions, including preparation and approval of plans for remediation of the EDC Parcels.

NOW, THEREFORE, the City Council of the City of Vallejo does hereby resolve as follows:

Section 1. Findings. The City Council hereby finds, based upon the recitals set forth above, and its consideration of all the written comments and public testimony it has received, that due to the nature of the Early Transfer Processing Agreement and the contemplated Mare Island Remediation Agreement, that requiring competitive bidding for the award of contracts for these services and work would not result in any advantage to the City in its efforts to contract for the greatest public benefit and that negotiating directly with Weston for the services and work to be performed under both agreements

provides the best opportunity for the City of Vallejo to economically and efficiently have the necessary services and work performed in a competent and responsible manner.

Section 2. Approval of Agreement. The City Council hereby approves and authorizes the City Manager to execute the Early Transfer Processing Agreement, in substantially the same form as the agreement attached to the Staff Report, and authorizes the City Manager to make minor clarifying or clerical changes, and in a form approved by the City Attorney

Section 3. Amendments to Agreement. The City hereby approves and authorizes the City Manager to enter into and execute any amendments to the Early Transfer Processing Agreement that do not modify the financial impact of the Agreement on the City or the intent of the Agreement, and in a form approved by the City Attorney

Section 4. Other Documents. The City Council hereby authorizes the City Manager or his designee to execute any other document or instrument and take any additional action as may be necessary to carry out the purposes of this Resolution.

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ATTACHMENT B

EARLY TRANSFER PROCESSING AGREEMENT

By and Between

CITY OF VALLEJO

and

WESTON SOLUTIONS, INC.

February ____, 2007

TABLE OF CONTENTS

LIST OF EXHIBITS

EARLY TRANSFER PROCESSING AGREEMENT

THIS EARLY TRANSFER PROCESSING AGREEMENT ("**Agreement**") is entered into as of February ____, 2007 ("**Effective Date**"), by and between WESTON SOLUTIONS, INC., a Pennsylvania corporation ("**Weston**"), and the CITY OF VALLEJO, a California municipal corporation ("**City**").

RECITALS

A. The Mare Island Naval Shipyard was ordered closed in July 1993 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended. Subsequent to that order, on July 26, 1994, the City approved the Mare Island Final Reuse Plan ("**Reuse Plan**"), which divided Mare Island into thirteen Reuse Areas.

B. City also has adopted the Mare Island Specific Plan to govern land use policy and development processes for Mare Island. The City approved a Specific Plan Amendment No. 1 for Mare Island and related environmental analysis, including a Subsequent Environment Impact Report, both of which were released for public comment in early 2005, and approved on or about December 6, 2005.

C. City and Touro University, Inc. ("**Touro**") have entered into an Exclusive Right to Negotiate Agreement dated January 9, 2007 ("**Touro ERN**"), which addresses, among other things (i) Touro's funding of certain early transfer costs and (ii) Touro's potential acquisition and development of the Touro EDC parcels (as defined below), which include that certain area described in Specific Plan Amendment No. 1 as Reuse Area 1A ("**Reuse Area 1A**"), including Touro's funding of its proportionate share of Mare Island infrastructure improvements pursuant to an acquisition agreement and development agreement and/or similar agreement between City and Touro. Reuse Area 1A contains approximately one hundred ninety-one (191) acres, approximately half of which is still owned by the Navy, and is depicted, along with the other EDC Parcels, on the Diagram of EDC Parcels attached hereto as Exhibit A.

D. The Touro ERN contemplates that City and Weston will negotiate and enter into an early transfer processing agreement whereby Weston will assume responsibility for negotiating an Economic Development Conveyance ("**EDC**") of all remaining EDC Parcels (as defined below) with the Navy and performing other related tasks and functions.

E. The Touro ERN further provides that Touro will reimburse Weston, on behalf of City, for a percentage of substantiated Prior Costs previously incurred by Weston and Lennar Mare Island, LLC ("**LMI**"), and a percentage of approved Future Costs to be incurred by Weston in connection with performance of Weston's obligations under the early transfer processing agreement.

F. City and Weston now desire to enter into an early transfer processing agreement, as contemplated by the Touro ERN, whereby Weston will assume responsibility for negotiating the EDC of all remaining EDC Parcels with the Navy and performing other related tasks and functions, including preparation and approval of plans for remediation of the EDC Parcels.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, City and Weston agree as follows:

ARTICLE 1
INTRODUCTORY PROVISIONS

Section 101. Scope and Purpose.

The purpose of this Agreement is to establish the rights, responsibilities and roles of the City and Weston, and in certain limited respects the roles of Touro and LMI pertaining to:

a. The Navy's proposed EDC of all remaining EDC Parcels to the City;

b. The Navy's proposed transfer to the City, through an Environmental Services Cooperative Agreement ("**ESCA**"), of the responsibility for completing environmental remediation of the EDC Parcels at Navy's expense;

c. The negotiation between City and Weston of a proposed Mare Island Remediation Agreement ("**Weston MIRA No. 2**") pursuant to which City would convey to Weston, through back-to-back escrows, all remaining EDC Parcels, other than the LMI EDC Parcels to be conveyed by City to LMI pursuant to the Acquisition Agreement between LMI and City dated November __, 1999 ("**LMI Acquisition Agreement**"), and Weston would assume responsibility for completing environmental remediation of all such EDC Parcels conveyed to Weston;

d. Weston's proposed conveyance to Touro of the Touro EDC Parcels following Weston's completion of cleanup of the Touro EDC Parcels, with the understanding that Weston shall not receive a purchase price for the Touro EDC Parcels;

e. Weston's proposed conveyance to City of the City EDC Parcels following Weston's completion of cleanup of the City EDC Parcels, with the understanding that Weston shall not receive a purchase price for the City EDC Parcels;

f. City's obligation to pay Weston, or at Weston's option to pay LMI on behalf of Weston, a percentage of substantiated Prior Costs (as defined in Section 401) previously incurred by LMI and Weston; and

g. City's obligation to pay Weston a percentage of approved Future Costs (as defined in Section 402) to be incurred by Weston in connection with performance of the EDC Negotiation Work (as defined in Section 201).

Section 102. EDC Parcels Defined.

a. Parcels V, VI, XVII (not including the portion subject to the public trust), XIX and I (but only the portion of Parcel I known as the Marine Corps Firing Range)

and which are subject to the existing LMI Acquisition Agreement are referred to in this Agreement as the "**LMI EDC Parcels.**"

b. Trust Termination Parcel II, Parcel XV-B(1) and, to the extent included in the Navy EDC conveyance and not required for road right-of-way purposes, Parcel XV-B(2) or any portion thereof, are referred to in this Agreement as the "**Touro EDC Parcels.**"

c. Parcels VII-B, X-B(1), X-B(2), and X-B(3), and the portion of Parcel XVII subject to the public trust, are referred to in this Agreement as the "**City EDC Parcels.**"

d. The LMI EDC Parcels, Touro EDC Parcels and City EDC Parcels are collectively referred to in this Agreement as the "**EDC Parcels**" and are depicted on Exhibit A attached hereto.

Section 103. Weston Representations and Warranties.

Weston represents and warrants to City, as a material inducement to City to enter into this Agreement, that:

a. Weston possesses the requisite skills and knowledge, trained personnel, organizational capacity and systems, and financial resources to timely and effectively perform the EDC Negotiation Work as provided in this Agreement;

b. Weston is a Pennsylvania corporation in good standing and authorized to do business in the State of California. Weston has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by Weston has been fully authorized by all requisite actions on the part of Weston;

c. Except as expressly set forth in this Agreement, there are no conditions or contingencies, express or implied, to Weston's undertaking of its obligations under this Agreement;

d. At all times under this Agreement, Weston will maintain a capitalization and net worth which is sufficient, in the exercise of its reasonable business judgment, to enable it to timely perform its obligations under this Agreement;

e. Weston's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Weston is a party or by which it is bound;

f. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Weston to perform its obligations under this Agreement; and

g. Weston is not the subject of any bankruptcy proceeding.

Until the expiration or earlier termination of this Agreement, Weston shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 103 not to be true, immediately give written notice of such fact or condition to City.

Section 104. City Representations and Warranties.

City represents and warrants to Weston, as a material inducement to Weston to enter into this Agreement, that:

a. City has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City;

b. City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound; and

c. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement.

d. Except as expressly set forth in this Agreement, to the best of City's current actual knowledge, there are no conditions or contingencies, express or implied, to City's undertaking of its obligations under this Agreement.

Until the expiration or earlier termination of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 104 not to be true, immediately give written notice of such fact or condition to Weston.

ARTICLE 2
NEGOTIATIONS WITH THE NAVY

Section 201. Weston Responsibilities.

Weston shall serve as the lead negotiator and coordinator of all remaining EDC early transfer negotiations with the Navy and shall perform, at its expense except as otherwise expressly provided herein, the duties and tasks as set forth in the Scope of Work attached as Exhibit F (collectively, "**EDC Negotiation Work**"). Weston shall use diligent, good faith efforts to perform all such EDC Negotiation Work within the times set forth in the Schedule of Performance attached as Exhibit G. If Weston is unable to perform all such EDC Negotiation Work within the times set forth in the Schedule of Performance despite its diligent, good faith efforts, such inability shall not constitute a Default pursuant to Section 502. Weston shall keep City, LMI and Touro informed regarding early transfer negotiations for the EDC Parcels with the Navy and the State of California Environmental Protection Agency - Department of Toxic Substances Control ("**DTSC**"), which is the state agency with oversight responsibility over remediation of the EDC Parcels. City shall have the right to participate in all early transfer negotiations and shall reasonably communicate to Weston when City intends to participate in such negotiations. Weston shall reasonably accommodate requests by LMI or Touro to

participate in such early transfer negotiations that relate to LMI's or Touro's respective EDC Parcels. Weston and City shall meet at least once a month prior to transfer of the EDC Parcels to review the status of the early transfer negotiations and documents, with each party represented at such meetings by a representative with administrative decision-making authority. Weston and City will invite Touro and LMI to attend and participate in these monthly meetings. In addition, Weston will invite Touro and LMI to participate in other meetings, to the extent material matters relating to Touro's or LMI's respective EDC Parcels will be determined at such meetings. Weston shall provide City, LMI and Touro copies of all early transfer documents that are exchanged with the Navy, DTSC or other governmental agencies, and City, LMI and Touro shall be afforded a reasonable opportunity to review and comment on all such early transfer documents.

Section 202. City Responsibilities.

City shall meet regularly with Weston to review the progress of negotiations with the Navy and to ensure the necessary coordination among Weston, City, LMI and Touro. City shall provide Weston with copies of all relevant, material documents pertaining to the EDC Parcels, and shall cooperate with and support Weston in its efforts to negotiate early transfer of the EDC Parcels from the Navy. City shall use diligent, good faith efforts to timely provide decisions and information requested by Weston in connection with such early transfer negotiations.

ARTICLE 3
PRIOR AND FUTURE COSTS

Section 301. Allocation of Prior Costs.

Weston and City agree that the costs incurred by LMI and Weston in connection with the due diligence, analysis, investigation and proposed transfer of the EDC Parcels prior to the Effective Date, which are in the amount of SEVEN HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED EIGHTEEN DOLLARS SIXTY-THREE CENTS ($745,418.63) as set forth in Exhibit B attached hereto ("**Prior Costs**"), shall be allocated between City on the one hand and LMI and Weston on the other, as provided in this Section 301. As noted in Exhibit B, Prior Costs include a fifteen percent (15%) administrative fee in addition to costs paid to third parties to compensate LMI for its internal staff costs. ***[Note: This section will need to be revised if LMI is unable to provide City and Touro with documentation substantiating its portion of Prior Costs.]***

Within twenty (20) days following the Effective Date, City shall pay to Weston, or at Weston's request directly to LMI on behalf of Weston, the City's Percentage Share (as defined in Section 306) of Prior Costs, which may be allocated between Weston and LMI as agreed by Weston and LMI. The remainder of such Prior Costs (i.e., those not paid by City) shall be borne by Weston or LMI as may be agreed upon by Weston and LMI. The City's Percentage Share of Prior Costs will be FOUR HUNDRED TWENTY-ONE THOUSAND NINE HUNDRED SIX DOLLARS NINETY-FOUR CENTS ($421,906.94). The parties acknowledge that City has established a mechanism under the Touro ERN for Touro to fully fund and pay City's Percentage Share of such Prior Costs. Weston and City further acknowledge and agree that under the Touro ERN

Touro has no obligation to pay for, fund or reimburse any Prior Costs in excess of City's Percentage Share of Prior Costs.

Section 302. Allocation of Future Costs.

Weston and City agree that those costs which Weston incurs following the Effective Date in connection with performance of the EDC Negotiation Work, including costs associated with negotiating and preparing the technical and legal documents necessary to consummate the early transfer and privatized remediation transactions pursuant to the proposed ESCA and Weston MIRA No. 2, but excluding costs of performing any remediation work ("**Future Costs**"), shall be allocated as provided in Sections 303 and 304 below. A detailed line item budget and estimate of Future Costs is set forth in Exhibit C attached hereto.

Section 303. Future Costs Cap.

Notwithstanding any other provision hereof to the contrary, the maximum liability of City for Future Costs ("**Future Costs Cap**") shall be EIGHT HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED NINETY-FOUR DOLLARS ($814,794). Except as provided in Section 504 relating to termination and City's contracting with a replacement environmental contractor, all Future Costs that are not the responsibility of City under this Agreement shall be borne by Weston or LMI as agreed by Weston and LMI, and, except to the extent this Agreement is terminated in accordance with the provisions of Section 504 below, Weston shall be obligated to complete all EDC Negotiation Work, regardless of whether Weston will have to incur additional Future Costs after the Future Costs Cap has been reached. The parties acknowledge that City has established a mechanism under the Touro ERN for Touro to fully fund and pay City's Percentage Share of Future Costs. Weston and City further acknowledge and agree that under the Touro ERN Touro has no obligation to pay for, fund or reimburse any Future Costs in excess of the Future Costs Cap.

Section 304. Future Costs – Payment Process.

Commencing on the last day of the first full month following the Effective Date and each month thereafter during the term of this Agreement, Weston shall submit invoices to the City, with a copy concurrently provided to Touro, for Future Costs incurred during the past thirty (30) days or, in the case of the first such invoice, since the Effective Date. Such monthly invoices shall explain in detail the work or services performed for all Future Costs, and identify the date the work or services were provided and the amount of time expended on each task and shall include reasonable and customary supporting information, including billing rates. Weston may provide redacted copies of Weston legal bills to the extent necessary to ensure preservation of attorney-client privilege of work performed for which Weston is not seeking payment from City and redacted copies of other documents containing trade secrets, or other confidential and proprietary internal cost and pricing data, or information not reasonably necessary to justify or support the invoices for Future Costs.

Following the receipt of each monthly invoice from Weston, City shall approve or disapprove the submitted Future Costs and, subject to the Future Costs Cap, pay Weston the City's Percentage Share of all such approved Future Costs within thirty (30) days following receipt of

the monthly invoice. City shall not unreasonably withhold approval of Future Costs. Any disputes between City and Weston regarding the propriety or reasonableness of Future Costs shall be resolved as provided in Section 501. Weston acknowledges that pursuant to Section 5(c) of the Touro ERN, Touro has the right to contest Weston invoices for Future Costs to the same extent City has such right under this Agreement.

Section 305. Future Costs – Accounting.

Weston shall establish an accounting mechanism reasonably acceptable to City to facilitate tracking of all Future Costs. Except as otherwise provided in sections 304 and 701, City shall have access to all documentation relating to the EDC Negotiation Work and EDC early transfer and City shall have the right to audit Weston's books and records relating to all Future Costs claimed by Weston. If such audit shows an error in Weston's calculations of Future Costs, then (i) the parties shall make such adjustments to the amount of Future Costs payable by City to or on behalf of Weston hereunder, in order to reflect the accurate calculations shown by such audit, and (ii) if such error in Weston's calculations resulted in an overstatement of the amount of Future Costs payable by City of more than five percent (5%), then Weston shall pay to City its out-of-pocket costs incurred in performing such audit, not to exceed $10,000.

Section 306. City's Percentage Share.

"**City's Percentage Share**" of Prior Costs and Future Costs shall be fifty-six and six-tenths percent (56.6%), which is based upon the ratio that the approximate acreage of the Navy-owned Touro EDC Parcels (approximately 92.4 acres) bears to the acreage of the Navy-owned Touro EDC Parcels plus the LMI EDC Parcels designated on Exhibit A as the DRMO (approximately 22.9 acres) and the MCFR (approximately 48.0 acres) (for a total of approximately 163.3 acres). The City's Percentage Share shall not increase.

ARTICLE 4
NEGOTIATION OF ESCA AND WESTON MIRA NO. 2

Section 401. ESCA and Weston MIRA.

City and Weston agree for four hundred (400) days following the Effective Date ("**Negotiation Period**") to negotiate diligently and in good faith with each other and the Navy to prepare the proposed ESCA and the proposed Weston MIRA No. 2 providing for Weston to perform, or cause to be performed, on behalf of City, certain remediation activities on the EDC Parcels to be set forth in the proposed ESCA and related environmental documents. The City Manager may approve an extension of the Negotiation Period for up to an additional one hundred (100) days, if he or she determines in his or her sole discretion that Weston and City have made substantial progress towards reaching agreement on the terms of the ESCA and Weston MIRA No. 2. Any further extension of the Negotiation Period shall require the approval of the City Council, which may be granted or denied in its sole, absolute discretion. During the Negotiation Period, the parties shall negotiate exclusively with each other and shall use good faith diligent efforts in connection with such negotiations.

The items to be discussed during the Negotiation Period shall include, but not be limited to, the following:

a. The transfer to Weston, and Weston's assumption of responsibility for environmental remediation of the City EDC Parcels and Touro EDC Parcels, and (as determined between LMI and Weston), the LMI EDC Parcels to the levels required to meet the land uses specified in the Reuse Plan and, subject to the availability of funding from Touro or other third party funding sources, to higher level of clean up as may be required to meet the land uses specified in the Specific Plan Amendment and such further amendments to the Specific Plan as may be necessary or desirable to accommodate Touro's proposed project as described in the Touro ERN.

b. A process for ensuring, via an environmental cost cap and liability insurance policy or policies, that (i) there is no gap in responsibility for environmental remediation and no financial exposure to City in the event of a default by Weston, (ii) all obligations of City under the ESCA with respect to the City EDC Parcels and Touro EDC Parcels, except for City's obligations with respect to the processing of applications for City approvals, have been fully passed through to Weston, and (iii) all obligations of City under the ESCA with respect to the LMI EDC Parcels have been fully passed through to Weston and/or LMI.

c. A process for providing Touro a reasonable opportunity to review and comment upon the ESCA, Weston MIRA No. 2 and the timing and scope of remediation work to be performed on the Touro EDC Parcels.

d. Subject to the consent of City, Weston and governmental agencies with regulatory authority over the EDC Parcels, including DTSC, and City and Touro negotiating a mutually acceptable acquisition agreement, a process for Touro to (i) assume responsibility for and/or fund the clean up of certain portions of the Touro EDC Parcels to a higher standard than otherwise would be required for the uses described in the Reuse Plan, and (ii) assume responsibility for and fund, to the extent not paid for by Navy under the ESCA, groundwater monitoring to enable Weston's transfer at the earliest feasible time of the Touro EDC Parcels to Touro.

Section 402. Limitations of Article 4.

By entering into this Agreement, City is not committing to or agreeing (1) to the disposition of or transfer of any real property to Weston; or (2) to undertake any acts or activities requiring the subsequent independent exercise of discretion by the City or any department thereof, other than as specifically set forth and agreed to by the City under this Agreement. The parties obligations under this Article 4 are merely to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the City and Weston as to any proposed ESCA or Weston MIRA No. 2 or other related agreements and all proceedings and decisions in connection therewith. Notwithstanding the foregoing or any other provision hereof to the contrary, nothing in this Agreement shall be deemed to require either City or Weston to enter into any proposed ESCA or Weston MIRA No. 2 or any other contract or agreement unless such proposed ESCA or Weston MIRA No. 2 or other contracts or agreements are acceptable to City and Weston in each party's sole and absolute discretion.

ARTICLE 5
DEFAULT, TERMINATION AND REMEDIES

Section 501. Dispute Regarding Future Costs.

In the event of a dispute arising under this Agreement regarding the reasonableness of any Future Costs, Weston and City shall attempt in good faith to informally resolve such dispute for a period of ten (10) calendar days, or such additional time as may be agreed upon by the parties. After the expiration of the informal resolution period, if the parties have not been able to resolve the dispute, the parties shall submit the dispute to arbitration. Pending arbitration proceedings as herein provided, a party shall not be deemed to be in Default with respect to a dispute submitted to arbitration. At the conclusion of the arbitration proceedings, if the determination is that a party is in Default under the terms of this Agreement, the cure and remedies provisions of Section 502 regarding Defaults shall apply.

The party invoking arbitration under this Section 501 shall notify the other party of its intent to arbitrate, specifying the nature of the dispute or matter of disagreement (**"Notice of Arbitration"**). Within ten (10) calendar days after the Notice of Arbitration, the party so electing (**"Electing Party"**) shall provide to the other party (**"Non-Electing Party"**) the names, addresses, telephone numbers and qualifications of five (5) persons chosen by the Electing Party as being acceptable to act as Arbitrator of the dispute, each of whom must be a former judge. Within ten (10) calendar days after receipt of the names of the proposed Arbitrator chosen by the Electing Party, the Non-Electing Party shall select in writing one of the proposed Arbitrators chosen by the Electing Party as the sole Arbitrator. If the Non-Electing Party fails to select an Arbitrator within said ten (10) calendar day period, then after the expiration thereof, the Electing Party may select the Arbitrator from the list previously delivered to the Non-Electing Party. If, after selection, the selected Arbitrator is determined to be unavailable to serve within the period required hereunder, the parties may agree to waive the time requirements hereunder to enable such Arbitrator to hear the dispute. If both parties do not waive the time requirements, then the Electing Party, within ten (10) calendar days of determining the unavailability of the selected Arbitrator shall submit a new list of five (5) proposed Arbitrators meeting the qualifications described above and the above selection process shall be repeated.

Upon the appointment of the Arbitrator, the matter shall be set for arbitration at a time not less than fifteen (15) calendar days, nor more than thirty (30) calendar days, from the effective date of the appointment of the Arbitrator. The arbitration shall be conducted under the procedures set forth in Chapter 3 of Title 9 of Part 3 of the California Code of Civil Procedure, or such other procedures agreeable to both parties. The Arbitrator shall not consider issues of remedies or other relief, but shall limit its determinations to the reasonableness of Future Costs, and whether a party is in Default under the terms of this Agreement. The provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall not be applicable to such proceeding, however, the Arbitrator may take account of evidentiary rules in considering the weight of evidence. In all cases, the Arbitrator shall make findings on all issues of fact raised by the parties in the Notice of Arbitration. The Arbitrator shall issue his or her determination within fifteen (15) calendar days following the conclusion of the arbitration proceedings. The determination of the Arbitrator shall be conclusive, final and binding between the parties, and the order of the Arbitrator may be enforced in the same manner as a judgment in a civil action pursuant to the applicable provisions of the California Code of Civil Procedure. The determination of the Arbitrator shall, however, be subject to vacation or correction on the grounds set forth in California Code of Civil Procedure Section 1286.2 and 1286.6. The cost of arbitration shall be borne equally by the parties. Nothing in this Agreement shall preclude the parties from mutually agreeing to submit to arbitration under this Section 501 any other dispute arising under this Agreement.

Section 502. Default.

Failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice shall constitute a "**Default**" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against the other party if (i) such party cures the Default within thirty (30) days following receipt of such notice of Default where the failure or delay is capable of being cured within thirty (30) days, or (ii) such party immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence, but in any event no later than ninety (90) days following the notice of Default, where such Default cannot be cured within thirty (30) days. City's failure to meet payment obligations hereunder shall be considered to be curable within thirty (30) days.

Section 503. Institution of Legal Actions.

Except as otherwise specifically provided herein, upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover actual damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Notwithstanding anything herein to the contrary, neither party shall have the right to recover any consequential, special or punitive damages in the event of a Default by the other party.

Section 504. Termination.

This Agreement may be terminated by notice to the other party if there is an uncured Default, by written notice from the party not in Default.

In addition, if at any point, despite Weston's diligent, good faith efforts, Weston believes in its reasonable business judgment that it is no longer reasonable to proceed with the transactions contemplated by this Agreement, Weston shall provide written notice of the same to City. Upon receipt of such notice, the parties shall meet and confer to determine whether (i) the issues giving rise to Weston's concern can be addressed in a mutually agreeable manner or (ii) this Agreement should be terminated. If the parties determine that the Agreement should be terminated pursuant to clause (ii) above, then Weston and City shall execute a letter of termination, and this Agreement shall terminate as of the date thereof. In the event of such termination, City shall retain the benefit, if any, of whatever Work Product Weston has produced to that point with respect to the City EDC Parcels and Touro EDC Parcels, and except for documents relating to LMI EDC Parcels for which Weston retains all rights, Weston shall deliver any and all documents relating to such work to City within thirty (30) days of such termination.

In addition, this Agreement may be terminated by City if (a) City and Navy fail to execute a mutually acceptable ESCA and/or City and Weston fail to execute a mutually acceptable Weston MIRA No. 2 on or before expiration of the Negotiation Period as provided in Section 401 above; or (b) Navy and City fail to complete the conveyance of remaining EDC Parcels to City and Navy fails to fund the ESCA within five hundred fifty (550) days following the Effective Date. If City and Navy close escrow for Navy's conveyance of the remaining EDC Parcels to City within one (1) year following the date City terminates this Agreement pursuant to the timing limitations set forth in clauses (a) and/or (b) above, City shall require, as part of the MIRA or similar contract between City and an environmental services firm other than Weston for environmental remediation work on the EDC Parcels, that such environmental services firm reimburse and pay to Weston at time of close of escrow an amount equal to the additional funds that City would have paid to Weston, in the absence of the Future Costs Cap, as City's Percentage Share of Future Costs, provided that in no event will such payment or reimbursement exceed Two Hundred Fifty Thousand Dollars ($250,000). Weston shall not be entitled to any such reimbursement and payment if the City and Navy close escrow for Navy's conveyance of the remaining EDC Parcels to City more than one (1) year following the date of termination of this Agreement. If City terminates this Agreement pursuant to clauses (a) and/or (b) above, City shall not rely on (and Weston shall have no liability or other obligations to City in connection with any such future reliance on) whatever Work Product Weston has completed prior to such termination.

In the event this Agreement is terminated as provided in this Section 504, neither party shall have any further rights or obligations to each other in connection with this Agreement or with respect to the EDC Parcels, except for those continuing obligations described in this Section 504 above, and those obligations which expressly survive termination or expiration of this Agreement. Subject to the Future Costs Cap, City shall remain obligated to pay Weston City's Percentage Share of all approved Future Costs incurred by Weston prior to the effective date of termination. Weston acknowledges and agrees that neither City nor Touro shall have any responsibility to pay for, fund or reimburse any Future Costs incurred after the effective date of termination or expiration of this Agreement.

Section 505. Rights and Remedies Are Cumulative.

The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party, except as otherwise expressly provided herein.

ARTICLE 6
INDEMNITY AND INSURANCE

Section 601. Indemnity.

Weston shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold City and its officers, employees, agents and representatives, harmless from, all third-party claims, demands, damages, defense costs or liability of any kind or nature, including reasonable attorneys' fees and costs (collectively "**Claims**"), to the extent arising from Weston's negligent acts or omissions or willful misconduct in connection with the performance of this Agreement, whether such performance or implementation thereof be by Weston or by anyone directly or indirectly employed or contracted with by Weston, and whether such damage shall accrue or be discovered before or after expiration or termination of this Agreement. Weston's indemnity obligations under this Section 601 shall not extend to Claims to the extent occasioned by the active negligence or willful misconduct of City or its officers, employees, agents or representatives. Weston's indemnity obligations under this Section 601 are not limited by the insurance provisions set forth in Section 602 below and shall survive the expiration or termination of this Agreement.

Section 602. Insurance.

At all times during the term of this Agreement, Weston shall maintain insurance coverage as set forth in Exhibit E attached hereto.

ARTICLE 7
GENERAL PROVISIONS

Section 701. Ownership of Work Product; Access to and Retention of Records.

Subject to Section 504, all technical data, evaluations, reports, plans and other work products (collectively, "**Work Product**") produced or prepared by or on behalf of Weston in connection with the EDC Negotiation Work shall become the property of City and shall be delivered to City upon completion thereof or termination of this Agreement. Weston may retain copies thereof for its files and internal use. City representatives shall have access to all Work Product, including records in automated or electronic form, during production thereof for the purpose of inspecting and copying same and determining that the EDC Negotiation Work is being performed in accordance with the terms of the Agreement. However, City shall not have access to Weston's trade secrets, or other confidential and proprietary internal cost and pricing data, or information not reasonably necessary to justify or support the invoices for Future Costs. Publication of any information derived from Work Product produced or prepared in connection with services rendered under this Agreement must be approved in writing by City.

Weston shall retain all such Work Product intact in original form for at least three (3) years following completion of the EDC Negotiation Work or termination of this Agreement. Access to Weston's Work Product will be at a location within a fifty (50) mile radius of City of Vallejo City Hall, during normal working hours, and City will give Weston three (3) business days prior notice of its intention to examine Weston's Work Product, unless City reasonably determines that more immediate entry is required by special circumstances.

Weston understands that the California Public Records Act, Government Code section 6250 *et seq.* ("**PRA**") and the City of Vallejo Sunshine Ordinance ("**Sunshine Ordinance**") require City to produce public records to members of the public upon request. If City receives a request to inspect or copy records or documents held by or under the control Weston, Weston shall cooperate with City in producing such public records within the time period required by applicable law but shall not be responsible for reproduction or copying costs, which shall be borne by the requesting party in accordance with applicable law. To the extent Weston fails or refuses to timely release any records or documents held by Weston which are sought by the party making the PRA or Sunshine Ordinance request, Weston shall indemnify, defend (with counsel reasonably acceptable to City) and hold City and its officers, employees, agents and representatives harmless from any Claims arising from such failure or refusal to release the records or documents. Nothing herein shall limit Weston's ability to challenge, at its expense, any assertion by a third party that certain records or documents held by Weston are subject to the disclosure requirements of the PRA and/or the Sunshine Ordinance. Weston's indemnity obligations under this Section 701 shall survive the expiration or termination of this Agreement.

Section 702. Modifications.

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

Section 703. Successors and Assigns.

The qualifications and identity of Weston are of particular concern to the City. It is because of those unique qualifications and identity that City has entered into this Agreement with Weston. Accordingly, Weston may not assign its rights or obligations hereunder to any other person or entity, without the prior written approval of the City in its sole discretion. Any purported voluntary or involuntary assignment of Weston's rights or obligations hereunder without such City written approval shall be null and void.

Section 704. Entire Agreement.

This Agreement (including the Exhibits attached hereto and the other agreements and documents specifically referred to herein) constitutes the entire agreement between the parties. All prior discussions and understandings on this matter, including the ETPA term sheet attached as "Exhibit B" to the Touro ERN, are superseded by this Agreement.

Section 705. Severability.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement shall

continue in full force and effect unless amended or modified by the mutual written consent of the parties.

Section 706. Waiver of Breach.

No party shall be deemed to have waived any provision of this Agreement in the event of a breach of this Agreement by the other party, and no course of conduct shall be considered to constitute such a waiver, absent a writing to the contrary signed by both parties.

Section 707. Notices.

Any approval, disapproval, demand, document or other notice which either party may desire to give to the other party under this Agreement must be in writing and shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or nationally recognized overnight courier (but not by facsimile or email), to the party to whom the notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by notice. Any notice shall be deemed received on the date of delivery if delivered by personal service, on the date of delivery or refused delivery as shown by the return receipt if sent by certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party

If to Weston:	Weston Solutions, Inc. 1400 Weston Way West Chester, PA 19380 Attn: Peter Ceribelli Telephone: (610) 701-3459
With a copy to:	Drinker Biddle & Reath LLP One Logan Square 18th and Cherry Streets Philadelphia, PA 19103-6996 Attn: Michael J. Miller, Esq. Telephone: (215) 988-2782
If to City:	City Manager City of Vallejo 555 Santa Clara Street Vallejo, CA 94590 Telephone: (707) 648-4576

With a copy to:	City Attorney City of Vallejo 555 Santa Clara Street Vallejo, CA 94590 Telephone: (707) 648-4545
And:	McDonough Holland & Allen PC 1901 Harrison Street, 9th Floor Oakland, CA 94612 Attn: Gerald J. Ramiza, Esq. Telephone: (510) 273-8780
If to Touro:	Richard Hassel Vice President of Administration Touro University – California 1310 Johnson Lane Vallejo, CA 94592 Telephone (707) 638-5248
With copy to:	Andersen & Bonnifield Attn.: Craig Andersen 1320 Willow Pass Road, Suite 500 Concord, CA 94520 Telephone: (925) 602-1400

Section 708. Incorporation of Recitals and Exhibits.

The Recitals and introductory paragraph of this Agreement and all Exhibits attached hereto are a substantive part hereof and are incorporated herein in full.

Section 709. Governing Law; Venue.

This Agreement shall be governed by the law of the State of California, without reference to its choice of laws principals, and venue for any action under this Agreement shall be in Solano County, California.

Section 710. Status of Parties.

Nothing in this Agreement shall be construed to make Weston and City joint venturers or partners or to create any relationship of principal and agent. Neither party shall have the authority to commit or bind the other party without such party's prior written consent.

Section 711. Administrative Actions and Extensions.

Except as otherwise expressly provided herein, the City Manager, or his or her designee, shall have the discretion and authority to permit extensions of time for Weston's performance under this Agreement. Unless otherwise required by law or this Agreement, all approvals by City shall

be administrative approvals within the discretion and authority of the City Manager, or his or her designee.

Section 712. Interpretation.

Each party has had an adequate opportunity to obtain such advice with respect to the terms of this Agreement from financial, legal and other advisors as such party has determined to consult. This Agreement has been reviewed by legal counsel for both Weston and City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation."

Section 713. Employment Practices.

Weston, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, sexual orientation, disability or marital status in its employment practices.

Section 714. Compliance with Laws.

Weston shall carry out all EDC Negotiation Work in conformity with all applicable federal, state and local laws, regulations, ordinances, rules and requirements.

Section 715. No Third Party Beneficiaries.

Nothing in this Agreement shall create any rights in third parties to enforce provisions of this Agreement, except as expressly otherwise agreed to in writing by Weston and City.

Section 716. Independent Contractor.

It is understood and agreed that Weston is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Weston's assigned personnel shall not be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Weston under the provisions of the Agreement, and is not required to issue W-2 forms for income and employment tax purposes for any of Weston's assigned personnel. Weston, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished. Any third persons employed by Weston shall be entirely and exclusively under the direction, supervision, and control of Weston.

Section 717. Cooperation in Defense of Third Party Challenges.

In the event of any court action instituted by a third party challenging the validity of this Agreement or any portion thereof, or the approval of this Agreement or findings made in connection therewith, City and Weston shall each determine whether to contest or defend such court action.

If Weston determines to contest or defend such litigation challenges, Weston shall reimburse City, within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all costs incurred by City in connection with the litigation challenge, including City's administrative, legal and court costs, provided that City shall either: (a) elect to joint representation by Weston's counsel; or (b) retain McDonough, Holland & Allen PC or another experienced litigation attorney reasonably acceptable to Weston, require McDonough, Holland & Allen PC or such other attorney to prepare and comply with a litigation budget, and present such litigation budget to Weston prior to incurring obligations to pay legal fees in excess of $10,000. In addition, if Weston contests or defends any such legal challenge, Weston shall indemnify, defend, and hold harmless City and its officials and employees from and against any claims, losses, or liabilities assessed or awarded against City by way of judgment, settlement, or stipulation. Nothing herein shall authorize Weston to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement, unless such amendment or modification is approved by City in accordance with applicable legal requirements, and City reserves its full legislative discretion with respect thereto. In no event shall the costs or fees of any such litigation challenge be deemed a "Future Cost" as that term is defined in this Agreement.

In the event that Weston elects not to contest or defend such litigation challenges, or if after initiating such litigation defense Weston elects to terminate the defense or withdraw from the litigation, City shall have the right, but not the obligation, to contest or defend such litigation challenges at its expense.

Section 718. Confidentiality of City Information

To the extent Weston obtains copies of any non-public City records or learns of any confidential or privileged City information in the course of performing the EDC Negotiation Work, Weston shall keep such records and information confidential and shall not, either during or after the term of this Agreement, disclose to any third party such non-public records or confidential or privileged information without the prior written consent of the City.

Section 719. Conflict of Interest.

Weston certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the EDC Negotiation Work to be performed pursuant to this Agreement. Weston agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the Effective Date. Weston further agrees to complete and file any statements of economic interest required by either City ordinance or State law.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Weston and City as of the day and year first above written.

WESTON SOLUTIONS, INC., a
Pennsylvania corporation

By:_____

Print Name:_____

Its: _____

By:_____

Print Name:_____

Its: _____

"WESTON"

CITY OF VALLEJO,
a California municipal corporation

By:_____
Joseph M.Tanner, City Manager

"CITY"

ATTEST:

_____
Mary Ellsworth, Acting City Clerk

APPROVED AS TO FORM:

_____
Frederick G. Soley, City Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:

_____
William R. Venski, Risk Manager

TOURO CONSENT
TO EARLY TRANSFER PROCESSING AGREEMENT

Whereas, City of Vallejo ("**City**") and Touro University, a California non-profit public benefit corporation ("**Touro**"), are parties to an Exclusive Right to Negotiate Agreement ("**ERN**") dated January 9, 2007, which provides, among other things, for (1) Touro and City to negotiate proposed Acquisition and Development Agreements (as defined in the ERN) regarding Touro's potential acquisition and development of Reuse Area 1A, including funding of Touro's proportionate share of Mare Island infrastructure improvements, (2) Touro's reimbursement of City for certain City Costs (as defined in the ERN) to be incurred by City in connection with the negotiation and implementation of such agreements and the negotiation of acquisition and transfer of that portion of Reuse Area 1A currently owned by the Navy, and (3) Touro's reimbursement of Weston Solutions, Inc. ("**Weston**"), on behalf of City, for City's Percentage Share of approved Prior Costs previously incurred by Weston and Lennar Mare Island, Inc. ("**LMI**"), and Future Costs to be incurred in the future by Weston, in connection with the acquisition of such portion of Reuse Area 1A from the Navy, and the preparation and approval of plans for remediation of Reuse Area 1A;

Whereas, the ERN contemplates that City will enter into a proposed Early Transfer Processing Agreement with Weston consistent with the business terms set forth in the City/Weston ETPA Term Sheet ("**ETPA Term Sheet**") attached to the ERN as Exhibit B, and further provides that Touro will be provided with drafts of the proposed Early Transfer Processing Agreement for its review and comment, and shall be requested to consent to the Early Transfer Processing Agreement prior to City Council's consideration of the Early Transfer Processing Agreement;

Whereas, as contemplated by the ERN, City and Weston have negotiated the proposed Early Transfer Processing Agreement ("**ETPA**") to which this consent is attached; and

Whereas, in accordance with the ERN, Touro and its legal counsel have been provided with drafts of the ETPA for review and comment prior to the City Council's consideration of the ETPA;

NOW THEREFORE, Touro hereby consents to and approves, without condition or reservation, all of the terms of the ETPA to which this consent is attached, including the definitions of and requirements pertaining to payment of City's Percentage Share of Prior Costs and Future Costs, notwithstanding any inconsistencies between the terms of the ETPA and the terms of the ETPA Term Sheet.

Touro hereby agrees that in the event of any inconsistencies between the terms of the ETPA Term Sheet and the ETPA, the terms of the ETPA shall control.

The undersigned hereby represents and warrants that he/she is fully authorized to sign this Consent on behalf of Touro.

_____, 2007

TOURO UNIVERSITY, a California non-profit public benefit corporation

By:_____

_____

[*print name*]

Its:_____

"TOURO"

EXHIBIT A

DIAGRAM OF EDC PARCELS

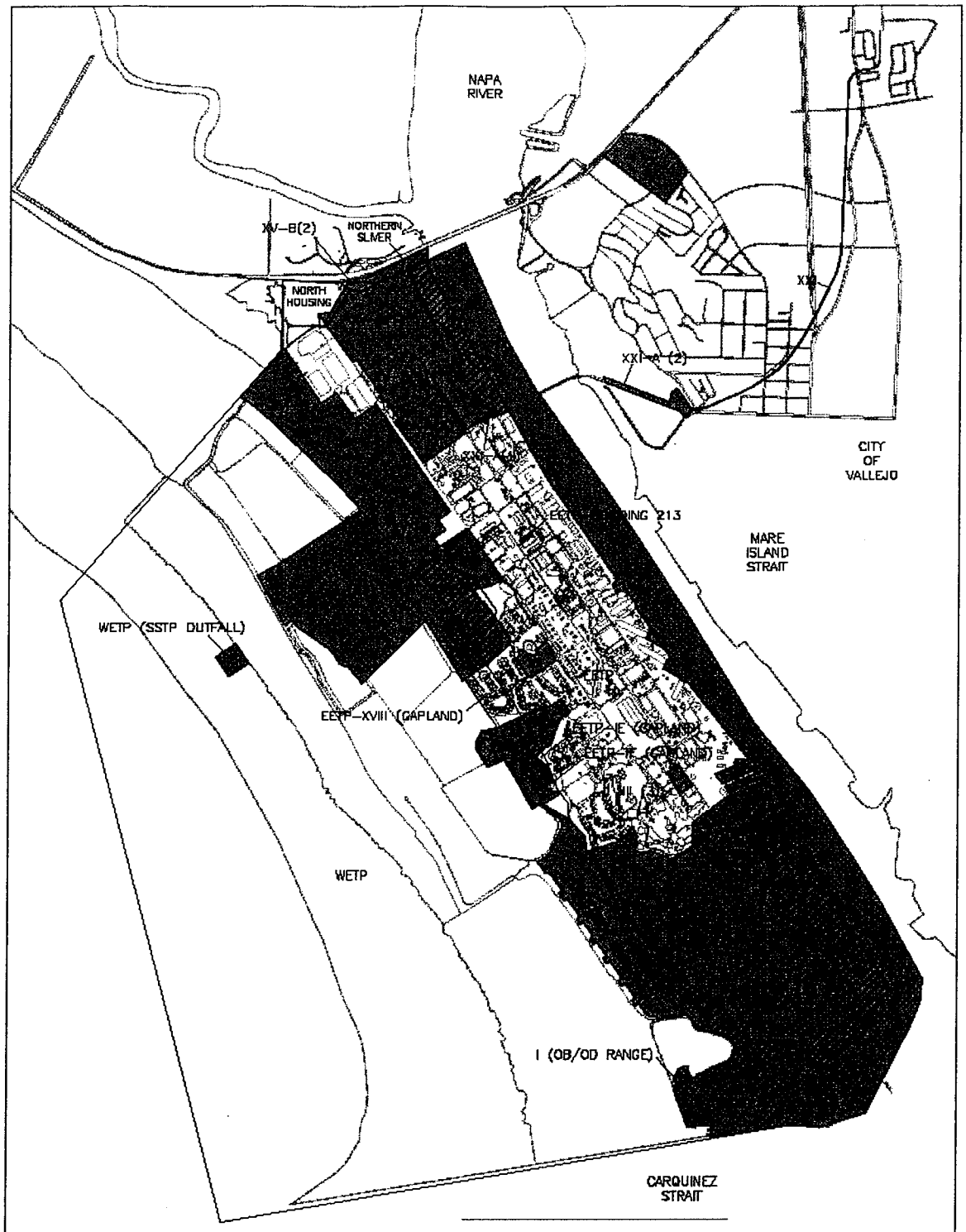

FIGURE 1

WESTON

750 E. Bunker Ct.
Suite 500
Vernon Hills, Illinois
60061

TRANSFER PARCEL MAP
MARE ISLAND
Mare Island, Vallejo, California

981685v1

EXHIBIT B

PRIOR COSTS

ISLAND-WIDE COSTS – ENVIRONMENTAL/EARLY TRANSFER

[Weston to provide updated attachment showing City North Island Responsibility in amount of $421,906]

Description			Prior Costs
Environmental/Early Transfer			
LMI North Island ERN Due Diligence			$ 297,330.04
Weston Solutions - Includes negotiation meetings with stakeholders (City of Vallejo, Navy, LMI, and regulatory agencies); researching data sources; identifying, researching, and discussing likely cleanup remedies. Includes providing summary data packages to facilitate multiparty discussions and site characterization updates over time. Scope also includes finalizing environmental scope of work and pricing.			
Labor			$ 172,860.52
Expenses			
Travel and other expenses			$ 17,489.31
Legal			$ 12,855.13
Other			$ 1,810.44
LMI Legal Costs to participate in all scoping and negotiations as described in Weston Item above			$ 153,460.13
Administrative Fee (15%)			$ 98,371.00
Total			$ 754,176.57

Allocation of Prior Costs	Acreage	% of Total Costs	Allocated Prior Costs
MCFR - LMI Responsibility	48.00	29.4%	$ 221,680.80
DRMO - LMI Responsibility	22.90	14.0%	$ 105,760.22
North Island - City Responsibility	92.40	56.6%	$ 426,735.55
Total	**163.30**	**100.0%**	**$ 754,176.57**

EXHIBIT C

FUTURE COSTS

Island-Wide Costs - Environmental/Early Transfer

Description			Future Costs Low Cost	Future Costs High Cost	Comments
Environmental/Early Transfer - Includes negotiation meetings with stakeholders (City of Vallejo, Navy, State Lands Commission, LMI, Touro, and regulatory agencies) through all phases of due diligence including meetings; researching data sources; identifying, researching, and discussing likely cleanup remedies. Includes providing summary data packages to facilitate multiparty discussions and site characterization updates over time. Scope also includes finalizing environmental scope of work and pricing.					
Labor			$ 368,500.00	$ 737,000.00	
Expenses					
Travel and other expenses			$ 51,000.00	$ 102,000.00	Travel to negotiation meetings.
Legal			$ 151,250.00	$ 302,500.00	
Other			$ 29,250.00	$ 58,500.00	Surveying
Contingency			$ 120,000.00	$ 240,000.00	Assumes 20% contingency
Total			$ 720,000.00	$ 1,440,000.00	

Allocation of Costs	Acreage	% of Total Costs	Allocated Future Low Costs	Allocated Future High Costs	
MCFR - LMI Responsibility	48.00	29.4%	$ 211,835.03	$ 423,270.06	
DRMO - LMI Responsibility	22.90	14.0%	$ 100,967.54	$ 201,935.09	
North Island - City Responsibility	92.40	56.6%	$ 407,397.43	$ 814,794.86	
Total	163.30	100.0%	$ 720,000.00	$ 1,440,000.00	

Early Transfer of Northern Parcel Mare Island Shipyard, CA Cost Estimate		TASK 1 Environmental Due Diligence (conceptual model, remedy selected/valid)		TASK 2 Remediation Estimate		TASK 3 Negotiations (w/ Navy over ESCA, w/ insur., etc.)		TASK 4 Legal Documents (ESCA, MIRA #2, etc)		TASK 5 Meetings (Regulatory, Status, RAB, etc.)		TASK 6 Program Management (Sr Mgt Briefs, Billings, etc.)		PROJECT SUMMARY	
Total Direct Labor Cost		HOURS 655	COST $111,222.16	HOURS 696	COST $82,717.60	HOURS 216	COST $48,625.30	HOURS 1000	COST $215,672.80	HOURS 768	COST $191,943.36	HOURS 256	COST $ 51,635.46	HOURS 3591	COST $ 701,816.68
Travel Airfare, Expenses, POV	RATE LS	NUMBER LS	COST $12,269.80	NUMBER LS	COST $6,100.67	NUMBER LS	COST $11,974.55	NUMBER LS	COST $6,016.41	NUMBER LS	COST $13,955.09	NUMBER LS	COST $ 7,395.28	NUMBER LS	COST $ 59,712.00
Total Travel Costs			$12,269.80		$6,100.67		$11,974.55		$6,016.41		$13,955.09		$ 7,395.28		$ 59,712.00
Other Direct Costs - Internal CADD Usage / hr Reproduction/Page	RATE $13.00 $0.07	NUMBER 50 1000	COST $650.00 $70.00	NUMBER 24 500	COST $312.00 $35.00	NUMBER 200 500	COST $2,600.00 $35.00	NUMBER 50 5000	COST $650.00 $350.00	NUMBER 20 500	COST $260.00 $35.00	NUMBER 0 500	COST $ - $ 35.00	NUMBER 344 8000	COST $ 4,472.00 $ 560.00
Total Other Direct Costs - Internal			$720.00		$347.00		$2,635.00		$1,000.00		$295.00		$ 35.00		$ 5,032.00
Other Direct Costs - External Postage/FedEX Administrative Supplies	RATE LS LS	NUMBER LS LS	COST $300.35 $0.00	NUMBER LS LS	COST $120.14 $0.00	NUMBER LS LS	COST $600.71 $0.00	NUMBER LS LS	COST $2,402.84 $0.00	NUMBER LS LS	COST $60.07 $0.00	NUMBER LS LS	COST $ 60.07 $ 600.71	NUMBER LS LS	COST $ 3,544.18 $ 600.71
Total Other Direct Costs - External			$300.35		$120.14		$600.71		$2,402.84		$60.07		$ 660.78		$ 4,144.89
Subcontractors Legal - Drinker - Biddle Survey	RATE LS LS	NUMBER LS LS	COST $0.00 $60,071.00	NUMBER LS LS	COST $0.00 $0.00	NUMBER LS LS	COST $78,092.30 $0.00	NUMBER LS LS	COST $242,284.00 $0.00	NUMBER LS LS	COST $48,056.80 $0.00	NUMBER LS LS	COST $ - $ -	NUMBER LS LS	COST $ 368,433.10 $ 60,071.00
Total Subcontractors			$60,071.00		$0.00		$78,092.30		$242,284.00		$48,056.80		$ -		$ 428,504.10
PROJECT COSTS			$184,563.31		$91,285.61		$141,927.86		$467,376.05		$254,310.32		$ 59,726.52		$ 1,199,209.67

Contingency	20%	$ 239,841.93
Total Project Cost		$ 1,439,051.60

EXHIBIT C-2

EXHIBIT D

INTENTIONALLY OMITTED

EXHIBIT E

INSURANCE PROVISIONS

Weston shall procure and maintain for the duration of this Agreement, including any extensions thereof, 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 Weston, their agents, representatives, or employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) 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).

2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 any auto and endorsement CA 0025.

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

4. Professional Liability insurance appropriate to Weston's profession (Errors and Omission).

B. Minimum Limits of Insurance

Weston shall maintain limits no less than:

1. 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.

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

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

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

C. Deductible and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City.

D. Other Insurance Provisions

The general liability and automobile liability policies, as can be provided, are to contain, or be endorsed to contain, the following provisions:

1. The City of Vallejo, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects; liability, including defense costs, arising out of activities performed by or on behalf of Weston; products and completed operations of Weston; premises owned, occupied or used by Weston; or automobiles owned, leased hired or borrowed by Weston. The coverage afforded to the City of Vallejo, its officers, officials, employees, agents or volunteers will be subject to policy terms and conditions. The insurance is to be issued by companies licensed to do business in the State of California.

2. For any claims related to this project, Weston'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 Weston's insurance and shall not contribute with it.

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

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

5. Coverage shall not be suspended, voided canceled, 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.

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 Weston's performance under this Agreement.

E. Acceptability of Insurers

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

F. Verification of Coverage

Weston shall furnish the City with certificates of insurance evidencing all coverages required to be maintained by Weston hereunder.

G. Subcontractors

Weston 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.

H. Payment Withhold

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

EXHIBIT F

SCOPE OF WORK

Assist the City with the technical and business issues necessary to effectuate early transfer and privatization of remediation at the remaining EDC Parcels, including: negotiating an ESCA, the Weston MIRA No. 2, a DTSC Consent Agreement, interim land use covenant, a Water Board Order, if necessary, an environmental insurance program, amendment to the State Lands Settlement and Exchange Agreement, if necessary, and other documents in connection with the EDC Negotiation Work. Weston's EDC Negotiation Work will also include the following:

- Lead the early transfer process on behalf of the City.
- Prepare technical submittals and data summaries in support of proposed remediation that would be presented during technical and regulatory meetings.
- Facilitate and lead technical and regulatory meetings with Stakeholders (City, Navy, DTSC, Water Board, U.S. EPA, Touro, and LMI, as necessary to facilitate timely early transfer.
- Provide detailed cost estimates, assumptions, schedules, and supporting cost information in support of the ESCA, DTSC Consent Agreement, Interim Land Use Covenant, Water Board Order, amendment(s), if any, to the State Lands Settlement and Exchange Agreement and insurance negotiations.
- Provide community updates at Restoration Advisory Board meetings or sponsor technical workshops with interested community members, as necessary.
- Provide legal expertise to review and prepare the legal documents identified above.
- Provide land surveying support for parcel legal descriptions.
- Address and incorporate City comments into the legal documents identified above and to the extent practical incorporate Touro and LMI's comments.
- Engage the California's Governor office, local political entities, and the Department of Defense community to facilitate, to the extent practical, a streamlined approval of the Covenant Deferral Request.
- Provide monthly updates to the City, Touro University, and Lennar Mare Island separate from technical and regulatory meetings and/or conference calls with the Navy or Regulatory community.
- Reasonable community involvement assistance.
- Reasonable City Council meeting assistance.

Weston's EDC Negotiation Work does not include conducting additional data gaps and analytical sampling. If these types of efforts are needed to facilitate the EDC early transfer process, Weston would require additional future costs to accomplish these tasks.

EXHIBIT G

SCHEDULE OF PERFORMANCE

Action	Start Date	Completion Date
Obtain Navy and Regulatory agreement on remediation scope of work	1	60
Prepare Draft Term Sheet and Cost Proposal	30	90
Obtain Navy agreement on Final Term sheet and Cost Proposal and commitment of funding from Navy	90	120
Negotiate and Finalize the Environmental Services Cooperative Agreement	120	240
Negotiate and Finalize with the City the MIRA	120	240
Negotiate and Finalize Regulatory Agreements between DTSC and Water Board, if necessary	120	240
Review and comment on Navy FOSET	75	270
Obtain and bind environmental cost cap and PLL insurance.	180	330

CC/RDA
PUBLIC HRG A

CITY OF VALLEJO

Agenda Item No.

CITY COUNCIL COMMUNICATION
REDEVELOPMENT AGENCY BOARD COMMUNICATION

Date: February 27, 2007

TO: Mayor and Members of the City Council
Chairperson and Members of the Redevelopment Agency

FROM: Craig Whittom, Assistant City Manager/Community Development
Robert Stout, Finance Director
Susan McCue, Economic Development Program Manager

SUBJECT: CONSIDERATION OF AN AMENDED AND RESTATED (THIRD) DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO AND CALLAHAN DESILVA VALLEJO, LLC

BACKGROUND & DISCUSSION

On October 17, 2000 the Redevelopment Agency of the City of Vallejo (Agency) entered into a Disposition and Development Agreement (DDA) with Callahan/DeSilva Vallejo, LLC (Developer) for the acquisition, disposition and development of certain public and private parcels located within the boundaries of the Marina Vista Redevelopment Project Area, the Vallejo Central Project Area and the Vallejo Waterfront Redevelopment Project Area. The original DDA was amended and restated in its entirety as of October 1, 2002 (the "First Restatement"), and further amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, executed as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement") (all of the foregoing are collectively referred to herein as the "Existing DDA"). Since the Second Restatement, the Vallejo Waterfront Redevelopment Project Area and the Marina Vista Redevelopment Project Area have been merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area.

Following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Project. The Agency, City, Developer and Coalition entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action. The Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third Restatement"), which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made since the approval of the Second Restatement, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement. Specifically, the Third Restatement is intended to: (1) implement the terms of the Settlement Agreement by conforming the terms of the DDA to the relevant provisions of the Settlement Agreement; (2) set forth the financial obligations of the parties with respect to their respective expenditures in connection with the Settlement Agreement and

related actions; (3) update both the Schedule of Performance (Attachment No. 3 to the DDA) and performance dates contained throughout the DDA to reflect the tolling of obligations under the DDA during the pending action, as well as current Project circumstances; and (4) make other conforming and minor updating changes to reflect changed circumstances for performance of the Project since the Second Restatement.

Housing and Redevelopment Commission

The Housing and Redevelopment Commission met in a special meeting held on February 7, 2007 to consider the Third Restatement. While the Housing and Redevelopment Commission recommended unanimously that the City Council and Redevelopment approve the Third Restatement, several Commissioners expressed concern that the language contained in the Scope of Development regarding an affordable housing component on Parcel T1 did not indicate a firm commitment to include affordable housing on that parcel. Staff explained that the process outlined in the Scope of Development takes into consideration the high level of uncertainty and Developer risk associated with site development of Parcel T1 related to contamination from the former manufactured gas plant located on the site. The proposed language (described more fully below) codifies a process by which the parties shall prepare and present a preliminary analysis to the City Council and Agency followed by a proposed specific affordable housing program six months prior to the submittal of a Unit Plan application for the parcel. The high degree of uncertainty and risk associated with the site will have been mitigated by this time, and the parties shall be able to commit to a specific affordable housing program which will be presented to the City Council and Agency for consideration.

Third Restatement

The proposed Third Restatement contains the following substantive changes to the Existing DDA:

1) Section 109 EIR Preparation and Planning Studies.

This section updates the costs spent to date on the EIR and related planning studies by the Developer and the method and timing by which the Agency will reimburse the Developer for certain costs incurred for the preparation of the EIR and related planning studies. To date, the Developer has advanced, on the Agency's behalf, approximately $628,077 for costs associated with the preparation of the EIR which are subject to reimbursement under the existing DDA and proposed Third Restatement. Various other costs for the preparation of planning studies and reports necessary for preparation of the EIR were incurred by the Developer that are not subject to reimbursement under the Existing DDA or proposed Third Restatement. As approved under the Existing DDA, these advanced costs shall be credited by the Agency against the purchase price for Parcel A.

2) Section 110 Defense and Settlement of Action

This section sets forth the financial responsibilities of the parties and the City in connection with their defense of the Action, including all activities undertaken by the parties and the City related to defense and settlement of the action filed by the Waterfront Coalition. The Developer shall pay their own costs associated with the Defense and Settlement activities as will the City and/or Agency, as applicable. The Developer shall also pay on behalf of all parties the attorney's fees and costs of the Coalition in the amount specified in the Settlement Agreement. Fifty percent (50%) of these costs (approximately $33,000) shall be credited by the Agency against the purchase price for Parcel A. The remaining fifty percent of the Developer's payment shall be considered and treated as Third Party Costs within the meaning of Section 201.2 (a)(26) (Method B Appraisal Calculation) if Method B is used to determine the purchase price of a Developer Parcel.

3) Section 304 Development of the Site; Unit Plans and Related Documents.

This section includes additional language to reflect the modified procedure related to the submittal, review and processing of Unit Plan applications according to agreed upon terms in the Settlement Agreement. In addition, this section includes a provision that defines the time frame for review by the Design Review Board as consisting of two hearings prior to the timely appeal by the Agency and Developer of the Design Review Board recommendation to the City Council. This language has been added in light of the additional commitments under the Settlement Agreement regarding two community design workshops to be held by the Developer and City regarding Project architecture prior to unit plan submittal.

4) Attachment No. 3 Schedule of Performance.

The updated Schedule of Performance reflects changes to the dates for performance of certain actions and to reflect actions that have been performed or partially performed since that last amendment (Existing DDA). Specifically, thirty days following the Action Dismissal Date of the Settlement Agreement, the parties shall develop Operating Memorandums setting forth the Internal Return Methodology for the Method B Appraisal calculations, the additional appraisal instructions related to the Method A and Method B appraisals, the legal descriptions for each Developer Parcel, and the budget for the expenditure of the Additional Developer deposit.

Ninety days following the Action Dismissal Date, the parties shall develop a Soft Cost Work Operating Memorandum for work associated with the Southern Waterfront. By September 2007, the parties shall apply for any necessary BCDC Permit Amendments associated with the Southern Waterfront Area Approvals. The parties shall prepare and obtain City and State Lands Commission approval of the Parcel A Exchange Agreement Amendment within 180 days after the Action Dismissal Date,

and within two years of the Action Dismissal Date, the Developer shall submit a Unit Plan application and a vesting tentative map for the Northern Waterfront Area.

The Schedule of Performance has been further updated to include the dates of performance of certain actions pertaining to the development of the Parks and Open Spaces, and, in particular, the development of the new Wetland Park, specific to terms and conditions contained in the Settlement Agreement. Finally, the Schedule of Performance has been further updated to reflect

Finally, the Schedule of Performance has been updated to include the schedule for actions pertaining to the development of an Affordable Housing Component for Parcel T1, located in the Southern Waterfront, as further described in the Scope of Development below.

5) Attachment No. 4 Scope of Development.

The Scope of Development has been updated to reflect the incorporation of Water Conservation Measures and Green Building Design Measures into the overall Project. It has been further updated to reflect the changes to the Central Waterfront and Northern Waterfront including the private development on Parcel A as well as the development of the public 4.0 acre Wetland Park on Parcel A to be designed and funded by the Developer. Under the proposed Third Restatement, Parcel F, the Jazz Festival Green, will be removed in order to accommodate the expanded public open space in the Northern Waterfront and to facilitate a reconfiguration of the required parking west of Harbor Way. The parties may be required to seek an amendment of the current Bay Conservation and Development Commission (BCDC) permit to accommodate a reconfiguration of the parking in the Northern Waterfront Area.

The development of all public open space will be subject to the public participation process which will commence upon the Action Dismissal Date. Under the Existing DDA, the Developer is obligated to make a contribution to the development of the Northern and Southern Waterfront Public Parks and Open Spaces in the combined amount of $5,201,070. The City and or Agency may elect to use a portion of these funds to conduct the public participation process.

Vallejo Station The proposed Third Restatement acknowledges that the City and the Redevelopment Agency are studying the feasibility of alternative strategies and opportunities for implementation of the Vallejo Station Project on Parcel L, including a phased approach for parking in the Central Waterfront Area and Vallejo Station. Under the proposed Third Restatement, the parties shall consider in good faith any proposed change in the scope, timing, phasing and funding of development of Vallejo Station resulting from such study of alternative strategies, with the objective of achieving the most timely and cost effective development of Vallejo Station that accomplishes as nearly as possible the planning and financial objectives of the parties as reflected in the current scope, timing, phasing and funding of such

development. Any mutually acceptable modifications to the scope, timing, phasing and/or funding of the Vallejo Station project on Parcel L shall be set forth in a mutually acceptable Operating Memorandum executed in accordance with Section 709 and, as needed, in a mutually acceptable amendment to the Planned Development Master Plan.

Affordable Housing Component Related to Development of Parcel TI The proposed Third Restatement defines the procedure and schedule by which the parties shall develop and present to the City Council and Agency an affordable housing program related to the development of Parcel TI (located in the Southern Waterfront). Specifically, within six months of the Action Dismissal Date, the parties shall present to the City Council and Redevelopment Agency a preliminary analysis of affordable housing alternatives providing up to 9% of the residential units related to the Parcel T1 development being made available at affordable housing cost to moderate income households. Within six months prior to the submittal of a Unit Plan application for Parcel T1, the parties shall prepare a specific program meeting the stated criteria for consideration by the City Council and Agency. This process takes into consideration the high level of uncertainty and Developer risk associated with site development of Parcel T1 related to contamination from the former manufactured gas plant located on the site.

6) Attachment No. 6 Method of Financing.

The annual assessments under the Landscaping and Lighting Maintenance District (LLMD) established in the Existing DDA shall be annually adjusted, beginning in July 2008, by a percentage equal to the Consumer Price Index for the San Francisco-Oakland-San Jose Area. In addition, the methodology for calculating the assessments throughout the district shall be periodically evaluated as additional units within the LLMD are constructed so that per unit assessments may be reduced to ensure that the assessments are fairly allocated within the district.

Section 33433 and 33679 Third Supplemental Report

In compliance with Health and Safety Code Section 33433 and 33679 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), outside counsel for the Agency has prepared a Third Supplemental Report (Attachment D) to provide certain information with respect to the proposed Third Restatement. The Third Supplemental Report supplements the Report prepared by the Agency at the time of approval by the Agency of the Original DDA (the "Original Report"), and the Supplemental Report prepared by the Agency at the time of approval by the Agency of the First Restatement (the "First Supplemental Report"), and the Supplemental Report prepared by the Agency at the time of approval by the Agency of the Second Restatement (the "Second Supplemental Report"), and addresses the changes made through the Third Restatement. All other terms and conditions not addressed in this Report remain unchanged and are as outlined in the DDA and as set out in the Original Report, the First Supplemental Report, and the Second Supplemental Report.

Project Benefits Under the Proposed Third Restatement

In addition to eliminating blighting conditions within the Project Areas, development of the Waterfront Project pursuant to the proposed Third Restatement will provide the following benefits to the Project Areas:

1) Development of the project will create employment opportunities, including short term construction-related jobs, as well as long-term employment opportunities associated with the retail, commercial and office uses to be developed as part of the Waterfront Project;

2) In furtherance of the project, the Developer has entered into a Project Labor Agreement with the Napa-Solano Building and Construction Trades Council, and various union affiliates of the Council, to develop a cooperative effort to assure that the development of the private portions of the Waterfront Project will be built in an expeditious, high quality and cost effective manner without interruption or delays, utilizing a skilled workforce;

3) The proposed Third Restatement will further the Agency's goals and objectives to remediate the hazardous materials conditions existing on portions of the Site, to enable redevelopment and use of those contaminated areas;

4) The Waterfront Project consists of a comprehensive and coordinated public and private development effort to revitalize Vallejo's Waterfront Area and to link the Waterfront area to the Downtown area;

5) The Waterfront Project includes, as a central component, development of the major new transit center for ferry patrons and bus transfer center ("Vallejo Station"), which will be a multimodal transportation facility serving regional and local transit needs; and

6) Development of the Project will intensify land uses in certain areas, and expand designated public open space areas, and enhance public access to the Waterfront and the Waterfront Promenade areas.

FISCAL IMPACT

With the exception of the financial responsibilities of the parties and the City in connection with their defense of the Action filed by the Waterfront Coalition (described earlier), the proposed Third Restatement does not impose any new obligations on the City or Agency over the Existing DDA approved by the City Council and Agency in October 2005. Similar to the Existing DDA, there is no immediate fiscal impact to the General Fund by approving the Third Restatement. All developer fees (including water fees, impact fees and excise taxes) will be paid for by the Developer in conjunction with the issuance of building permits for the Project with the exception of the City park fees. The total Developer Public Parks and Open Space Contribution of $5,201,070 is significantly more than the cumulative total of City park fees anticipated to be due

RECOMMENDATION

Staff recommends that the City Council and Agency approve the attached resolutions authorizing the City Manager/Executive Director or his designee to execute the Third Restatement between the Redevelopment Agency of the City of Vallejo and Callahan/DeSilva Vallejo, LLC, and to take such actions and execute such documents as may be necessary to carry out the obligations of the Agency under the DDA, as amended through the Third Restatement.

ALTERNATIVES CONSIDERED

The Third Restatement is intended to implement the terms of the Settlement Agreement by conforming the terms of the DDA to the relevant provisions of the Settlement Agreement. As indicated earlier, the Settlement Agreement provides for the Action to be dismissed by the parties 31 days after the second reading and approval of the Settlement-Related Ordinances, currently scheduled for consideration by the City Council on March 13, 2007. If the proposed Third Restatement were not approved by the City Council and Agency, the Existing DDA would not confirm to agreed upon terms in the Settlement Agreement approved by the City Council and Agency on November 28, 2006, which would delay or terminate dismissal of the lawsuit.

ENVIRONMENTAL REVIEW

A project level Environmental Impact Report (EIR) analyzing the environmental impacts of the proposed project was certified for the Waterfront Project by the City Council on October 27, 2005. An addendum to the EIR was prepared analyzing the additional impacts of the proposed project under the Third Restatement and considered by the City Council and the Agency earlier this evening.

PROPOSED ACTION

Adopt the following attached resolutions:

1) A Resolution of the Redevelopment Agency of the City of Vallejo authorizing the execution of an Amended and Restated (Third) Disposition and Development Agreement between the Redevelopment Agency of the City of Vallejo and Callahan/DeSilva Vallejo, LLC; and

2) A Resolution of the City of Vallejo authorizing the execution of an Amended and Restated (Third) Disposition and Development Agreement between the Redevelopment Agency of the City of Vallejo and Callahan/DeSilva Vallejo, LLC.

DOCUMENTS ATTACHED

Attachment A: Agency Resolution on the Third Restatement
Attachment B: City Council Resolution on the Third Restatement

Attachment C: Third Restatement (Amended and Restated DDA)-Redlined
Attachment D: Third Supplemental Report (33433 Report) on the Third Restatement

PREPARED BY: Bonnie Robinson Lipscomb, Senior Community Development Analyst
648-5278, blipscomb@ci.vallejo.ca.us

CONTACT: Bonnie Robinson Lipscomb, Senior Community Development Analyst
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Craig Whittom, Assistant City Manager/Community Development
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K:\PUBLIC\AI\ED\CC RDA 022707 Waterfront DDA Staff Report.DOC

ATTACHMENT A

AGENCY RESOLUTION NO. 07-____

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED (THIRD) DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND CALLAHAN/DESILVA VALLEJO, LLC

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), the Redevelopment Agency of the City of Vallejo (the "Agency") is carrying out the Redevelopment Plans (the "Redevelopment Plans") for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project (collectively, the "Redevelopment Projects"), both of which Redevelopment Projects were recently merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area (the "Merged Redevelopment Project Areas"); and

WHEREAS, in furtherance of the Redevelopment Plans, the Agency and Callahan/DeSilva Vallejo LLC, a California limited liability company (the "Developer") entered into that certain Disposition and Development Agreement, dated as of October 17, 2000 (the "Original DDA"), which Original DDA was amended and restated as of October 1, 2002, and subsequently amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, dated as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement") (all of the foregoing are collectively referred to herein as the "Existing DDA") providing for the acquisition, disposition and development of certain real property (the "Site") included within the boundaries of the Vallejo Waterfront and Marina Vista Redevelopment Project Areas, and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses (collectively, the "Waterfront Project"); and

WHEREAS, the Site includes certain parcels to be conveyed to the Developer (the "Developer Parcels") and certain parcels that are currently owned by or are intended to be acquired and retained by the Agency or City (collectively, the "Agency/City Parcels"); and

WHEREAS, following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Waterfront Project, and the Agency, City, Developer and Coalition subsequently entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action; and

WHEREAS, the Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third

Restatement"), which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made since the approval of the Second Restatement, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement; and

WHEREAS, specifically, the Third Restatement is intended to: (1) implement the terms of the Settlement Agreement by conforming the terms of the DDA to the relevant provisions of the Settlement Agreement; (2) set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the Settlement Agreement and related actions; (3) update both the Schedule of Performance (Attachment No. 3 to the DDA) and performance dates contained throughout the DDA to reflect the tolling of obligations under the DDA during the pending action, as well as current Project circumstances; and (4) make other conforming and minor updating changes to reflect changed circumstances for performance of the Project since the Second Restatement; and

WHEREAS, as part of the Waterfront Project, and pursuant to the DDA, as amended by the Third Restatement, the Agency will be providing financing for the design and construction of various publicly-owned improvements and facilities, including parking facilities and parks and open space improvements and amenities within the Waterfront Project, and for the design and construction of certain publicly-owned buildings, including certain parking facilities, a new Bus Transfer Center and improvements to the public boat launch facility located within the Waterfront Project, and related site preparation and remediation work, improvements and amenities, all as more fully described in the Third Restatement (all collectively referred to herein as the "Public Improvements"); and

WHEREAS, the Community Redevelopment Law provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a report containing specified information and the financial aspects of the proposal; and

WHEREAS, pursuant to Section 33445 of the Community Redevelopment Law, the Agency is authorized, with the consent of the City Council, to pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure or other improvement which is publicly owned either within or without the Redevelopment Project Areas upon a determination by the City Council that such building, facility, structure or other improvement is of benefit to the Redevelopment Project Areas or the immediate area in which the Project is located, that no other reasonable means of financing such building, facility, structure or other improvement are available to the community, that the payment of funds for the acquisition of land or the cost of such building, facility, structure or other improvement will assist in the elimination of one or more blighting conditions within the Redevelopment Project Areas, and is consistent with the Agency's adopted Five-Year Implementation Plans for the Redevelopment Project Areas; and

WHEREAS, the Community Redevelopment Law provides in Section 33679 that before an agency commits to use tax increment funds for the purpose of paying all or part of the value of the land for, and the cost of the installation and construction of, any publicly owned building, other than parking facilities, the legislative body shall hold a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that a summary report shall be available for public inspection containing specified information; and

WHEREAS, pursuant to Sections 33433 and 33679 of the Health and Safety Code, the Agency has prepared a Third Supplemental Report to provide certain information with respect to the proposed Third Restatement, which Third Supplemental Report supplements the Report prepared by the Agency at the time of approval of the Original DDA (the "Original Report"), the Supplemental Report prepared by the Agency at the time of approval of the First Restatement to the DDA (the "First Supplemental Report"), and the Second Supplemental Report prepared by the Agency at the time of approval of the Second Restatement to the DDA (the "Second Supplemental Report"), which Third Supplemental Report contains a copy of the Third Restatement, including all attachments thereto, and a summary describing the cost of the Third Restatement to the Agency, and other information required by said Sections 33433 and 33679, and said report was made available to the public for inspection (the Original Report, the First Supplemental Report, the Second Supplemental Report and the Third Supplemental Report are collectively referred to herein as the "Agency's Summary Report"); and

WHEREAS, the City Council and the Agency held a joint public hearing on February 27, 2007, in the City Council Chambers to consider and act on the Third Restatement; and

WHEREAS, as required by Health and Safety Code Section 33490, the Agency adopted Five-Year Implementation Plans covering fiscal year 2004/05 through fiscal year 2008/09, for each of its redevelopment projects, including the Marina Vista and the Waterfront Redevelopment Project Areas, and as part of its adoption of the Merged Waterfront/Downtown Redevelopment Projects, adopted a combined Amended and Restated Five-Year Implementation Plan for fiscal year 2004-05 through fiscal year 2008-09, covering the entire Merged Redevelopment Project Areas, including the Vallejo Waterfront and Marina Vista project areas; and

WHEREAS, the Agency and City have prepared and, prior to adoption of this Resolution, certified and approved an Environmental Impact Report (the "EIR") for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073), including the EIR Mitigation Monitoring and Reporting Program, and the City has prepared and approved an addendum ("Addendum") to the certified Final Environmental Impact Report State Clearinghouse No. 2000052073, which Addendum was prepared in conjunction with the City's consideration and approval of amendments to the Planned Development Master Plan and Design Guidelines (the PDMP/DG) and the Development Agreement for the Waterfront Project; and

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

Section 1. The Agency reaffirms its prior findings and determinations made with respect to the Existing DDA. The Agency further finds and determines that approval and implementation of the Third Restatement, and the sale and transfer of the Developer Parcels to the Developer as provided in the DDA, as amended through the Third Restatement, will assist in the elimination of blight, and is consistent with the Five-Year Implementation Plan for the Merged Waterfront/Downtown Redevelopment Project Areas adopted by the Agency pursuant to Health and Safety Code Section 33490. The Agency further finds and determines that the consideration to be paid by the Developer to the Agency for the Developer Parcels pursuant to the DDA, as amended through the Third Restatement, is not less than the fair market value at the Developer Parcels' highest and best use in accordance with the Redevelopment Plans. These findings are based upon the facts and information contained in the Agency's Summary Report, that certain City Council and Redevelopment Agency Board Communication, dated February 27, 2007, to Mayor and Members of the City Council and Chairperson and Members of the Redevelopment Agency, from Craig Whittom, Assistant City Manager/Community Development, Robert Stout, Finance Director, and Susan McCue, Economic Development Program Manager, regarding Consideration Of An Amended And Restated (Third) Disposition And Development Agreement (DDA) Between The Redevelopment Agency Of The City Of Vallejo And Callahan DeSilva Vallejo, LLC, including all documents attached thereto or referenced therein (the "February 27 Staff Report"), and other evidence and testimony presented prior to and at the joint public hearing on the Third Restatement.

Section 2. The Agency, in reaffirming its prior findings and determinations made with respect to the Existing DDA, hereby finds and determines that the payment by the Agency of costs for the acquisition and assembly of those portions of the site currently owned by or to be acquired by the Agency, and the site preparation and environmental remediation activities related to and the provision of the Public Improvements by the Agency, in whole or in part, for the development of the Waterfront Project pursuant to the DDA, as amended through the Third Restatement, is necessary to effectuate the purposes of the Redevelopment Plans and the Agency is authorized, with the consent of the City Council, to pay such costs and provide such Public Improvements. The Agency further finds and determines that the Public Improvements to be provided by the Agency pursuant to the DDA, as amended through the Third Restatement, are of primary benefit to the Redevelopment Project Areas and the immediate neighborhoods in which the Waterfront Project is located; that no other reasonable means of financing the Public Improvements are available to the community; and that the payment of funds for the acquisition of land, site preparation and environmental remediation, and the cost of the Public Improvements will assist in the elimination of one or more blighting conditions inside the Redevelopment Project Areas and is consistent with the Five Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490. These findings are based upon the facts and information contained in the Agency's Summary Report, the February 27 Staff Report and other evidence and testimony presented prior to and at the joint public hearing on the Third Restatement.

Section 3. The Agency, in reaffirming its prior findings and determinations made with respect to the Existing DDA, finds and determines that the Waterfront Project, including the disposition and development of the Site and the changes incorporated in the Third Restatement, is covered by a Final Environmental Impact Report relating to the Vallejo Station Project and the

Vallejo Waterfront Project, including the EIR Mitigation Monitoring and Reporting Program related thereto, certified by the Agency by Resolution No. 05 - 22 and by the City Council by Resolution No. 05-354 N.C., both of which Resolutions were adopted on October 25, 2005 (SCH #2000052073), and an Addendum to the EIR, approved by the City Council by Resolution No. 07-_____ N.C., which Resolution was adopted on February 27, 2007 (collectively, the "EIR"), and that the Waterfront Project incorporates all applicable mitigation measures identified in Agency Resolution No. 05-22 and Council Resolution No. 05-354 N.C. The Agency further finds that the Waterfront Project, including the development of the Site pursuant to the DDA as amended through the Third Restatement, is within the scope of the EIR and that no additional environmental impact report or other environmental analysis is required because: (a) the Third Restatement does not propose subsequent changes in the project which will require major revisions to the EIR; (b) substantial changes have not occurred with respect to the circumstances under which the Third Restatement will be implemented which will require major revisions in the EIR; and (c) there is no new information available which was not known or could not have been known at the time the EIR was certified as complete.

Section 4. The Agency hereby approves the Third Restatement in substantially the form on file with the Agency Secretary, which Third Restatement is incorporated herein by reference.

Section 5. The Agency authorizes the acquisition of those portions of the Site not yet owned but intended to be acquired by the Agency, and the sale and lease, as applicable, of the Developer Parcels to the Developer pursuant to the terms and conditions set forth in the Third Restatement, including all attachments thereto. The Agency hereby further approves the payment of costs for the Agency's portion of expenditures in connection with the Settlement Agreement and related actions, the site preparation and environmental remediation activities and the Public Improvements to be provided for or financed by the Agency pursuant to the Third Restatement.

Section 6. The Executive Director and Secretary of the Agency are hereby authorized and directed to execute the Third Restatement on behalf of the Agency, subject to any minor clarifying, conforming and technical changes as may be approved by Agency Counsel. The Executive Director is further authorized and directed to take such actions and execute such documents as may be necessary to carry out the obligations of the Agency under the DDA, as amended through the Third Restatement.

This resolution was adopted by those present and voting at a regular meeting of the Redevelopment Agency held on _____, 2007, by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

_____
ANTHONY J. INTINTOLI, JR., Chairman

ATTACHMENT B

COUNCIL RESOLUTION NO. 07-____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED (THIRD) DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO AND CALLAHAN/DESILVA VALLEJO, LLC

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), the Redevelopment Agency of the City of Vallejo (the "Agency") is carrying out the Redevelopment Plans (the "Redevelopment Plans") for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project (collectively, the "Redevelopment Projects"), both of which Redevelopment Projects were recently merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area (the "Merged Redevelopment Project Areas"); and

WHEREAS, in furtherance of the Redevelopment Plans, the Agency and Callahan/DeSilva Vallejo LLC, a California limited liability company (the "Developer") entered into that certain Disposition and Development Agreement, dated as of October 17, 2000 (the "Original DDA"), which Original DDA was amended and restated as of October 1, 2002, and subsequently amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, dated as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement") (all of the foregoing are collectively referred to herein as the "Existing DDA") providing for the acquisition, disposition and development of certain real property (the "Site") included within the boundaries of the Vallejo Waterfront and Marina Vista Redevelopment Project Areas, and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses (collectively, the "Waterfront Project"); and

WHEREAS, the Site includes certain parcels to be conveyed to the Developer (the "Developer Parcels") and certain parcels that are currently owned by or are intended to be acquired and retained by the Agency or City (collectively, the "Agency/City Parcels"); and

WHEREAS, following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Waterfront Project, and the Agency, City, Developer and Coalition subsequently entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action; and

WHEREAS, the Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third

Restatement"), which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made since the approval of the Second Restatement, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement; and

WHEREAS, specifically, the Third Restatement is intended to: (1) implement the terms of the Settlement Agreement by conforming the terms of the DDA to the relevant provisions of the Settlement Agreement; (2) set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the Settlement Agreement and related actions; (3) update both the Schedule of Performance (Attachment No. 3 to the DDA) and performance dates contained throughout the DDA to reflect the tolling of obligations under the DDA during the pending action, as well as current Project circumstances; and (4) make other conforming and minor updating changes to reflect changed circumstances for performance of the Project since the Second Restatement; and

WHEREAS, as part of the Waterfront Project, and pursuant to the DDA, as amended by the Third Restatement, the Agency will be providing financing for the design and construction of various publicly-owned improvements and facilities, including parking facilities and parks and open space improvements and amenities within the Waterfront Project, and for the design and construction of certain publicly-owned buildings, including certain parking facilities, a new Bus Transfer Center and improvements to the public boat launch facility located within the Waterfront Project, and related site preparation and remediation work, improvements and amenities, all as more fully described in the Third Restatement (all collectively referred to herein as the "Public Improvements"); and

WHEREAS, the Community Redevelopment Law provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a report containing specified information and the financial aspects of the proposal; and

WHEREAS, pursuant to Section 33445 of the Community Redevelopment Law, the Agency is authorized, with the consent of the City Council, to pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure or other improvement which is publicly owned either within or without the Redevelopment Project Areas upon a determination by the City Council that such building, facility, structure or other improvement is of benefit to the Redevelopment Project Areas or the immediate area in which the Project is located, that no other reasonable means of financing such building, facility, structure or other improvement are available to the community, that the payment of funds for the acquisition of land or the cost of such building, facility, structure or other improvement will assist in the elimination of one or more blighting conditions within the Redevelopment Project Areas, and is consistent with the Agency's adopted Five-Year Implementation Plans for the Redevelopment Project Areas; and

WHEREAS, the Community Redevelopment Law provides in Section 33679 that before an agency commits to use tax increment funds for the purpose of paying all or part of the value of the land for, and the cost of the installation and construction of, any publicly owned building, other than parking facilities, the legislative body shall hold a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that a summary report shall be available for public inspection containing specified information; and

WHEREAS, pursuant to Sections 33433 and 33679 of the Health and Safety Code, the Agency has prepared a Third Supplemental Report to provide certain information with respect to the proposed Third Restatement, which Third Supplemental Report supplements the Report prepared by the Agency at the time of approval of the Original DDA (the "Original Report"), the Supplemental Report prepared by the Agency at the time of approval of the First Restatement to the DDA (the "First Supplemental Report"), and the Second Supplemental Report prepared by the Agency at the time of approval of the Second Restatement to the DDA (the "Second Supplemental Report"), which Third Supplemental Report contains a copy of the Third Restatement, including all attachments thereto, and a summary describing the cost of the Third Restatement to the Agency, and other information required by said Sections 33433 and 33679, and said report was made available to the public for inspection (the Original Report, the First Supplemental Report, the Second Supplemental Report and the Third Supplemental Report are collectively referred to herein as the "Agency's Summary Report"); and

WHEREAS, the City Council and the Agency held a joint public hearing on February 27, 2007, in the City Council Chambers to consider and act on the Third Restatement; and

WHEREAS, as required by Health and Safety Code Section 33490, the Agency adopted Five-Year Implementation Plans covering fiscal year 2004/05 through fiscal year 2008/09, for each of its redevelopment projects, including the Marina Vista and the Waterfront Redevelopment Project Areas, and as part of its adoption of the Merged Waterfront/Downtown Redevelopment Projects, adopted a combined Amended and Restated Five-Year Implementation Plan for fiscal year 2004-05 through fiscal year 2008-09, covering the entire Merged Redevelopment Project Areas, including the Vallejo Waterfront and Marina Vista project areas; and

WHEREAS, the Agency and City have prepared and, prior to adoption of this Resolution, certified and approved an Environmental Impact Report (the "EIR") for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073), including the EIR Mitigation Monitoring and Reporting Program, and the City has prepared and approved an addendum ("Addendum") to the certified Final Environmental Impact Report State Clearinghouse No. 2000052073, which Addendum was prepared in conjunction with the City's consideration and approval of amendments to the Planned Development Master Plan and Design Guidelines (the PDMP/DG) and the Development Agreement for the Waterfront Project; and

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

Section 1. The City Council reaffirms its prior findings and determinations made with respect to the Existing DDA. The City Council further finds and determines that approval and implementation of the Third Restatement, and the sale and transfer of the Developer Parcels to the Developer as provided in the DDA, as amended through the Third Restatement, will assist in the elimination of blight, and is consistent with the Five-Year Implementation Plan for the Merged Waterfront/Downtown Redevelopment Project Areas adopted by the Agency pursuant to Health and Safety Code Section 33490. The City Council further finds and determines that the consideration to be paid by the Developer to the Agency for the Developer Parcels pursuant to the DDA, as amended through the Third Restatement, is not less than the fair market value at the Developer Parcels' highest and best use in accordance with the Redevelopment Plans. These findings are based upon the facts and information contained in the Agency's Summary Report, that certain City Council and Redevelopment Agency Board Communication, dated February 27, 2007, to Mayor and Members of the City Council and Chairperson and Members of the Redevelopment Agency, from Craig Whittom, Assistant City Manager/Community Development, Robert Stout, Finance Director, and Susan McCue, Economic Development Program Manager, regarding Consideration Of An Amended And Restated (Third) Disposition And Development Agreement (DDA) Between The Redevelopment Agency Of The City Of Vallejo And Callahan DeSilva Vallejo, LLC, including all documents attached thereto or referenced therein (the "February 27 Staff Report"), and other evidence and testimony presented prior to and at the joint public hearing on the Third Restatement.

Section 2. The City Council, in reaffirming its prior findings and determinations made with respect to the Existing DDA, hereby finds and determines that the payment by the Agency of costs for the acquisition and assembly of those portions of the site currently owned by or to be acquired by the Agency, and the site preparation and environmental remediation activities related to and the provision of the Public Improvements by the Agency, in whole or in part, for the development of the Waterfront Project pursuant to the DDA, as amended through the Third Restatement, is necessary to effectuate the purposes of the Redevelopment Plans and the Agency is authorized, with the consent of the City Council, to pay such costs and provide such Public Improvements. The City Council further finds and determines that the Public Improvements to be provided by the Agency pursuant to the DDA, as amended through the Third Restatement, are of primary benefit to the Redevelopment Project Areas and the immediate neighborhoods in which the Waterfront Project is located; that no other reasonable means of financing the Public Improvements are available to the community; and that the payment of funds for the acquisition of land, site preparation and environmental remediation, and the cost of the Public Improvements will assist in the elimination of one or more blighting conditions inside the Redevelopment Project Areas and is consistent with the Five Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490. These findings are based upon the facts and information contained in the Agency's Summary Report, the February 27 Staff Report and other evidence and testimony presented prior to and at the joint public hearing on the Third Restatement.

Section 3. The City Council, in reaffirming its prior findings and determinations made with respect to the Existing DDA, finds and determines that the Waterfront Project, including the disposition and development of the Site and the changes incorporated in the Third Restatement, is covered by a Final Environmental Impact Report relating to the Vallejo Station

Project and the Vallejo Waterfront Project, including the EIR Mitigation Monitoring and Reporting Program related thereto, certified by the Agency by Resolution No. 05 - 22 and by the City Council by Resolution No. 05-354 N.C., both of which Resolutions were adopted on October 25, 2005 (SCH #2000052073), and an Addendum to the EIR, approved by the City Council by Resolution No. 07-_____ N.C., which Resolution was adopted on February 27, 2007 (collectively, the "EIR"), and that the Waterfront Project incorporates all applicable mitigation measures identified in Agency Resolution No. 05-22 and Council Resolution No. 05-354 N.C. The City Council further finds that the Waterfront Project, including the development of the Site pursuant to the DDA as amended through the Third Restatement, is within the scope of the EIR and that no additional environmental impact report or other environmental analysis is required because: (a) the Third Restatement does not propose subsequent changes in the project which will require major revisions to the EIR; (b) substantial changes have not occurred with respect to the circumstances under which the Third Restatement will be implemented which will require major revisions in the EIR; and (c) there is no new information available which was not known or could not have been known at the time the EIR was certified as complete.

Section 4. The City Council hereby approves the Third Restatement in substantially the form on file with the City Clerk, which Third Restatement is incorporated herein by reference.

Section 5. The City Council authorizes the acquisition of those portions of the Site not yet owned but intended to be acquired by the Agency, and the sale and lease, as applicable, of the Developer Parcels to the Developer pursuant to the terms and conditions set forth in the Third Restatement, including all attachments thereto. The City Council hereby further approves the payment of costs for the Agency's portion of expenditures in connection with the Settlement Agreement and related actions, the site preparation and environmental remediation activities and the Public Improvements to be provided for or financed by the Agency pursuant to the Third Restatement.

Section 6. The Agency is hereby authorized to execute the Third Restatement on behalf of the Agency, subject to any minor clarifying, conforming and technical changes as may be approved by Agency Counsel. The Agency is further authorized to take such actions and execute such documents as may be necessary to carry out the obligations of the Agency under the DDA, as amended through the Third Restatement.

This resolution was adopted by those present and voting at a regular meeting of the City Council held on _____, 2007, by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

_____
ANTHONY J. INTINTOLI, JR., Mayor

ATTACHMENT C

~~Execution~~**Public Hearing Version**
February 27, 2007

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

REDEVELOPMENT AGENCY OF
THE CITY OF VALLEJO
and
CALLAHAN / DeSILVA VALLEJO, LLC

Waterfront Redevelopment Project /
Marina Vista Redevelopment Project

Executed as of October 17, 2000

Amended and Restated (First) as of October 1, 2002

Amended as of October 24, 2003

Amended as of August 24, 2004

Amended and Restated (Second) as of October 27, 2005

Amended and Restated (Third) as of February 27, 2007

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ATTACHMENTS

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement"), initially executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended as of October 24, 2003, and August 24, 2004, ~~and as hereby fully~~ amended and restated for a second time as of October 27, 2005 (the "Second Restatement"), and as hereby fully amended and restated for a third time as of February 27, 2007 (the "Third Restatement") is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO (the "Agency") and CALLAHAN / DeSILVA VALLEJO, LLC, a California limited liability company (the "Developer"). The Agency and the Developer are sometimes collectively referred to in this Agreement as the "Parties" or "parties" and individually as a "Party" or "party."

RECITALS

A. The parties initially executed this Agreement as of October 17, 2000 to implement a program of public and private revitalization of the Vallejo Waterfront area (the "Project," as further defined and described in Section 101 and the Scope of Development (Attachment No. 4)) within a strategic site adjacent to the Waterfront area and Vallejo's commercial Downtown area (the "Site," as further defined and described in Sections 101 and 104). The parties initially executed this Agreement in recognition of the accomplishment of the following milestone actions:

1. On August 13, 1996, the Agency authorized the Executive Director to seek proposals from qualified developers for the development of available parcels within the Marina Vista and Waterfront Redevelopment Project Areas. A request for qualifications was issued on January 2, 1997, and distributed to more than 130 developers. Four proposals were submitted in response to the request for qualifications. A Waterfront Developer Review Panel (the "WDRP") was established that included staff and representatives of the community to review the qualifications statements and visit projects of the proposed developers. Following this process, the WDRP recommended that the Agency approve The DeSilva Group ("DeSilva") as the Master Waterfront Developer. The Agency approved DeSilva as the Master Waterfront Developer on April 15, 1997, and directed DeSilva to formulate a community-based Waterfront Master Plan.

2. In May 1997, the Agency approved an Exclusive Right to Negotiate Agreement ("ERN") with DeSilva, which required DeSilva to develop the Waterfront Master Plan and then proceed to negotiate a Disposition and Development Agreement. DeSilva subsequently teamed with Callahan Property Company ("CPC") to form the limited liability company which is the Developer under this Agreement.

3. Since beginning the Waterfront public planning process, the Developer, in conjunction with the City of Vallejo (the "City"), has held Public Planning Workshops, outreach meetings and presentations to City commissions and boards. In addition, the City's Community Development Department sent letters to neighborhood and community organizations inviting participation in outreach meeting and public workshops, and the public workshops were also advertised in a local newspaper, on a local cable television channel and through handouts and flyers.

4. As a result of this public planning process, DeSilva prepared a Waterfront Master Plan, which was accepted by the Agency on April 20, 1999, subject to certain conditions, including without limitation negotiations of a final Disposition and Development Agreement with the Agency and completion of the environmental review process. The primary goal of the Waterfront Master Plan is to incorporate mixed land uses which are pedestrian-friendly and which will allow the Waterfront and Downtown areas to evolve into the social, cultural and entertainment hub of the City.

5. Following acceptance of the Waterfront Master Plan, the Agency retained an Urban Land Institute (ULI) Advisory Panel, which convened in Vallejo in June 1999, to review the Waterfront Master Plan. The Agency accepted the Panel's report at its meeting on August 24, 1999. On March 28, 2000, modifications to the Waterfront Master Plan were accepted by the Agency.

6. Through a competitive process, the City and the Waterfront Downtown Design Advisory Committee selected the firm of Wallace Roberts & Todd, Inc. ("WRT") as the landscape architect to provide design concepts and plans for the public spaces within the Waterfront Master Plan area. Through an extensive public participation process, WRT prepared and the Agency approved the Vallejo Waterfront Downtown Master Plan for Public Spaces, by action of September 19, 2000 (the "Plan for Public Spaces").

B. This Agreement ~~has been~~was comprehensively updated through the Second Restatement, approved by the Agency on October 27, 2005, to reflect progress made and further planning and financial agreements reached by the Agency and the Developer ~~since~~from the time of the initial execution of this Agreement through the date of the Second Restatement. Among the milestone actions leading to the Second Restatement of this Agreement ~~are~~were the following:

1. The Georgia Street Extension element of the Project ~~has been~~was satisfactorily completed by the parties, with the Developer serving as the project manager for such completion.

2. Former Developer Parcel K ("Former Parcel K") ~~has been~~was removed from the Site that is the subject of this Agreement and ~~has been~~was satisfactorily developed as an office facility for the State Farm Electronic Claims Center pursuant to a separate disposition and development agreement between the Agency and CPC, a member of the Developer. As part of the separate development of Former Parcel K, CPC served as the Agency's project manager for completion of the segment of Capitol Street between Mare Island Way and Civic Center Drive.

3. Former Parcels N and V ~~have been~~were removed from the Site that is the subject of this Agreement and ~~are being considered for~~were made part of the development under a separate disposition and development agreement entered into between the Agency and Triad ~~Development Company~~Downtown Vallejo, LLC. Former Parcel U (the Boat Launch relocation parcel) ~~has~~was also ~~been~~ removed from the Site that is the subject of this Agreement.

4. On December 11, 2002, the City and the Agency circulated an initial draft environmental impact report (the "IDEIR"), in accordance with the California Environmental

Quality Act and applicable state and local guidelines ("CEQA"). The IDEIR evaluated the potential environmental effects of the Project as envisioned under this Agreement as initially executed and ~~previously~~ amended prior to the Second Restatement of this Agreement. Extensive comments were received on the IDEIR. During preparation of responses to those comments, the City and the Agency decided that a revised draft environmental impact report (the "RDEIR") should be prepared and circulated in accordance with CEQA for reasons set forth in the Introduction to the RDEIR. In connection with preparation of the RDEIR, and as detailed therein, the parties and the City ~~have~~ made various revisions to the Project scope and description. These revisions ~~reconfigure~~reconfigured and ~~scale~~scaled-back the Project from that originally envisioned when this Agreement was initially executed in October, 2000, and ~~respond~~responded to public concerns and changed circumstances with respect to surrounding developments in the Downtown area and at Mare Island.

5. The City and the Agency circulated the RDEIR (State Clearing House No. 2000052073) on June 10, 2005. On October 3, 2005, the City and the Agency circulated a document containing responses to comments received on the RDEIR and other information required by CEQA, which together with the RDEIR constitutes the "EIR" for the Project~~, as further described in Section 102.2.~~.

6. In connection with preparation of the EIR and the Second Restatement of this Agreement, the parties and the City ~~have~~ prepared ~~a~~the following series of land use approvals and entitlements for the revised Project, for consideration of approval by the City concurrently with consideration of approval of the Second Restatement of this Agreement (together with the EIR, the following documents and approvals are collectively referred to as the "Required Approvals~~," as further described in Section 102.2). As applicable, the Required Approvals incorporate~~"):

a. An Amendment to the City's General Plan (#00-001, referred to as [the "General Plan Amendment") to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;]

b. An Amendment to the City's Zoning Ordinance (#03-0003)[to provide for zoning consistent with the General Plan Amendment;]

c. A Planned Development Master Plan for the Site (#00-0022, referred to as [the "Planned Development Master Plan"), which includes as an attached and incorporated element the Waterfront Design Guidelines, prepared jointly by the Agency and Developer;] and

d. A development agreement (#05-0008, referred to as [the "Development Agreement") pursuant to Government Code Section 65864 et seq., between the City and the Developer pertaining to all of the Developer Parcels identified in Section 104 of this Agreement.]

The Required Approvals incorporated refined concepts and designs from previous planning and policy documents for the Waterfront area, including the Waterfront Master Plan and the Plan For Public Spaces (as described in Recital A above).

C. On October 25 and 27, and November 15, 2005, the City Council and the Agency:

1. Conducted public hearings on the revised Project, the Second Restatement of this Agreement, and the Required Approvals;

2. Certified the EIR and made the required CEQA findings; and

3. Approved the Second Restatement of this Agreement and the Required Approvals.

As a result of these actions, the Second Restatement of this Agreement became fully effective by its terms on December 15, 2005.

D. On or about December 2, 2005, the Vallejo Waterfront Coalition, an unincorporated association (the "Coalition") filed a Petition for Writ of Mandate And Complaint for Injunctive Relief in the Solano County Superior Court, captioned *Vallejo Waterfront Coalition v. City of Vallejo, et al.*; Case No. FCS 027048 (the "Action"). On or about January 12, 2006, the Coalition filed a First Amended Petition, etc. in the Action. Beginning on or about January 20, 2006, the Agency, the City, the Developer, and the Coalition have engaged in settlement negotiations to resolve the Action and have reached an agreement to do so on the terms and conditions stated in that certain Settlement and Release Agreement entered into as of November 28, 2006 (the "Settlement Agreement").

E. On November 28, 2006, the City Council and the Agency approved the Settlement Agreement in the form previously executed by the Developer and the Coalition. The City and the Agency thereafter duly executed the Settlement Agreement.

F. On February 27, 2007, following conduct of duly noticed public hearings as required by law, the City Council and the Agency took the following actions

1. The City Council and the Agency approved an addendum to the EIR that evaluated the impacts of the Project as modified by the Settlement-Related Amendments (as defined below), and the Third Restatement of this Agreement (the "EIR Addendum");

2. The City Council and the Agency approved the Third Restatement of this Agreement; and

3. The City Council introduced and conducted the first reading of ordinances (collectively, the "Settlement-Related Ordinances") to approve certain amendments to the Planned Development Master Plan and the accompanying Waterfront Design Guidelines and certain amendments to the Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments").

G. The Settlement Agreement provides for the Action to be dismissed by the parties thereto within thirty-one (31) days after the second reading and approval of the Settlement-Related Ordinances enacting the Settlement-Related Amendments, which second reading is

currently scheduled for consideration by the City Council on March 13, 2007. The date that the Action is dismissed is referred to as the "Action Dismissal Date."

H. Through the Third Restatement of this Agreement, the parties intend to modify the Agreement to:

1. Implement the terms of the Settlement Agreement by conforming the terms of this Agreement to the relevant provisions of the Settlement Agreement, the Settlement-Related Ordinances, and the Settlement Related Amendments;

2. Set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the satisfactory disposition of the Action through approval of the Settlement Agreement and related actions;

3. Update both the Schedule of Performance (Attachment No. 3) and performance dates contained throughout the main text of this Agreement to reflect the tolling of obligations under this Agreement during the pending Action, as well as current Project circumstances; and

4. Make other conforming and minor updating changes to reflect changed circumstances for performance of the Project since this Agreement was last amended through the Second Amendment.

I. The revised Project contemplated by the parties and the City for implementation pursuant to this Agreement (as amended by the ~~Second~~Third Restatement) and the Amended Required Approvals (as defined in Section 102.5), consists of a comprehensive and coordinated public and private development effort to revitalize Vallejo's Waterfront area and to link the Waterfront area to the Downtown area. The Project includes, as a central component, development of a major new transit center for ferry and bus users within Parcels L and O of the Site to be known as "Vallejo Station."

~~D~~J. The fundamental objectives of the revised Project to be undertaken pursuant to this Agreement (as amended by the ~~Second~~Third Restatement) and the Amended Required Approvals are to revitalize the Waterfront and Downtown areas by intensifying land uses in certain areas, to expand designated public open space areas from approximately 11 acres to approximately ~~32~~31 acres, to create Vallejo Station as a multimodal transportation facility serving regional and local transit needs, and to enhance public access to the Waterfront and the Waterfront Promenade area. The revised Project includes up to ~~562,000~~587,000 gross square feet of commercial building space (and associated parking), up to 1,251 residential units (and associated parking), the Vallejo Station multimodal transportation facility (including an approximately 1,190 space parking garage for ferry patrons and a new bus transfer center), the development of approximately ~~21~~20 acres of net new public park and open space, and the preservation of approximately 11 acres of existing public park and open space (as further specified in Table 2-3 of the RDEIR, as updated in the EIR Addendum).

AGREEMENT

The Agency and the Developer agree as follows:

1. ~~I.~~ [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose of this Agreement

The purpose of this Agreement is to effectuate the respective Redevelopment Plans (collectively, the "Redevelopment Plans") for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project (collectively, the "Redevelopment Projects") by providing for the acquisition, disposition and development of certain real property consisting of approximately 92 acres (the "Site") included within the boundaries of the Redevelopment Projects (the "Redevelopment Project Areas"). It is the intent of the Parties that the Site shall be developed as a master planned mixed-use development, including residential, commercial, retail, hotel, conference center, and open space and park uses. All predisposition activities, property acquisitions and dispositions, demolition and public or private improvements of any nature on any portion of the Site, and all other activities in furtherance of the development of the Site pursuant to this Agreement and the Project Approvals (as defined in Section 102.5) are collectively referred to in this Agreement as the "Project."

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Vallejo, California, and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

As fully set forth in the Scope of Development (Attachment No. 4) and the Method of Financing (Attachment No. 6), the Project and the Site are proposed to be developed in three separate and independent geographic elements or areas (each, an "Area"), as follows:

1. The "Northern Waterfront" or "Northern Waterfront Area", generally as shown in the Map of the Site for the Northern Waterfront (Attachment No. 1A);

2. The "Central Waterfront" or "Central Waterfront Area", generally as shown in the Map of the Site for the Central Waterfront (Attachment No. 1B); and

3. The "Southern Waterfront" or "Southern Waterfront Area", generally as shown in the Map of the Site for the Southern Waterfront (Attachment No. 1C).

B. [§102] The Redevelopment Plans; ~~Required Approvals; Effectiveness of~~ Agreement; Project Approvals

1. Redevelopment Plans. A portion of the Site is included within the Waterfront Redevelopment Project Area, and a portion of the Site is included within the Marina Vista Redevelopment Project Area. The Redevelopment Plan for the Waterfront Redevelopment Project was originally approved and adopted by the City Council of the City of Vallejo (the "City Council") on December 26, 1973, by Ordinance No. 206 N.C. (2d). The Redevelopment Plan for the Marina Vista Redevelopment Project was originally adopted by the City Council on January

18, 1960, by Ordinance No. 372 N. C. as the Urban Renewal Plan for the Marina Vista, and was subsequently amended and superseded in its entirety by the adoption of the Redevelopment Plan by Ordinance Nos. 274 N. C. (2d) and 275 N. C. (2d) on May 5, 1975. This Agreement is subject to the provisions of the Redevelopment Plans, as such Redevelopment Plans have been amended to date. The Redevelopment Plans, as they now exist and as they may be subsequently amended pursuant to this Section and Section 701, are incorporated herein by reference and made a part hereof as though fully set forth herein.

~~The parties anticipate that~~By ordinances approved on November 28, 2006, the City Council adopted amendments to the Redevelopment Plans ~~will be amended~~and approved a merged Redevelopment Plan to, among other things, merge the Marina Vista Redevelopment Project, the Waterfront Redevelopment Project, and the adjacent Vallejo Central Redevelopment Project, as more fully set forth in Section 701 hereof.

2. ~~Required Approvals;~~ Effectiveness of Third Restatement of This Agreement. Except ~~with respect to rights and obligations involving preparation and procurement of, or otherwise expressly intended to be exercised prior to and pending, approval of the Required Approvals (which rights and obligations will vest and be effective upon execution of this Agreement by both parties), this Agreement, and the rights and obligations of the parties hereunder, are specifically contingent upon approval or certification, as applicable, and effectiveness following any applicable referendum period, of all of the following actions (collectively the "Required Approvals"):~~

~~a. City Council approval of an Amendment to the City's General Plan ({the "General Plan Amendment") to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;}~~

~~b. City Council approval of an Amendment to the City's Zoning Ordinance{ to provide for zoning consistent with the General Plan Amendment;}~~

~~c. City Council approval of a Planned Development Master Plan for the Site ({the "Planned Development Master Plan"), which includes as an attached and incorporated element the Waterfront Design Guidelines, prepared jointly by the Agency and Developer;}~~

~~d. City Council and Agency Board certification of an Environmental Impact Report (the "EIR") for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073) prepared by the City and Agency to evaluate the environmental impacts of development of the Project in accordance with this Agreement and the other Required Approvals; and~~

~~e. City Council approval of a development agreement ({the "Development Agreement") pursuant to Government Code Section 65864 et seq., between the City and the Developer pertaining to all of the Developer Parcels identified in Section 104 of this Agreement.}~~

~~As used in this Agreement, the "Required Approvals" shall include all conditions of approval in connection with the above actions {and the EIR Mitigation Monitoring and Reporting Program}. This~~as otherwise provided in Sections 102.6 and 110, the Third Restatement of this Agreement shall become effective ~~for all purposes on the date (the "Required Approvals Effective Date") upon which all of the Required Approvals have been approved and are first in full force and effect under applicable law. Promptly following the Required Approvals Effective~~on the Action Dismissal Date, as defined in Recital G. Within thirty (30) days after the Action Dismissal Date, the parties shall memorialize such date through execution of an Operating Memorandum pursuant to Section 709. Unless otherwise provided by applicable law or otherwise determined by a court of competent jurisdiction, so long as the Action has been dismissed, the filing of a legal action challenging the approval ~~or certification of this Agreement (including the Second Restatement) or any Required Approval~~of the EIR Addendum, the Third Restatement of this Agreement, the Settlement Agreement, the Settlement-Related Ordinances and/or the Settlement-Related Amendments shall not be deemed to render the Third Restatement of this Agreement ~~(including the Second Restatement) or any challenged Required Approval non-effective for purposes of establishing the Required Approvals Effective Date and the full effectiveness~~non-effective. Pending the Action Dismissal Date, the Second Restatement of this Agreement shall remain in effect and control the rights and obligations of the parties.

3. Efforts To Obtain Required Approvals and Settlement-Related Ordinances/Amendments. In furtherance of the Agency's obligations under this Agreement, and with the assistance of Developer funding as described in Sections 109.1 and 109.2, the Required Approvals ~~have been prepared and presented for consideration of approval and certification concurrently with the presentation and consideration of approval of the Second Restatement of this Agreement on October 25, 2005 (as continued to October 27, 2005)~~were obtained as further described in Recital C of this Agreement.

The Agency, at its sole cost and in cooperation with the Developer, shall use its best efforts to cause the City to ~~prepare,~~ approve the second reading of and adopt the Settlement-Related Ordinances to enact the Settlement-Related Amendments to the Required Approvals in a manner consistent with the Settlement Agreement, and to obtain effectiveness of the ~~Required Approvals within the time set forth in Item 3(b) of the Schedule of Performance (Attachment No. 3) (the "Required Approvals Deadline"). As previously acknowledged and agreed in Section 10 of the Amendment to this Agreement entered into by the parties as of October 24, 2003, notwithstanding the subsequent passage of the Required Approvals Deadline, the Agency shall remain fully obligated, pursuant to this Section 102 and Section 109.4, to prepare the EIR and to use its best faith efforts to cause the City to prepare, approve, and adopt the Required Approvals in a timely and diligent manner, including funding of all costs required to be funded by the Agency under this Agreement in connection with preparation of the EIR (or a Further Revised EIR, as described in Section 102.4 below) and procurement of the Required Approvals; provided, however, that nothing in this Agreement requires the City to grant the Required Approvals or to grant any particular form of the Required Approvals. The~~Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals by not later than April 12, 2007. Without[the prior written approval of the Developer, which may be granted or denied by the Developer in its sole discretion (notwithstanding the provisions of Section 607)], the Agency shall have no right to terminate this Agreement, or any part hereof, for failure of the ~~EIR to be considered and acted upon for certification and/or the Required~~

~~Approvals to be considered and acted upon for approval and adoption by the City by the Required Approvals Deadline or any later date without{ the prior written approval of the Developer, which may be granted or denied by the Developer in its sole discretion (notwithstanding the provisions of Section 607)}~~City Council to approve second reading of and adopt the Settlement-Related Ordinances in a manner consistent with the Settlement Agreement or for failure of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals to become effective following the applicable referendum period by April 12, 2007, or any later date.

4. Failure of ~~Required Approvals~~Settlement-Related Ordinances/Amendments to Become Effective. If the City Council ~~and the Agency, as applicable, do not approve~~does not approve second reading of and adopt the Settlement-Related Ordinances to enact the Settlement-Related Amendments to the Required Approvals in ~~substantially the form presented to them on October 25, 2005 (as continued to October 27, 2005)~~a manner consistent with the Settlement Agreement, or if, following approval~~, all of~~ and adoption, both of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals do not become effective in accordance with applicable law by ~~January 31, 2006~~April 12, 2007 (collectively, a "~~Required Approvals~~Settlement Failure Event"), then the provisions of this Section 102.4 shall apply. ~~A Required Approval shall be deemed approved in "substantially the form presented" if it is adopted in the form presented with only such modifications as are approved in writing by the Developer.~~

~~a. If the Required Approvals Failure Event consists of a City Council and/or Agency Board disapproval of proposed certification of the EIR, the Agency, at its cost as provided in Section 109.4 and in cooperation with the Developer, shall prepare such revisions to the EIR (a "Further Revised EIR") as necessary to meet the requirements of CEQA for certification of the Further Revised EIR, and shall submit or resubmit a Further Revised EIR, as necessary, and shall use its best faith efforts to obtain City Council and Agency Board certification of a Further Revised EIR.~~

a. ~~b.~~ Upon a ~~Required Approvals~~Settlement Failure Event, the Developer may terminate this Agreement pursuant to Section 510 hereof.

b. ~~c. If the Required Approvals Failure Event is one other than as described in subsection a. above, and~~ the Developer notifies the Agency that it does not intend to exercise the termination right set forth in subsection ~~b~~a. above, the parties shall meet and confer in good faith for such period as is reasonably necessary to agree upon a modification of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals for resubmission to the City Council that accomplishes, as nearly as possible under the applicable circumstances of the previous failure of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals to be approved and/or become effective, the physical and economic outcomes contemplated by the parties, the City and the Coalition as envisioned by execution of the ~~Second Restatement of this~~Settlement Agreement. The Agency ~~shall~~, at its sole cost ~~as provided in Section 109.4~~ and in cooperation with the Developer, shall use best efforts to expeditiously prepare and submit, and to cause the City Council to consider, adopt and approve such mutually agreed modified ~~Required Approvals~~Settlement-Related Ordinances and Settlement-Related Amendments to the Required

Approvals, including as necessary, preparing and paying the costs of any amendments to the EIR Addendum or any other required CEQA document.

~~5. Project Approvals~~ 5. Project Approvals. The Required Approvals, as proposed to be amended by the Settlement-Related Amendments, are referred to in this Agreement ~~as~~ the "Amended Required Approvals," and include all conditions of approval in connection with Amended Required Approvals[and the EIR Mitigation Monitoring and Reporting Program]. As used throughout this Agreement, "Project Approvals" has the precise meaning given in the Development Agreement, and consists generally of the Amended Required Approvals, any subsequent amendments to the Amended Required Approvals, and any additional land use approvals, entitlements, Unit Plans, subdivision maps, permits, and amendments thereto that may hereafter be issued or granted by the City in connection with implementation of the Project on the Site.

6. Immediate Effectiveness. The provisions of this Section 102 are expressly made immediately effective upon execution of the ~~Second~~Third Restatement of this Agreement, and shall apply prior to and pending the ~~Required Approvals Effective~~Action Dismissal Date.

C. [§103] The Redevelopment Project Areas

The Redevelopment Project Areas are located in the City of Vallejo, California, and the exact boundaries thereof are specifically described in the respective Redevelopment Plans.

D. [§104] The Site

The Site that is the subject of this Agreement is that certain real property shown on the Maps of the Site (Attachment No. 1), which attachment is incorporated herein by reference. Attachment No. 1 consists of three diagrammatic Area maps as follows:

Attachment No. 1A	Northern Waterfront Area
Attachment No. 1B	Central Waterfront Area
Attachment No. 1C	Southern Waterfront Area

The Maps of the Site (Attachment No.1) show the currently anticipated configuration of the public and private parcels within the Site as they are described below in this Section 104 and as they are intended to be subdivided (or ~~resubdivided~~re-subdivided) and developed in accordance with this Agreement and the Amended Required Approvals.

As planning of the Project proceeds pursuant to this Agreement, and as applicable subdivision maps are processed for various portions of the Site in accordance with the Amended Required Approvals, the precise configuration and legal description of the Developer Parcels within the Site shall be determined by the parties. Upon creation of each legal parcel constituting a Developer Parcel under this Agreement, a final legal description shall be prepared by the Developer, subject to Agency review and approval, and attached to this Agreement by Operating Memorandum pursuant to Section 709, and made a part hereof at such time as the applicable final map creating each Developer Parcel is recorded with the County Recorder of Solano County.

The Site consists of certain parcels to be conveyed to the Developer pursuant to this Agreement (referred to collectively as the "Developer Parcels"), and certain parcels that are currently owned by or are intended to be acquired and owned by the City or the Agency in connection with implementation of this Agreement and the Project Approvals (referred to collectively as the "City/Agency Parcels"), all as generally depicted on the Maps of the Site (Attachment No. 1) and described below.

1. Developer Parcels. The Developer Parcels consist of the following parcels and subparcels, organized by Area.

a. Northern Waterfront. The Developer Parcels within the Northern Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1A: Parcel A (~~including A Street, B Street,~~consisting of subparcels A1 and ~~C Street~~A2), Parcel B1, Parcel B2, and Parcel C1.

b. Central Waterfront. The Developer Parcels within the Central Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1B: Parcel J (consisting of subparcels J1 and J2), Parcel L1, Parcel L2, and Parcel L4. Parcels L1, L2, and L4 are sometimes collectively referred to as the "L Developer Parcels."

c. Southern Waterfront. The Developer Parcels within the Southern Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1C: Parcel S and Parcel T (consisting of subparcels T1, T2, and T3).

2. City/Agency Parcels. The City/Agency Parcels consist of the following parcels and public streets, organized by Area.

a. Northern Waterfront. The City/Agency Parcels within the Northern Waterfront Area consist of the following parcels, and public streets as shown on Attachment No. 1A: Parcel C2, Parcel D1, Parcel D2, Parcel E, Parcel F, and Harbor Way.

b. Central Waterfront. The City/Agency parcels within the Central Waterfront Area consist of the following parcels and public streets as shown on Attachment No. 1B: Parcel L3, Parcel L5, Parcel O, the City Hall Parking Lot parcel, Capitol Street and Capitol Street Dedication, Georgia Street and Georgia Street Extension, Civic Center Drive, Unity Plaza, the Capitol Street Open Space parcel, the Festival Green parcel, the Existing Service Club Park parcel, the Existing Georgia Street Mitigation parcel, the Ferry Facility parcel, the Kiss and Ride parcel, the Independence Park parcel, the Future Expansion parcel, the Independence Park Expansion parcel, and the State Farm Mitigation Independence Park parcel.

c. Southern Waterfront. The City/Agency Parcels within the Southern Waterfront Area consist of the following parcels and public streets as shown on Attachment No. 1C: the S-Open Space Parcel, the T-Open Space parcel, the Boat Launch parcel, Marin Street Extension, Solano Avenue Extension, and Kaiser Place.

E. [§105] Parties to this Agreement

1. [§106] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.). The office of the Agency is located at 555 Santa Clara Street, Vallejo, CA 94590. "Agency," as used in this Agreement, includes the Redevelopment Agency of the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

2. [§107] The Developer

The Developer is Callahan / DeSilva Vallejo, LLC, a California limited liability company, whose members are De Silva Group, Inc., a California corporation and Callahan Property Company, a California corporation. The principal office of the Developer is 11555 Dublin Boulevard, Dublin, CA 94568.

The qualifications and identity of the Developer are of particular concern to the City and the Agency, and it is because of such qualifications and identity that the Agency has entered into this Agreement with the Developer. Subject to the provisions of Section 315 hereof and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the Agency pursuant to Section 511 hereof (with respect to the portions of the Site and the Project so specified in Section 511) if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer prior to the completion of the development of the Site as evidenced by the issuance of a Final Certificate of Completion therefor, except as expressly set forth in this Section 107, Section 315 hereof, or any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement.

Notwithstanding any other provision hereof, (a) the membership ownership percentages of the Developer may be adjusted between the members of the Developer, and/or (b) the Developer may join and associate with other entities in joint ventures, partnerships (including limited partnerships) or otherwise for the purpose of developing the Site (or one or more Developer Parcels therein), provided that the Developer maintains management and control of such entities and remains fully responsible to the Agency as provided in this Agreement with respect to the Site. Upon any such change described in subparagraph (a) or (b) above, the Developer shall so notify the Agency of such change in writing to obtain the Agency's approval, which consent shall not be unreasonably withheld and shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within fifteen (15) days of Agency's receipt of such notice. Wherever the term "Developer" is used herein, such term shall include any permitted nominee or assignee as herein provided. Upon request of the Developer, the Agency shall provide written confirmation in form reasonably acceptable to the Developer that it has approved, if such be the case, any change in membership ownership percentages described in (a) above is in compliance with this Agreement, or any entity formed in

accordance with (b) above for all or a portion of the Site is in compliance with this Agreement and is recognized as the Developer under this Agreement for the applicable portion(s) of the Site.

Except as otherwise provided in this Section 107, Section 315, and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement, the Developer shall not assign all or any part of this Agreement without the prior written approval of the Agency.

F. [§108] Deposit

The Developer has made or shall make the following deposits to the Agency.

1. Initial Deposit. ~~Through the Second Restatement of this Agreement, the~~The parties acknowledge and agree that:

a. Prior to or simultaneously with the initial execution of this Agreement by the Agency, the Developer delivered for the benefit of the Agency a deposit of cash or certified check in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the "Initial Deposit") as security for the performance of the obligations of the Developer under this Agreement;

b. The Initial Deposit (and interest earned thereon) has been used by the Agency in accordance with the terms of this Agreement to pay for costs incurred by the Agency, from time to time, in the preparation of this Agreement and the Required Approvals; and

c. The parties have fully satisfied their respective obligations under this Agreement with respect to the Initial Deposit.

2. Additional Deposit. The Developer shall deliver for the benefit of the Agency an additional deposit of cash or certified check in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the "Additional Deposit") as follows:

a. A TWO HUNDRED THOUSAND DOLLAR ($200,000) portion of the Additional Deposit shall be delivered to the Agency within five (5) days after the ~~Required Approvals Effective~~Action Dismissal Date; and

b. The remaining THREE HUNDRED THOUSAND DOLLAR ($300,000) portion of the Additional Deposit shall be delivered to the Agency at the time of and as a condition of closing for the conveyance of Parcel A by the Agency to the Developer.

The Agency shall use the Additional Deposit, and any interest earned thereon, to pay costs of the Southern Waterfront Soft Cost Work, as defined and described in Section IV.A.9 of the Scope of Development (Attachment No. 4). The Additional Deposit (including interest earned thereon) shall be credited toward the Purchase Price to be paid to the Agency by the Developer for Parcels S and T, with such credit applied to each closing for portions of Parcels S and T in chronological order until the credit is fully used. If this Agreement is terminated by the Developer pursuant to Section 510 or by the Agency pursuant to subsection

d., h., j., k., l., or o. of Section 511, any unexpended portion of the Additional Deposit (including interest earned thereon) shall be returned by the Agency to the Developer as provided therein.

G. [§109] EIR Preparation and Planning Studies

{~~1. Actions To-Date. Through the~~ }Second{ ~~Restatement of this Agreement, the parties acknowledge and agree that~~}~~, as of October 27, 2005:~~

~~a. The Agency and the City have prepared and presented the EIR and the other Required Approvals for consideration of adoption as further provided in Section 102.2.~~

~~b. The~~ [1. Actions To-Date. Through the]Third[Restatement of this Agreement, the parties acknowledge and agree that] the Developer has advanced, on the Agency's behalf and in fulfillment of the Agency's obligations under this Agreement, various costs of preparation of the EIR and other planning studies and reports necessary for preparation of the Required Approvals, a portion of which Developer prior advances, in the aggregate amount of ~~FOUR~~SIX HUNDRED ~~FIFTY-NINE~~TWENTY-EIGHT THOUSAND ~~FIVE HUNDRED THIRTY-FIVE~~SEVENTY-SEVEN DOLLARS ($~~459,535~~628,077), shall be subject to reimbursement as provided in Section ~~109.3~~109.2 below (the "Total Reimbursable ~~Prior~~Developer Advance"). The remaining prior Developer advances to pay costs of preparation of the EIR and other planning studies and reports shall not be subject to reimbursement by the Agency to the Developer.

~~c. The parties anticipate that the Agency will be required to pay additional invoices for consultant services (for EIP Associates and related third party consultants) in connection with completion of the EIR and the other Required Approvals for presentation and consideration on October 25, 2005 (as continued to October 27, 2005), in the estimated amount of ONE HUNDRED TEN THOUSAND DOLLARS ($110,000) (the actual cost incurred in connection with payment of such additional invoices to prepare the EIR and the other Required Approvals for consideration on October 25, 2005 (as continued to October 27, 2005) is referred to as the "Additional EIR/Required Approvals Cost").~~

2. ~~Payment of Additional EIR/Required Approvals Cost. The Developer shall pay when due, on behalf of the Agency and in fulfillment of the Agency's obligations under this Agreement, the Additional EIR/Required Approvals Cost.~~ 3. Reimbursement To Developer. ~~As used below, "Total Reimbursable Developer Advance" means the sum of the Reimbursable Prior Advance (as defined in Section 109.1.b above) plus the Additional EIR/Required Approvals Cost paid by the Developer pursuant to Section 109.2 above.~~ Upon receipt of available tax increment revenue generated from the Waterfront Redevelopment Project Area and/or the Marina Vista Redevelopment Project Area (but not the Vallejo Central Redevelopment Project Area) or receipt of other available governmental grants or public funds from which the Total Reimbursable Developer Advance may be reimbursed, the Agency shall promptly reimburse to the Developer the Total Reimbursable Developer Advance. Any portion of the Total Reimbursable Developer Advance that has not been reimbursed by the Agency to the Developer at the time of the close of escrow for Parcel A shall be credited toward the Purchase Price otherwise payable by the Developer for Parcel A (or, to the extent that other credits earned by the Developer for Parcel A pursuant to this Agreement are already sufficient to pay the Purchase Price for Parcel A, the unreimbursed portion of the Total Reimbursable Developer

Advance shall be credited at the applicable close of escrow toward the Purchase Price otherwise payable by the Developer for the next Developer Parcel(s) to be purchased by the Developer).

~~4. Agency Obligation. Except for the Developer's past payments as provided in Section 109.1 above, and the Developer's obligation to pay the Additional EIR/Required Approvals cost as provided in Section 109.2 above, the Agency shall pay all costs in connection with fulfillment of its obligations under Sections 102.3 and 102.4 to use best efforts to cause the City to prepare, approve and adopt the Required Approvals (including certification of a Further Revised EIR, if necessary).~~ ~~5.~~ 3. Immediate Effectiveness. The provisions of this Section 109 are expressly made immediately effective upon execution of the ~~Second~~Third Restatement of this Agreement, and shall apply prior to and pending the ~~Required Approvals Effective~~Action Dismissal Date.

H. [§110] Defense and Settlement of Action

This section sets forth the financial responsibilities of the parties and the City in connection with their defense of the Action, including all activities undertaken by the parties and the City related to defense and settlement of the Action (the "Defense and Settlement Activities").

1. City and Agency Costs. The City and/or the Agency, as applicable, shall pay the costs of the City Attorney's Office, the Agency's special counsel McDonough, Holland & Allen, and City/Agency staff in formulating and implementing the Defense and Settlement Activities. The Agency shall pay the costs to meet its obligations as set forth in Section 102.3 and 102.4.

2. Developer Costs.

a. Basic Costs. The Developer shall pay the costs of the Developer's in-house staff and any outside consultants, advisors, and attorneys employed by the Developer in formulating and implementing the Defense and Settlement Activities, and such costs shall constitute General and Administration Costs within the meaning of Section 201.2(a)(8) or Third Party Costs within the meaning of Section 201.2(a)(26), as applicable.

b. Special Cost Advance. In addition, the Developer shall advance on behalf of the parties and the City payment of the attorneys fees and costs of the Coalition in the amount specified to be paid by the Developer pursuant to the Settlement Agreement (the "Developer's Advance For Coalition Attorneys Fees/Costs"). Fifty percent (50%) of the Developer's Advance for Coalition Attorneys Fees/Costs shall be subtracted from the Preliminary Purchase Price as a credit toward determination of the Purchase Price for Parcel A in accordance with Section 201.2.e.(4). The remaining fifty percent (50%) of the Developer's Advance For Coalition Attorneys Fees/Costs shall be considered and treated as Third Party Costs within the meaning of Section 201.2(a)(26).

3. Immediate Effectiveness. The provisions of this Section 110 are expressly made immediately effective upon execution of the Third Restatement of this Agreement, and shall apply prior to and pending the Action Dismissal Date.

2. ~~II.~~ [§200] DISPOSITION OF THE DEVELOPER PARCELS

A. [§201] Acquisition of the Site; Disposition of the Developer Parcels

1. Basic Obligation; Organization of Section. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency and the Developer shall cooperate to acquire the real properties comprising the Site (and not already owned by the Agency) from the City and certain other third party owners. The Agency agrees to sell or ground lease, as applicable, to the Developer those Developer Parcels owned or to be acquired pursuant to this Agreement by the Agency on the terms and for the amounts set forth herein. Developer Parcels B1, B2, and C1 (collectively, the "B/C Ground Lease Parcels," and individually, a "B/C Ground Lease Parcel") shall be conveyed to the Developer by ground lease or sub-ground lease, as further provided in Section 201.4. All of the other Developer Parcels shall be conveyed to the Developer in fee simple.

Section 201.2 sets forth the method for determination of the Purchase Price for the Developer Parcels to be conveyed in fee to the Developer. Sections 201.3 through 201.8 set forth the terms for acquisition and conveyance of each of the respective Developer Parcels.

2. Consideration For Conveyances. The purchase price (the "Purchase Price," as further defined in subsection e.(4) below) for each of the Developer Parcels to be conveyed in fee from the Agency to the Developer shall be determined as set forth in this Section 201.2. The ground rent payments for each of the B/C Ground Lease Parcels shall be based upon the corresponding Purchase Price for each of the B/C Ground Lease Parcels, determined as set forth in this Section 201.2, and converted into annualized ground rent payments in the manner set forth in Section 201.4.b. Subsection b. below sets forth certain defined terms used in this Section 201.2. Subsection c. below establishes basic standards and procedures for performance of the appraisals required by this Section 201.2. Subsections d. and e. below provide conditions and standards for the conduct of two different methods of appraisal to be prepared and applied in determining the Purchase Price for each Developer Parcel. Subsection e. below sets forth the procedure for determining the Purchase Price for each Developer Parcel, taking into account the results of the two different methods of appraisal. Subsection f. below provides for arbitration of disputes arising under this Section 201.2.

a. Special Definitions. The terms defined below shall have the following meanings in connection with the interpretation and implementation of this Section 201.2 and this Agreement:

(1) "Appraiser" has the meaning given in subsection b. below.

(2) "Carry-forward Balance" for a given Developer Parcel means the amount, if any, determined as follows:

(A) If the Preliminary Purchase Price for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(3) below) was the Method B Appraisal Amount (Adjusted), then the Carry-forward Balance is zero dollars ($0); and

(B) If the Preliminary Purchase Price for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(3) below) was the Method A Appraisal Amount (Final), then the Carry-forward Balance shall be determined as follows:

(i) First, the "Applied Investment Amount" for the Most Recently Conveyed Developer Parcel shall be determined. The Applied Investment Amount shall equal the Method B Appraisal Amount (Unadjusted) for the Most Recently Conveyed Developer Parcel less the Method A Appraisal Amount (Final) for the Most Recently Conveyed Developer Parcel.

(ii) Second, the Carry-forward Balance shall be determined. The Carry-forward Balance shall equal the Developer Investment for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(1) below) less the Applied Investment Amount (determined in accordance with clause (i) above in this definition).

(3) "Certified Statement" for a given Developer Parcel means a statement certified by a managing member of the Developer and submitted to the Agency within fifteen (15) days after the Reporting Date for such Developer Parcel, setting forth the Developer Investment for the Reporting Period for the given Developer Parcel, and including the following:

(A) The Carry-forward Balance applicable to the Developer Parcel (as defined and determined pursuant to definition (2) above), if any, together with documentation of the calculation made in determining such Carry-forward Balance;

(B) The Third Party Costs for the Developer Parcel (as defined and determined pursuant to definition (26) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as expended, with supporting invoices or other documentation of the expenditure of such Third Party Costs;

(C) The General and Administration Costs for the Developer Parcel (as defined and determined pursuant to definition (8) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as incurred, with supporting documentation of the basis for determining such costs;

(D) The Interest Amount for the Developer Parcel (as defined and determined pursuant to definition (9) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as imputed to be incurred, together with documentation of the calculations made in determining the Interest Amount;

(E) The Developer Return Amount for the Developer Parcel (as defined and determined pursuant to definition (6) below), together with the calculation made in determining the Developer Return Amount, and, in the case of a Residential Parcel, a statement of the Estimated Gross Residential Unit Sales Proceeds and a copy of the Residential

Market Report upon which the amount of the Estimated Gross Residential Unit Sales Proceeds has been determined.

(F) The Developer Investment for the Developer Parcel, consisting of the sum of the amounts set forth in items (A) through (E) above.

The names of individuals and firms contained in each Certified Statement shall be treated by the Agency on a confidential basis as proprietary information and, to the maximum extent permitted by law, shall not be disclosed to any third party.

(4) "Commercial Parcel" means a Developer Parcel that will be developed to contain commercial uses, but no residential dwelling units. As of the ~~Second~~Third Restatement, the Commercial Parcels include Developer Parcels B1, B2, C1, L2, L4, S, T2, and T3.

(5) "Developer Investment" for a given Developer Parcel means the sum of the following amounts incurred during or otherwise imputed or deemed applicable to the Reporting Period for the given Developer Parcel, as shown and documented in the Certified Statement approved or deemed approved by the Agency pursuant to subsection e.(1) below:

(A) the Carry Forward Balance (as defined and determined pursuant to definition (2) above), if any; plus

(B) the Third Party Costs (as defined and determined pursuant to definition (26) below); plus

(C) the General and Administration Costs (as defined and determined pursuant to definition (8) below); plus

(D) the Interest Amount (as defined and determined pursuant to definition (9) below); plus

(E) the Developer Return Amount (as defined and determined pursuant to definition (6) below).

(6) "Developer Return Amount" for a given Developer Parcel means:

(A) With respect to a Developer Parcel that is a Residential Parcel, an amount equal to the lesser of:

(i) ~~(i)~~ an amount equal to the Estimated Gross Residential Unit Sales Proceeds for such Residential Parcel multiplied by fifteen percent (15%); or

(ii) ~~(ii)~~ an amount that yields a twenty-five percent (25%) internal rate of return on the Developer Capital Costs for the Developer Parcel, taking into account the amounts and timing of all such Developer Capital Costs. The "Developer Capital Costs" for a given Developer Parcel means the sum of the amounts incurred during or otherwise imputed or deemed applicable to the Reporting Period for the given Developer Parcel for the following items listed in the definition of Developer Investment contained in definition (5) above: (A) (Carry-forward Balance, if any), (B) (Third Party Costs), and (C) (General and Administration Costs). The detailed methodology for calculating such internal rate of return amount for a given Developer Parcel shall be set forth in an Operating Memorandum to be executed pursuant to Section 709 within thirty (30) days after the ~~Required Approvals Effective~~Action Dismissal Date;

(B) With respect to a Developer Parcel that is a Commercial Parcel, an amount equal to the Method B Appraisal Amount (Unadjusted) for such Developer Parcel multiplied by thirty-three percent (33%); and

(C) ~~(C)~~ With respect to a Developer Parcel that is a Mixed Use Parcel, an amount equal to the sum of:

(i) ~~(i)~~ With respect to the residential portion of such Mixed Use Parcel, an amount calculated under subparagraph (A) above, multiplied by a ratio, the numerator of which is the gross square footage of the building area to be developed on such Developer Parcel that is intended to be devoted primarily to residential use and the denominator of which is the total gross square footage of the building area to be developed on such Developer Parcel; plus

(ii) ~~(ii)~~ With respect to the commercial portion of such Mixed Use Parcel, an amount calculated under subparagraph (B) above, multiplied by a ratio, the numerator of which is the gross square footage of the building area to be developed on such Developer Parcel that is intended to be devoted primarily to commercial use and the denominator of which is the total gross square footage of the building area to be developed on such Developer Parcel.

In allocating square footage between square footage that is primarily for residential use or primarily for commercial use, one hundred percent (100%) of the total gross square footage of the building area to be developed on the applicable Developer Parcel shall be allocated to one category or the other.

(7) "Estimated Gross Residential Unit Sales Proceeds" for a given Residential Parcel or Mixed Use Parcel means the gross proceeds (without any deductions) estimated to be obtained from the sale of all the residential units in the Residential Parcel or Mixed Use Parcel, as determined pursuant to and set forth in a Residential Market Report for such Residential Parcel or Mixed Use Parcel.

(8) "General and Administration Costs" for a given Developer Parcel means, except as otherwise provided below, the costs attributable to services provided by the Developer's in-house personnel related to the Project (and not limited to the applicable

Developer Parcel) during the Reporting Period for the given Developer Parcel, as reported in the Certified Statement for such Developer Parcel. Such attributable costs shall be determined by multiplying the estimated Eligible Hours (as defined below) devoted by the Developer's in-house personnel times a commercially reasonable hourly rate that is based on salary, labor overhead and an allocation for overhead support. "Eligible Hours" means all time (stated on an hourly basis) devoted by the Developer's in-house personnel to the Project (A) prior to the Original Execution Date in connection with preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents, and (B) following the Original Execution Date. Eligible Hours shall not include (i) the allocable portion of the time devoted by Joseph Callahan and Robert Silva prior to the Original Execution Date for matters other than preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents (i.e., Eligible Hours shall not include the time of such personnel related to other matters in connection with the ERN or in connection with negotiation of the Original Agreement between May and October 2000), or (ii) the time of Ernest Lampkin prior to the Original Execution Date.

(9) "Interest Amount" for a given Developer Parcel means the sum of the following imputed interest amounts:

(A) Imputed interest on the Carry-forward Balance, if any, calculated by applying the Interest Rate to the Carry-forward Balance from the first day of the Reporting Period to the end of the Reporting Period; plus

(B) Imputed interest on the Third Party Costs, calculated by applying the Interest Rate to each monthly portion of the Third Party Costs (as shown in the Certified Statement) from the end of the month in which such monthly portion of the Third Party Costs was paid to the end of the Reporting Period; plus

(C) Imputed interest on the General and Administration Costs, calculated by applying the Interest Rate to each monthly portion of the General and Administration Costs (as shown in the Certified Statement) from the end of the month in which such monthly portion of the General and Administration Costs was incurred to the end of the Reporting Period.

(10) "Interest Rate" means a variable interest rate applicable from time to time equal to the prime rate of interest charged by the Bank of America N.A. from time to time plus two percent (2%).

(11) "Method A Appraisal (Baseline)", as further defined in subsection b. below, means an appraisal for a given Developer Parcel prepared every two (2) years in accordance with the conditions and standards set forth in subsection c. below.

(12) "Method A Appraisal (Final)", as further defined in subsection b. below, means an appraisal for a given Developer Parcel prepared in accordance with the conditions and standards set forth in subsection c. below following the Unit Plan Approval Date for the Developer Parcel.

(13) "Method A Appraisal Amount (Final)" for a given Developer Parcel means the fair market value for the Developer Parcel (stated on a per square foot basis) as set forth in the Method A Appraisal (Final).

(14) "Method B Appraisal (Unadjusted)", as further defined in subsection b. below, means the appraisal for a given Developer Parcel prepared in accordance with the conditions and standards set forth in subsection d. below following the Unit Plan Approval Date for the Developer Parcel.

(15) "Method B Appraisal Amount (Unadjusted)" for a given Developer Parcel means the fair market value for the Developer Parcel (stated on a per square foot basis) as set forth in the Method B Appraisal (Unadjusted).

(16) "Method B Appraisal Amount (Adjusted)" for a given Developer Parcel is further defined in subsection e.(2) below, and equals the Method B Appraisal Amount (Unadjusted) for the Developer Parcel (determined in accordance with subsection d. below) less the Developer Investment for the Developer Parcel (determined in accordance with subsection e.(1) below).

(17) "Mixed Use Parcel" means a Developer Parcel that will be developed to contain for-sale residential dwelling units and commercial uses. As of the ~~Second~~Third Restatement, the Mixed Use Parcels include (or may include) Developer Parcels J1, J2, and L1.

(18) "Most Recently Conveyed Developer Parcel" for a given Developer Parcel means the Developer Parcel conveyed to the Developer by the Agency most recently prior to the given Developer Parcel.

(19) "Original Execution Date" means October 17, 2000, the date of execution of the original version of this Agreement.

(20) "Preliminary Purchase Price" for a given Developer Parcel has the meaning given in subsection e.(3) below.

(21) "Purchase Price" for a given Developer Parcel means the amount determined as set forth in subsection e.(4) below.

(22) "Reporting Date" for a given Developer Parcel means the date that is forty-five (45) days prior to the anticipated closing date for conveyance of the given Developer Parcel to the Developer by the Agency, as reasonably determined by the Developer.

(23) "Reporting Period" for a given Developer Parcel means:

(A) with respect to the first Developer Parcel to be conveyed by the Agency to the Developer, the period from May 20, 1997, through the Reporting Date for such first Developer Parcel to be conveyed; and

(B) with respect to each succeeding Developer Parcel to be conveyed by the Agency to the Developer, the period from the day following the end of the Reporting Period for the Most Recently Conveyed Developer Parcel through the Reporting Date for the Developer Parcel then about to be conveyed.

(24) "Residential Parcel" means a Developer Parcel that will be developed to contain for-sale residential dwelling units, but no commercial uses. As of the ~~Second~~Third Restatement, the Residential Parcels include Developer Parcels A and T1.

(25) "Residential Market Report" for a given Residential Parcel or Mixed Use Parcel means a report prepared by a qualified residential marketing consultant mutually acceptable to the parties containing an estimate of the Estimated Gross Residential Unit Sales Proceeds anticipated to be received from such Residential Parcel or Mixed Use Parcel, together with industry-standard supporting documentation and analysis.

(26) "Third Party Costs" for a given Developer Parcel means, except as otherwise provided below, the out-of-pocket pre-construction payments related to the Project (and not limited to the applicable Developer Parcel) made by the Developer to third-party persons or entities during the Reporting Period for the given Developer Parcel, as reported in the Certified Statement for such Developer Parcel, plus the amount of the Initial Deposit as set forth in Section 108.1, plus the Developer's Wetland Park Contribution as described in Section II.A.3 of the Scope of Development (Attachment No. 4) (but only to the extent the Total Developer Public Parks and Open Space Contribution (as defined in Section I.H of the Method of Financing (Attachment No. 6)) exceeds the amount of City park fee credits granted by the City to the Developer pursuant to Section 3.8 of the Development Agreement). Third Party Costs shall not include any payments made by the Developer for which the Developer is entitled to repayment by the Agency or a credit against Purchase Prices pursuant to Section 108.2, ~~109.3,~~109.2, 110.2., 201.6.a, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709. Third Party Costs also shall not include any payments made prior to the Original Execution Date other than payments by the Developer made in connection with preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents.

(27) "Unit Plan Approval Date" for a given Developer Parcel means the date the City grants final unappealable approval to the Unit Plan (and, if sought by the Developer, the vesting tentative map) for such Developer Parcel. If final unappealable approval is granted on separate dates, the Unit Plan Approval Date shall be the date the City grants final unappealable approval to the later to be approved of the Unit Plan and the vesting tentative map for such Developer Parcel.

(28) "Valuation Date" means:

(A) With respect to the Method A Appraisals (Baseline), ~~January~~June 1, ~~2006~~2007 and each succeeding second anniversary, as applicable (i.e., ~~January 1, 2008, 2010, 2012,~~June 1, 2009, 2011, 2013, etc.).

(B) With respect to the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) for a given Developer Parcel, the Unit Plan Approval Date for such Developer Parcel.

b. Appraisal Process—In General. Each appraisal required pursuant to this Section 201.2 shall be performed by a qualified appraiser who is a California Certified General Appraiser and a Member of the Appraisal Institute and who is acceptable to both the Agency and the Developer (the "Appraiser"). The costs for each appraisal shall be shared equally between the Developer and the Agency. By Operating Memorandum prepared and executed in accordance with Section ~~709,~~709 and within thirty (30) days after the Action Dismissal Date, the parties ~~may~~shall provide the Appraiser with further appraisal instructions consistent with the general appraisal instructions provided in this Section 201.2. To the extent consistent with the standards, conditions, and instructions set forth in this Section 201.2 and any applicable executed Operating Memorandum, each appraisal shall be performed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). To the extent of any inconsistency between the standards, conditions, and instructions of this Section 201.2 or any applicable executed Operating Memorandum and those of USPAP, the standards, conditions, and instructions of this Section 201.2 and any applicable executed Operating Memorandum shall control. The interest appraised in each appraisal shall be a fee simple interest in the applicable Developer Parcel.

As of the ~~Second~~Third Restatement, the parties have retained Garland & Associates as the Appraiser to prepare an appraisal to determine the fair market value, as of the ~~January~~June 1, ~~2006~~2007 Valuation Date, of each Developer Parcel under the conditions and standards set forth in subsections c. below (each, a "Method A Appraisal (Baseline)"). The parties anticipate that such Method A Appraisals (Baseline) will be delivered on or around ~~January~~June 15, ~~2006.~~2007. The parties shall cause an Appraiser to prepare and deliver updated Method A Appraisals (Baseline) on or about each succeeding second (2^{nd}) anniversary of the delivery of the initial Method A Appraisals (Baseline). The Method A Appraisals (Baseline) may set forth the fair market values of each Developer Parcel on a per square foot basis to the extent the precise square footage is not yet known.

Within five (5) days after the Unit Plan Approval Date for a Developer Parcel, the parties shall commission an Appraiser to prepare a final appraisal in accordance with the standards and conditions of subsection c. below (the "Method A Appraisal (Final)") and an appraisal in accordance with the standards and conditions set forth in subsection d. below (the "Method B Appraisal (Unadjusted)") for such Developer Parcel for simultaneous delivery to the parties within sixty (60) days after such commissioning. The Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) shall set forth the respectively determined fair market values for the applicable Developer Parcel on a total dollar value basis taking into account the actual total square footage of the applicable Developer Parcel as determined from the approved Unit Plan.

Notwithstanding the preceding paragraph, in connection with Developer Parcels involving complex, multi-level construction that may require extensive pre-Unit Plan design and engineering efforts (e.g., Parcels J1, J2, L1, and T1), the parties may

mutually agree by Operating Memorandum pursuant to Section 709 to commission and obtain the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) at an earlier date to accommodate financial planning needs, subject to any adjustment of such appraisals at the time of Unit Plan approval as may be set forth in such Operating Memorandum.

Each appraisal of a Developer Parcel shall include industry-standard information and analysis to support such current fair market value determination.

c. Method A Appraisal—Baseline and Final. For each Developer Parcel then being appraised (whether in connection with a Method A Appraisal (Baseline) or a Method A Appraisal (Final)), the selected Appraiser shall prepare and deliver to the parties an appraisal determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection c. and any other standards and conditions set forth in any Operating Memoranda executed by the parties and delivered to the Appraiser:

(1) Except as otherwise set forth below in this subsection c., the appraisal shall assume that the state and condition of development of the Developer Parcel being appraised and all other parcels comprising the Site and Former Parcel K is that as it existed on the Original Execution Date, such that, consistent with the method for determining fair market value set forth in California Code of Civil Procedure Section 1263.330, each determination of the fair market value shall not take into account any increase or decrease in value attributable to implementation of the Project itself on the Site, but may, as deemed relevant by the Appraiser, take into account then current general market conditions in the applicable market area;

(2) The appraisal shall assume that the applicable zoning and development entitlements shall be those that existed as of the Original Execution Date.

(A) The marketplace anticipation as of the Valuation Date of reasonably likely changes in zoning and general plan amendments, and accompanying regulatory agency approvals and agreements, necessary to allow alternative land uses, is to be considered in the appraisal, but in light of conditions affecting the likelihood of those changes and amendments as those conditions existed as of the Original Execution Date (as further described below). This is not to say that the applicable Developer Parcel is to be appraised as if the zoning and general plan land use designation had been changed from that existing as of the Original Execution Date, but the appraisal is to recognize the marketplace speculation on those potentials for alternative land uses.

(B) In recognizing such marketplace speculation, the appraisal is to take into account and discount for land developer risk the following factors: (i) the terms of this Agreement as of the Original Execution Date, which did not contain any assurances that the City would grant any changes in zoning and/or general plan land use designations with respect to the Site; (ii) the costs and risks as of the Original Execution Date of obtaining changes in zoning and general plan land use designations for the applicable Developer Parcel, including the prospects as of the Original Execution Date of overcoming any public concerns, expectations and opposition to the conversion of the applicable Developer Parcel from its then existing actual land use(s), the need to complete the applicable CEQA and land use approval processes for such

zoning and general plan land use amendments, and the prospect that, in order to obtain changes in zoning and general plan land use designations, the potential buyer might need to prepare and obtain master plan approvals from the City for all or portions of the Site in addition to the Developer Parcel being appraised; (iii) the public infrastructure costs related to the Site and the applicable Developer Parcel as of the Original Execution Date and the impact of such costs on the ability to obtain changes in zoning and general plan land use designation; and (iv) the costs and risks as of the Original Execution Date of obtaining necessary BCDC, SLC, Water Board, and other governmental regulatory approvals necessary to support any alternative land uses on the applicable Developer Parcel;

(3) With respect to Parcel J, the appraisal shall take into account the existence and value added by the extension of Georgia Street, and the Agency acquisition of the property formerly leased to GVRD;

(4) With respect to Parcel L4, the appraisal shall value the vertical subdivision Parcel L4 assuming and taking into account the value added by the existence of the L3 Public Garage and the L3 Public Garage Support Facilities for Parcel L4 (as described in Section III.A.4.d of the Scope of Development (Attachment No. 4));

(5) The appraisal shall assume that the Site contains no soil or other contamination for which remediation work to enable the intended use under this Agreement is required by any governmental or other regulatory agency with jurisdiction over such matters; and

(6) The appraisal shall take into account all then known or estimated direct and indirect costs related to on-site and off-site public and private improvements required to be constructed by the Developer for the applicable Developer Parcel, including, without limitation, subdivision improvement costs, permit and fees costs, other on- and off-site public improvement costs, and costs of construction of private improvements with respect to the applicable Developer Parcel.

d. Method B Appraisal (Unadjusted). For each Developer Parcel then being appraised, the Appraiser shall also prepare and deliver to the parties a Method B Appraisal (Unadjusted) determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection d. and any other standards and conditions set forth in any Operating Memoranda executed by the parties and delivered to the Appraiser:

(1) Except as otherwise set forth below in this subsection d., the appraisal shall assume that the state and condition of development of the Developer Parcel being appraised and all other parcels comprising the Site and Former Parcel K is that as it existed on the Original Execution Date, such that, consistent with the method for determining fair market value set forth in California Code of Civil Procedure Section 1263.330, each determination of the fair market value shall not take into account any increase or decrease in value attributable to implementation of the Project itself on the Site, but shall take into account then current general market conditions in the applicable market area;

(2) The appraisal shall assume that the applicable zoning and development entitlements shall be those that exist as of the Unit Plan Approval Date;

(3) With respect to Parcel J, the appraisal shall take into account the existence and value added by the extension of Georgia Street, and the Agency acquisition of the property formerly leased to GVRD;

(4) With respect to Parcel L4, the appraisal shall value the vertical subdivision Parcel L4 assuming and taking into account the value added by the existence of the L3 Public Garage and the L3 Public Garage Support Facilities for Parcel L4 (as described in Section III.A.4.d of the Scope of Development (Attachment No. 4));

(5) The appraisal shall assume that the Site contains no soil or other contamination for which remediation work to enable the intended use under this Agreement is required by any governmental or other regulatory agency with jurisdiction over such matters; and

(6) The appraisal shall take into account all ~~then-~~known or estimated direct and indirect costs related to on-site and off-site public and private improvements required to be constructed by the Developer for the applicable Developer Parcel under the terms of this Agreement and the Project Approvals as of the Unit Plan Approval Date, including, without limitation, subdivision improvement costs, permit and fees costs, other on- and off-site public improvement costs (including, without limitation, park and open space improvement costs), and costs of construction of private improvements with respect to the applicable Developer Parcel; and

(7) The appraisal shall take into account all known or estimated limitations on revenues related to the development and use of the applicable Developer Parcel under the terms of this Agreement and the Project Approvals as of the Unit Plan Approval Date, including, without limitation, the terms of the Post Office Relocation Lease as further described in Section 201.6.a.(1)(B)(2) with respect to Parcel T2, and the requirement to use commercially reasonable efforts to lease the retail space in the Arcade Area of Parcel L4 for Category 1 Uses, as further defined and provided in Section III.A.4 of the Scope of Development (Attachment No. 4).

e. Purchase Price Determination. Prior to the closing for conveyance of each Developer Parcel, the parties shall determine the Purchase Price for such Developer Parcel as follows:

(1) First, the Developer Investment with respect to the Developer Parcel shall be determined by the parties as follows. Within fifteen (15) days after the Reporting Date for such Developer Parcel, the Developer shall submit to the Agency a Certified Statement setting forth the Developer Investment and required supporting documentation. The Agency shall approve or disapprove the Certified Statement within fifteen (15) days of receipt thereof. If the Agency approves the Certified Statement or fails to disapprove the Certified

Statement in writing within such fifteen (15) day period, then the Development Investment amount set forth in the Certified Statement shall constitute the Developer Investment with respect to the Developer Parcel. If the Agency disapproves the Certified Statement in writing within such fifteen (15) day period, it shall set forth with specificity the basis for such disapproval, and the parties shall meet and confer within five (5) days thereafter to seek in good faith to agree upon a modified Certified Statement. The Developer Investment amount set forth in any such agreed upon modified Certified Statement shall then constitute the Developer Investment with respect to the Developer Parcel. If the parties cannot agree upon a modified Certified Statement following such conference, then either party may present the matter for arbitration as further provided in subsection f. below.

(2) Second, the "Method B Appraisal Amount (Adjusted)" for the Developer Parcel shall be determined by the parties. The Method B Appraisal Amount (Adjusted) shall equal the Method B Appraisal Amount (Unadjusted) for the Developer Parcel (determined in accordance with subsection d. above) less the Developer Investment with respect to the Developer Parcel (determined in accordance with subsection e.(1) above).

(3) Third, the "Preliminary Purchase Price" for the Developer Parcel shall be determined by the parties. The Preliminary Purchase Price shall equal the greater of the Method A Appraisal Amount (Final) for the Developer Parcel (determined in accordance with subsection c. above) and the Method B Appraisal Amount (Adjusted) for the Developer Parcel (determined in accordance with subsection e.(2) above).

(4) Finally, the "Purchase Price" for the Developer Parcel shall be determined by the parties. The Purchase Price shall equal the Preliminary Purchase Price (determined in accordance with subsection e.(3) above) less the principal amount of assessments or other governmental charges that are a lien against the Developer Parcel payable after the closing for conveyance of such Developer Parcel, and also less the sum of all previously unapplied amounts that are specified to be credited against the Purchase Price pursuant to Section 108.2, ~~109.3,~~109.2, 110.2.b, 201.6.a, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709; provided, however, that in no event shall the Purchase Price for a Developer Parcel be less than zero dollars ($0).

f. Arbitration of Disputes. Any dispute regarding the interpretation and implementation of this Section 201.2 (including, without limitation, a dispute regarding approval of a Certified Statement pursuant to subsection e.(1) above) shall be subject to resolution by arbitration in the manner provided in Section 706. The parties may agree by Operating Memorandum entered into pursuant to Section 709 to complete the closing for conveyance of a Developer Parcel by the Agency to the Developer prior to the outcome of any such arbitration and subject to an after-closing reconciliation of the Purchase Price based on the results of such arbitration. The parties shall not unreasonably withhold approval of such an arrangement to close pending the outcome of arbitration.

3. Parcel A. Parcel A is currently owned by the City. In accordance with and subject to all the terms, covenants and conditions of this Agreement and within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency agrees to acquire from the City

and convey in fee, and Developer agrees to accept conveyance of, Parcel A for development in accordance with the Scope of Development (Attachment No. 4). The Purchase Price to be paid by the Developer for Parcel A shall be the Purchase Price determined pursuant to Section 201.2.

4. B/C Ground Lease Parcels. The B/C Ground Lease Parcels are comprised of vacant land currently owned by the City, and are subject to tideland public trust requirements and use restrictions (the "Trust Requirements") established by applicable statutes, grants, and regulations of the California State Lands Commission (the "SLC").

a. Conveyance Method. In accordance with and subject to all the terms, covenants and conditions of this Agreement and the Trust Requirements, and within the time set forth in the Schedule of Performance (Attachment No. 3):

(1) The Agency shall acquire from the City a ground leasehold interest in each of the B/C Ground Lease Parcels pursuant to separate ground leases between the Agency and the City for each of the respective B/C Ground Lease Parcels (each such ground lease is referred to as a "City/Agency Ground Lease"). Each City/Agency Ground Lease shall:

(A) be consistent with the Trust Requirements and the terms of the applicable Agency/Developer Sub-Ground Lease (as described below);

(B) provide the Developer and its lender(s) with third-party beneficiary rights to cure any Agency default and with the reasonable opportunity to enter into a direct ground lease with the City in the event of an Agency default; and

(C) be in a form reasonably acceptable to the Agency, the City and the Developer, which form shall be agreed upon within the time set forth in the Schedule of Performance (Attachment No. 3) and incorporated in this Agreement through an Operating Memorandum pursuant to Section 709.

(2) The Agency shall convey, and the Developer shall accept conveyance of, a sub-ground leasehold interest in each of the B/C Ground Lease Parcels pursuant to separate sub-ground leases between the Agency and the Developer for each of the respective B/C Ground Lease Parcels (each such sub-ground lease is referred to as an "Agency/Developer Sub-Ground Lease"). Each Agency/Developer Sub-Ground Lease shall:

(A) be consistent with the Trust Requirements;

(B) provide for development of the applicable B/C ~~round~~Ground Lease Parcel in accordance with the Scope of Development (Attachment No. 4);

(C) provide for use of the applicable B/C Ground Lease Parcel solely for uses permitted by applicable City land use permits and approvals and in a manner that satisfies the Trust Requirements;

(D) provide for ground rent payments for the applicable B/C Ground Lease Parcel determined as set forth in subsection b. below;

(E) provide for a leasehold term equal to the longest term permitted by the Trust Requirements (currently sixty-six (66) years);

(F) contain commercially reasonable terms that will support private debt and equity financing of the contemplated development on the applicable B/C Ground Lease Parcel;

(G) contain provisions required by the California Community Redevelopment Law for leases of the nature of the applicable Agency/Developer Sub-Ground Lease, including the provision regarding non-discrimination required by Health and Safety Code Section 33436(b) and the provision regarding property tax payments required by Health and Safety Code Section 33675; and

(H) be in a form reasonably acceptable to the Agency and the Developer, which form shall be agreed upon within the time set forth in the Schedule of Performance (Attachment No. 3) and incorporated in this Agreement through an Operating Memorandum pursuant to Section 709.

If the parties are unable to agree upon the form of a City/Agency Ground Lease or an Agency/Developer Sub-Ground Lease within the time set forth in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the applicable City/Agency Ground Lease or Agency/Developer Sub-Ground Lease consistent with the terms of this Section 201.4.

If requested by the Developer, the Agency shall consider in good faith, and shall cause the City to consider in good faith, an alternative conveyance method whereby, consistent with the Trust Requirements and all applicable law, the City would directly convey a ground leasehold interest in one or more of the B/C Ground Lease Parcels pursuant to a ground lease or ground leases directly between the City and the Developer containing terms comparable to those to be contained in the applicable Agency/Developer Sub-Ground Lease (each, a "City/Developer Ground Lease"). The Agency shall reasonably cooperate with the City ~~and the Agency~~ to prepare and cause approval and execution of any such requested City/Developer Ground Lease.

At the request and cost of the Developer, the Agency shall reasonably cooperate, and shall cause the City to reasonably cooperate, with the Developer to seek SLC approval of any City/Agency Ground Lease, Agency/Developer Sub-Ground Lease, or City/Developer Ground Lease for the B/C Ground Lease Parcels in accordance with the procedures of Public Resources Code Section 6702.

b. Ground Rent Payments. Each Agency/Developer Sub-Ground Lease shall provide for the Developer to make annual ground rent payments (the "Annual Rent Payments" or an "Annual Rent Payment") in advance for each year of the term of the Agency/Developer Sub-Ground Lease, with the initial Annual Rent Payment to be made on the date that the Developer is entitled to possession of the applicable B/C Ground Lease Parcel (the

"Possession Date"), and subsequent Annual Rent Payments to be made on each anniversary of the Possession Date (each, a "Rent Payment Date"). The amount of each Annual Rent Payment shall be determined as follows.

The Annual Rent Payment due on the Possession Date and on the next two Rent Payment Dates shall equal the Initial Annual Rent Payment Amount (as defined below). On each Rent Adjustment Date (as defined below), the Annual Rent Payment shall be increased to equal the Adjusted Annual Rent Payment Amount (as defined below). As used in this subsection b., the following terms have the meanings set forth below:

(1) "Initial Annual Rent Payment Amount" means an amount equal to the product of the Purchase Price for the applicable B/C Ground Lease Parcel determined pursuant to Section 201.2 multiplied by the Debt Constant Factor.

(2) "Debt Constant Factor" means the debt constant factor that yields level annual amortized loan payments for a loan with a term of twenty-five (25) years and an interest rate equal to the Designated Interest Rate.

(3) "Designated Interest Rate" means an interest rate equal to 1.5% above the current yield-to-maturity on 10-year United States Treasury bills as reported in the Wall Street Journal on the date that is ten (10) days prior to the Possession Date for the applicable Agency/Developer Sub-Ground Lease.

(4) "Rent Adjustment Date" means the third (3^{rd}) anniversary of the Possession Date for the applicable Agency/Developer Sub-Ground Lease, and each succeeding third anniversary (i.e., the 3^{rd} anniversary, 6^{th} anniversary, 9^{th} anniversary, 12^{th} anniversary, etc. of the applicable Possession Date).

(5) "Adjusted Annual Rent Payment Amount" means an amount equal to the product of the Annual Rent Payment amount in effect immediately prior to determination of the Adjusted Annual Rent Payment Amount multiplied by the Adjustment Factor.

(6) "Adjustment Factor" means a ratio, the numerator of which is the CPI Index amount as of the applicable Rent Adjustment Date, and the denominator of which is the CPI Index amount as of the previous Rent Adjustment Date (or the Possession Date, in connection with determination of the Adjusted Annual Rent Payment Amount for the first Rent Adjustment Date); provided, however, that in no event shall such ratio exceed 1.12.

(7) "CPI Index" means the Consumer Price Index for all Urban-Consumers (CPI-U): U.S. City Average, All Items (base year 1982-84 = 100) for the United States, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index has changed so that the base year differs from that used as of the Possession Date, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the term of the applicable Agency/Developer Sub-Ground Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain

substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

In consultation with the Appraiser who prepared the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) for the applicable B/C Ground Lease Parcel, the parties may agree on such mutually acceptable modifications of the above-described formula for determining the Annual Rent Payments as will reasonably establish the fair rental value for the applicable B/C Ground Lease Parcels. If the parties are unable to agree upon the amount of any Annual Rent Payment, then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the amount of any such disputed Annual Rent Payment consistent with the terms of this Section 201.4.b.

5. Parcel J. Parcel J consists of a portion of the land currently owned by the Agency and improved with parking improvements known as City Parking Lot C and part of Marina Vista Park, and a portion of the land currently owned by the City and utilized as parking for City Hall and the JFK Library. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall acquire that portion of Parcel J owned by the City, and shall cause termination of all leasehold interests encumbering Parcel J. Following such acquisition by the Agency, the Agency agrees to convey, and the Developer agrees to accept conveyance of, Parcel J for development in accordance with the Scope of Development (Attachment No. 4). As further provided in Section III.B of the Scope of Development (Attachment No. 4), Parcel J may be subdivided into two Developer Subparcels (each a "J Developer Subparcel"), and conveyed at separate times to the Developer upon satisfaction of the preconditions to the conveyance of each such J Developer Subparcel. The Purchase Price to be paid by the Developer for each J Developer Subparcel shall be the Purchase Price determined pursuant to Section 201.2.

6. Parcel L.

a. Acquisition and Relocation with Respect To Post Office Site. As further provided in Section 201.6.c, the City and the Agency currently own all of Parcel L except for a parcel owned by the Hilf Trust (the "Post Office Site Owner") and leased to the United States Postal Service (the "USPS") under a long-term lease for operation of a post office facility (the "Post Office Site"), and a parcel owned by Jack Higgins (the "Restaurant Site Owner") and used by a tenant as a place of business for a restaurant (the "Restaurant Site"). This Section 201.6.a sets forth terms for acquisition of the Post Office Site and relocation of the current post office facility from the Post Office Site. Section 201.6.b sets forth terms for acquisition of the Restaurant Site and relocation of the business from the Restaurant Site.

(1) Acquisition of Post Office Site. Within the time sets forth in the Schedule of Performance (Attachment No. 3) and in accordance with all applicable legal requirements, the Agency shall take the following actions at its cost, using federal funds available for implementation of the Vallejo Station development ("Vallejo Station Funds"):

(A) The Agency shall seek to acquire fee title to the Post Office Site from the Post Office Site Owner by voluntary agreement. To that end, the Agency shall deliver a written offer to the Post Office Site Owner following consultation with the

Developer regarding such written offer. The Agency shall use reasonable efforts to acquire the Post Office Site by negotiation at a purchase price consistent with the acquisition budget for the use of Vallejo Station Funds, and shall make good faith efforts to condition such negotiated purchase on either the ability to negotiate the purchase or the passage of a resolution of necessity with respect to the Restaurant Site.

(B) If the Agency is unable to acquire the Post Office Site by negotiation within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall or shall cause the City to consider the adoption of a Resolution of Necessity for acquisition of the Post Office Site by eminent domain. If the Agency or the City elects to adopt the Resolution of Necessity, the Agency or the City, as applicable, shall proceed promptly to acquire the Post Office Site by eminent domain and shall file an order for immediate possession with respect to the Post Office Site. The Developer acknowledges that discretion is vested in the Agency and the City to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency or the City to make the findings required by Code of Civil Procedure Section 1245.230 or adopt the Resolution of Necessity for the Post Office Site. If the Agency ~~fails~~and the City fail to adopt the Resolution of Necessity for the Post Office Site by the time set forth in the Schedule of Performance (Attachment No. 3), or if the Agency or the City adopts the Resolution of Necessity but, after good faith efforts, is unable to proceed with acquisition of the Post Office Site by eminent domain within the time set forth in the Schedule of Performance (Attachment No. 3), the exclusive remedy of Developer shall be to terminate this Agreement pursuant to Section 510 with respect to Parcel J and/or L only, as the Developer may elect. Upon any such termination of this Agreement with respect to Parcel L (so that relocation of the Post Office facility to Parcel T2 as described below is not necessary), the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2.

(2) Relocation of USPS To Post Office Relocation Facility. The parties' intention is to negotiate with the USPS the termination of its current lease for the Post Office Site and the relocation of the current USPS facility from the Post Office Site to a new Post Office facility to be developed on Parcel T2 (the "Post Office Relocation Facility") by the Developer in accordance with this Agreement and the Project Approvals for Parcel T2, and in accordance with the terms of a new, commercially reasonable and financible lease between the Developer and the USPS (the "Post Office Relocation Facility Lease"). The parties shall make good faith and commercially reasonable efforts to negotiate a relocation agreement with the USPS that includes a long-term continued retail presence for the U.S. Postal Service in the Downtown or the Central Waterfront Area as close as possible to the existing location. The parties acknowledge that the USPS has exclusive authority to determine the location of postal facilities.

The Schedule of Performance (Attachment No. 3) includes a schedule of actions to accomplish the relocation of the USPS operation off of the Parcel L Post Office Site and into the newly completed Post Office Relocation Facility on Parcel T2 by ~~December 2007,~~February 2009, to enable timely commencement of construction of the Vallejo Station public garage on Parcel L3 (the "L3 Public Garage") by that time. The parties

acknowledge and agree that accomplishment of such a schedule for relocation of the USPS facility will require fast-tracking of the normal USPS process for the location of new postal facilities; that, based on prior discussions with the USPS, there is reason to believe that such a fast-track process may be feasible; but that, if, despite the parties' good faith efforts, such fast-tracking of the USPS relocation process proves not to be completely feasible, the parties shall make necessary modifications to the Schedule of Performance (Attachment No. 3), through execution of an Operating Memorandum pursuant to Section 709, to reflect future conditions.

To accomplish the intended relocation of the USPS facility from the Post Office Site, the parties shall cooperate to achieve the following preliminary steps within the times set forth in the Schedule of Performance (Attachment No. 3) (some of these actions relate to the physical development of the Post Office Relocation Facility on Parcel T2 within the Southern Waterfront Area); provided, however, that the parties' obligations to perform the following steps (other than negotiation and execution of a Post Office Budget LOI Operating Memorandum, as described and defined below) shall be contingent on prior acquisition of, or adoption of a resolution of necessity with respect to, the Post Office Site by the Agency or the City:

(A) The parties shall jointly seek to negotiate with, and obtain USPS approval of, a letter of intent (a "Post Office LOI") establishing business terms for the termination of the current USPS lease of premises at the Post Office Site and for the new Post Office Relocation Facility Lease. To that end, the parties shall jointly work with the USPS to prepare preliminary plans and specifications, a building program, geotechnical design recommendations, a preliminary development proforma, a general contractor cost estimate and other documents related to the Post Office Relocation Facility that are reasonably required to complete negotiations of the Post Office LOI, and to obtain USPS approval of the location of the Post Office Relocation Facility and of the Developer as the developer and landlord for the Post Office Relocation Facility. The parties shall also complete the steps described in Section 208 to determine that title to Parcel T2 will be in a condition mutually satisfactory to the parties and to the USPS.

Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date, the parties shall seek to negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Post Office LOI Budget Operating Memorandum") establishing a budget and an allocation of costs for completion of the actions described in this subparagraph (A), based on the following funding principles:

(i) Vallejo Station Funds and Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) shall be used to the maximum extent they are available and eligible for such use; and

(ii) To the extent the Developer agrees to advance funds for use within the scope and amount of the budget set forth in the Post Office LOI Budget Operating Memorandum or any amendment thereto, the Developer shall be entitled to a credit against the Purchase Price payable by the Developer for Developer Parcels S and T, with such credit applied to each closing for portions of Developer Parcels S and T in chronological order until the credit is fully used.

Upon execution of the Post Office LOI Budget Operating Memorandum (or any amendment thereto), the parties shall adhere to the budget contained therein in connection with the expenditure of funds to accomplish the tasks set forth in this subparagraph (A).

(B) Within 30 days after USPS approval of the Post Office LOI, the parties shall seek to negotiate and execute a further Operating Memorandum in accordance with Section 709 (the "Post Office Development Budget Operating Memorandum") establishing a budget and an allocation of costs for completion of the additional pre-construction actions described in subparagraphs (C) and (E) below together with the actual construction of Post Office Relocation Facility, based on the following funding principles:

(i) Vallejo Station Funds and Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) shall be used to the maximum extent they are available and eligible for such use;

(ii) Private debt and equity funds to be obtained by the Developer shall next be applied in an amount that can reasonably be obtained based on the Post Office LOI business terms for the Post Office Relocation Facility Lease; and

(iii) Any shortfall in budgeted costs remaining after applying the funds described in clauses (i) and (ii) above shall be filled from contributions of the parties in amounts and subject to funding terms to be negotiated and set forth in the Post Office Development Budget Operating Memorandum.

(C) Following USPS approval of the Post Office LOI and the execution of the Post Office Development Budget Operating Memorandum, the parties shall jointly work to implement the following pre-construction activities using funds as set forth in the Post Office Development Budget Operating Memorandum:

(i) Preparation, in cooperation with the USPS, of design development-level architectural, structural, civil engineering, and landscaping plans and specifications for the Post Office Relocation Facility, and procurement of USPS approval of such design development-level plans and specifications;

(ii) Negotiation, preparation, and procurement of USPS approval of the Post Office Facility Relocation Lease, based on the terms of the Post Office LOI;

(iii) Preparation, in cooperation with the USPS, of final working drawings and final plans and specifications necessary for construction of the Post Office Relocation Facility, and procurement of USPS approval of such working drawings, plans and specifications;

(iv) Procurement of all building and grading permits necessary for construction of the Post Office Relocation Facility; and

(v) Negotiation of the terms for relocation of any existing tenant(s) from Parcel T2 and for revised access to the adjacent Kiewitt property (collectively, the "Parcel T2 Relocation Obligations").

(D) At its cost, the Developer shall use diligent good faith efforts to complete the following additional pre-construction activities:

(i) Preparation, processing, and procurement of City approval of a Unit Plan, tentative tract map, and public improvement plans for the required extension of Solano Avenue in connection with construction of the Post Office Relocation Facility on Parcel T2;

(ii) Recordation of a final parcel map establishing Parcel T2 as a legal parcel and dedicating the required Solano Avenue right-of-way; and

(iii) Procurement of private debt and equity funds for development of the Post Office Relocation Facility as contemplated by the Post Office Development Budget Operating Memorandum.

(E) Using funds as set forth in the Post Office Development Budget Operating Memorandum, the Agency shall perform the Parcel T2 Relocation Obligations.

(F) Upon completion of the foregoing actions, and satisfaction of the requirements set forth in this Agreement for conveyance of a Developer Parcel, the Agency shall sell to the Developer, and the Developer shall purchase from the Agency, Developer Parcel T2 for the Purchase Price and pursuant to the conveyance terms set forth in this Agreement, with particular reference to Section 201.8.

(G) Using funds as set forth in the Post Office Development Budget Operating Memorandum, the Developer shall engage a general contractor to construct and equip the Post Office Relocation Facility and required off-site public improvements (including the required extension of Solano Avenue) in accordance with this Agreement, the Project Approvals, and the Post Office Relocation Facility Lease. Upon completion of construction and in accordance with the terms of the Post Office Relocation Facility Lease, the parties and the USPS shall cause the relocation of fixtures and equipment, as applicable, from the Post Office Site and all other actions necessary to cause the USPS to relocate from and permanently vacate the Post Office Site and move into the completed Post Office Relocation Facility on Parcel T2.

Upon the occurrence of any of the following events (each a "Post Office Relocation Termination Event"), either party may terminate this Agreement with respect to Parcel L (as further provided in Sections 510 and 511), and thereafter the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2:

(H) Failure within the scheduled time period of the parties to agree upon and execute the Post Office LOI Budget Operating Memorandum;

(I) Failure within the scheduled time period of the USPS to approve a Post Office LOI, the Post Office Relocation Facilities Lease, or any other plans, specifications and documents required to be approved by the USPS in connection with the proposed relocation of its current facilities from the Parcel L Post Office Site; or

(J) Failure within the scheduled time period of the parties to agree upon and execute the Post Office Development Budget Operating Memorandum; or

(K) Failure within the scheduled time period, and despite commercially reasonable good faith efforts, of the Developer to obtain private debt and equity funds for development of the Post Office Relocation Facility as contemplated by the Post Office Development Budget Operating Memorandum.

b. Acquisition and Relocation With Respect to Restaurant Site. Within the time sets forth in the Schedule of Performance (Attachment No. 3) and in accordance with all applicable legal requirements, the Agency shall take the following actions at its cost, using Vallejo Station Funds:

(1) The Agency shall seek to acquire fee title to the Restaurant Site from the Restaurant Site Owner by voluntary agreement. To that end, the Agency shall deliver a written offer to the Restaurant Site Owner following consultation with the Developer regarding such written offer. The Agency shall use reasonable efforts to acquire the Restaurant Site by negotiation at a purchase price consistent with the acquisition budget for the use of Vallejo Station Funds, and shall make good faith efforts to condition such negotiated purchase on either the ability to negotiate the purchase or the passage of a resolution of necessity with respect to the Post Office Site.

(2) If the Agency is unable to acquire the Restaurant Site by negotiation within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall or shall cause the City to consider the adoption of a Resolution of Necessity for acquisition of the Restaurant Site by eminent domain. If the Agency or the City elects to adopt the Resolution of Necessity, the Agency or the City, as applicable, shall proceed promptly to acquire the Restaurant Site by eminent domain and shall file an order for immediate possession with respect to the Restaurant Site. The Developer acknowledges that discretion is vested in the Agency and the City to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency or the City to make the findings required by Code of Civil Procedure Section 1245.230 or adopt the Resolution of Necessity for the Restaurant Site. If the Agency ~~fails~~and the City fail to adopt the Resolution of Necessity for the Restaurant Site by the time set forth in the Schedule of Performance (Attachment No. 3), or if the Agency or the City adopts the Resolution of Necessity but, after good faith efforts, is unable to proceed with acquisition of the Restaurant Site by eminent domain

within the time set forth in the Schedule of Performance (Attachment No. 3), the exclusive remedy of Developer shall be to terminate this Agreement pursuant to Section 510 with respect to Parcel J and/or L only, as the Developer may elect. Upon any such termination of this Agreement with respect to Parcel L (so that relocation of the Post Office facility to Parcel T2 as described ~~below~~above is not necessary), the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2.

(3) In connection with the acquisition of the Restaurant Site, the Agency shall complete the relocation of the restaurant business from the Restaurant Site in accordance with any voluntarily agreed terms, and all applicable statutory relocation requirements.

c. Acquisition of Portion of Parcel L (City/Agency Site). The City/Agency portion of Parcel L (the "City/Agency Site") consists of the balance of Parcel L (other than the Post Office Site and the Restaurant Site), including a portion of the land currently owned by the Agency and improved with parking improvements, and a portion of the land currently owned by the City and utilized as parking. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall acquire that portion of Parcel L owned by the City.

d. Conveyance of Developer Parcels; Retention of Public Parking and Paseo Parcels. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to convey and the Developer agrees to accept conveyance of the following L Developer Parcels:

(1) Parcel L1, consisting of land currently entirely within the City/Agency Site. Following conveyance, Parcel L1 shall be developed in accordance with the Scope of Development (Attachment No. 4).

(2) Parcel L2, consisting of land almost entirely within the City/Agency Site. Following conveyance, Parcel L2 shall be developed in accordance with the Scope of Development (Attachment No. 4).

(3) Parcel L4, a vertical subdivision parcel to be established, and following conveyance to the Developer, to be developed in accordance with the Scope of Development (Attachment No. 4) and the Parcel L4 Operating Memorandum to be prepared and executed as further provided in Section III.A.4 of the Scope of Development.

The Agency shall retain title to or transfer to the City the portion of Parcel L comprising Parcels L3 and L5, which are vertical subdivision parcels to be established and developed in accordance with the Scope of Development (Attachment No. 4).

e. Purchase Price for Developer Parcel L1. The Purchase Price to be paid by the Developer for Parcel L1 shall be the Purchase Price determined pursuant to Section 201.2.

f. Purchase Price for Developer Parcel L2. The Purchase Price to be paid by the Developer for Parcel L2 shall be the Purchase Price determined pursuant to Section 201.2.

g. Purchase Price for Developer Parcel L4. The Purchase Price for Developer Parcel L4 shall be the Purchase Price determined pursuant to Section 201.2.

7. Parcel S. Parcel S consists of real property, a portion of which is currently owned by the Agency and is improved with marine sales and bait shop uses, and is subject to agreements with the operators of those uses, and a portion of which is currently owned by the City and is improved for storage uses, and is subject to agreements with individual tenants utilizing the storage areas on the property. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall terminate the existing agreements with the marine sales and bait shop operators, shall cause the City to terminate the existing agreements with the storage tenants, and shall acquire from the City that portion of Parcel S currently owned by the City. Following such acquisition by the Agency, the Agency agrees to convey, and the Developer agrees to accept conveyance of, Parcel S for development in accordance with the Scope of Development (Attachment No. 4). The Purchase Price to be paid by the Developer for Parcel S shall be the Purchase Price determined pursuant to Section 201.2.

8. Parcel T. Parcel T consists of property currently owned by the Agency and occupied by certain tenants. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall terminate any existing occupancy agreements and cause relocation of existing occupants from Parcel T. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to convey, and the Developer agrees to accept conveyance of, Parcel T for development in accordance with the Scope of Development (Attachment No. 4). As further provided in Section IV.B of the Scope of Development (Attachment No. 4), Parcel T may be subdivided into between three and five Developer subparcels (each a "T Developer Subparcel"), and conveyed at separate times to the Developer upon satisfaction of the preconditions to the conveyance of each T Developer Subparcel. The Purchase Price to be paid by the Developer for each T Developer Subparcel shall be the Purchase Price determined pursuant to Section 201.2.

B. [§202] Escrow

The Agency agrees to open an escrow for conveyance of each Developer Parcel to the Developer with First American Title Company, or any other escrow company approved by the Agency and the Developer, as escrow agent (the "Escrow Agent"), in Vallejo, California, within the time established in the Schedule of Performance (Attachment No. 3). Except as may mutually be agreed between the Agency and Developer, the close of escrow hereunder and conveyance of each Developer Parcel to the Developer shall occur within the times set forth in the Schedule of Performance (Attachment No. 3). The parties acknowledge and agree that the individual Developer Parcels to be conveyed by the Agency to the Developer may be conveyed to the Developer at separate times, and, as such, the provisions of this Agreement with respect to the conveyance of the Developer Parcels to the Developer shall apply to the extent applicable to the particular Developer Parcel(s) being conveyed at that time.

This Agreement constitutes the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The Agency and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 202 in writing, delivered to the Agency and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

Upon delivery of the grant deeds (or ground leases) for the applicable Developer Parcels pursuant to Section 209 of this Agreement, and upon satisfaction of the Agency's and Developer's conditions to closing, the Escrow Agent shall record such grant deeds (or ground leases), as applicable, when title to the Developer Parcels can be vested in the Developer in accordance with the terms and provision of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing any Developer Parcels are not to be transferred.

The Developer shall pay in escrow to the Escrow Agent all fees, charges and costs relating to such escrow, including without limitation the following, promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the date provided for herein for the close of escrow:

1. One-half (1/2) of the escrow fee;

2. The portion of the premium for the title insurance policy or special endorsements to be paid by the Developer, if any, as set forth in Section 211 of this Agreement;

3. Costs of drawing the grant deeds;

4. Recording fees;

5. Notary fees;

6. Ad valorem taxes, if any, described in Section 212 of this Agreement which are the responsibility of the Developer; and

7. Any transfer taxes.

The Developer shall also deposit with the Escrow Agent the Purchase Price for the Developer Parcels, or applicable portion thereof then being conveyed to the Developer, (or, with respect to the B/C Ground Lease Parcels or applicable portion thereof then being conveyed to the Developer, the applicable first year's Initial Annual Rent Payment Amount).

The Agency shall pay in escrow to the Escrow Agent the following, promptly after the Escrow Agent has notified the Agency of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the date provided for herein for the close of escrow:

1. One-half (1/2) of the escrow fee;

2. The premium for a C.L.T.A. standard title insurance policy to be paid by the Agency as set forth in Section 211 of this Agreement.

The Agency shall timely and properly execute, acknowledge and deliver the grant deeds in substantially the form established in Section 207 of this Agreement (or the Agency/Developer Sub-Ground Leases with respect to the B/C Ground Lease Parcels) conveying to the Developer fee title to (or a sub-ground leasehold interest in) the Developer Parcels in the condition required by Section 208 of this Agreement, together with an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such conveyance, if such be the fact.

The Escrow Agent is authorized to:

1. Pay and charge the Agency and the Developer, respectively, for any fees, charges and costs payable under this Section 202 of this Agreement. Before such payments are made, the Escrow Agent shall notify and obtain approval (which approval shall not be unreasonably withheld) from the Agency and the Developer of the fees, charges and costs necessary to clear title and close the escrow;

2. Disburse funds and deliver the grant deeds (or memoranda of ground leases), and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the Agency and the Developer; and

3. Record the grant deeds (or memoranda of ground leases), and any other instruments delivered through this escrow, if necessary or proper, to vest fee title (or a ground leasehold interest) to the Developer Parcels, as applicable, in the Developer in accordance with the terms and provisions of this Agreement.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30-day month.

If the escrow for a particular Developer Parcel is not in condition to close before the time for conveyance established in Section 209 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner and to the extent set forth in Section 510 or 511 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner and to the extent set forth in Section 510 or 511 hereof, as the case may be. If neither the Agency nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 209, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any

objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the affected Developer Parcel(s) until instructed in writing by both the Agency and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 202 shall be construed to impair or affect the rights or obligations of the Agency or the Developer to specific performance. Notwithstanding the foregoing, the time for conveyance established in Section 209 of this Agreement shall be extended so long as the party who has not fully performed the necessary acts for conveyance is working reasonably to satisfy the conditions for conveyance and diligently proceeds to complete all of such acts.

Any amendment of these escrow instructions shall be in writing and signed by both the Agency and the Developer. The Agency's Executive Director, or his designee, is authorized to execute any escrow instructions or amendments thereto on behalf of the Agency. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the Agency or the Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between the Agency and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 202 to 213, both inclusive, of this Agreement.

Neither the Agency nor the Developer shall be liable for any real estate commissions or brokerage fees which may arise ~~herefrom~~from this Agreement. The Agency and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction, and each party shall hold the other harmless from any claims for any such commissions or fees.

C. [§203] Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Developer of title to the respective Developer Parcels shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). Said Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the Agency pursuant to Operating Memoranda, as described in Sections 604 and 709 hereof. The Agency and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 216 of this Agreement. The Developer shall accept title and possession on or before the said date.

Notwithstanding the provisions of this Agreement requiring the Agency to acquire title to the Site prior to the time set for conveyance of the Developer Parcels in the Schedule of

Performance (Attachment No. 3) and to deposit the grant deeds in escrow prior to such time, if, at or prior to the time set forth in the Schedule of Performance for conveyance of the portion of Parcel L that comprises a Developer Parcel, the Agency has not obtained title to the necessary portion of Parcel L but has obtained a judicial order authorizing the Agency to take possession thereof and, upon the further mutual agreement of the parties:

1. The Agency deposits a copy of the order in escrow;

2. Upon request of the Title Company, the Agency delivers an executed agreement indemnifying the Title Company against claims arising out of any property for which the Agency has obtained a judicial order authorizing the Agency to take possession;

3. The Agency delivers exclusive possession of the property involved to the Developer by a written lease or other document reasonably approved as a means of effectuating this Agreement by the Agency and the Developer, on or prior to the time set for conveyance thereof;

4. The right of possession which the Developer acquires from the Agency is such that the Title Company commits to issue a policy or policies of title insurance as set forth in Section 218 and which enables the Developer to obtain financing for the development of such Developer Parcel;

5. The Agency diligently proceeds with the eminent domain action until a final judgment is rendered, and the Agency forthwith deposits the grant deed to such property in the escrow provided herein; and

6. All occupants have been relocated from the property involved or are subject to the order of immediate possession requiring them to surrender possession of the property,

then the Developer shall not terminate this Agreement under the provisions of Section 510 but shall accept such right of possession and shall proceed with the development of the portion of Parcel L that comprises a Developer Parcel. In such event, the escrow provided in Section 202 with respect to such Developer Parcel shall remain open until the grant deeds to the property involved can be deposited therein in accordance with this Section 203.

The Agency shall cooperate with the Developer and the Title Company to seek to procure issuance of a policy or policies of title insurance as described in paragraph 4 above, and in that regard, agrees that it shall provide the indemnification agreement described in paragraph 2 above in a form approved by the Agency and its legal counsel.

D. [§204] Conditions Precedent to Conveyance

1. [§205] Agency's Conditions to Closing

The following are conditions precedent, and shall be completed to the Agency's satisfaction or waived by the Agency (collectively, the "Agency's Conditions to Closing") prior

to close of escrow for conveyance of any Developer Parcel, or any portion thereof, to the Developer:

a. Approval, adoption and effectiveness of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals;

b. Submission by the Developer and approval by the Agency of the Developer's evidence of financing adequate to finance the acquisition and development of the Developer Parcel(s) being conveyed, pursuant to Section 217 hereof;

c. Completion of acquisition of the applicable Developer Parcel by the Agency (or, if applicable, filing of orders for immediate possession);

d. Deposit into escrow by the Developer of the applicable Purchase Price (or initial year's Annual Rent Payment, as applicable) and all other documents and required sums necessary for close of escrow pursuant to Section 202 hereof;

e. Submission by the Developer and approval by the City of the Developer's Unit Plan for the applicable Developer Parcel(s), pursuant to Sections 304 and 305 hereof;

f. Submission by the Developer of evidence that the Developer is ready to proceed with demolition of the existing improvements and site preparation work;

g. Preparation and recordation of reciprocal easement agreements and/or covenants, conditions and restrictions ("REA/CC&Rs") required by the Agency and/or City with respect to the Developer Parcel, or portion thereof, to be developed for residential uses, as provided in Section 704 hereof; and

h. The Developer entity to which the applicable Developer Parcel(s) is being conveyed shall not be in default of this Agreement with respect to any Developer Parcel(s) previously conveyed to that Developer entity (it being expressly agreed by the Agency that this condition shall not apply to prevent conveyance to a Developer entity if a default exists under this Agreement with respect to a Developer Parcel(s) previously conveyed to an unrelated Transferee(s) in accordance with Section 315 hereof).

2. [§206] Developer's Conditions to Closing

In addition to any other conditions set forth in this Agreement in favor of the Developer, the following are conditions precedent (the "Developer's Conditions to Closing"), and shall be completed to the Developer's satisfaction, or waived by the Developer, prior to close of escrow for conveyance of any Developer Parcel, or applicable portion thereof, by the Agency to the Developer:

a. Subject to the provisions of Section 203 hereof, the Agency shall be ready to timely tender title to (or possession of) the Developer Parcel in the condition required for conveyance to the Developer hereunder;

b. The Agency shall have complied with all requirements of the escrow applicable to the Agency, including, without limitation, deposit into escrow of the applicable grant deed or Agency/City Sub-Ground Lease, and all other documents and all sums, if any, necessary for the close of escrow pursuant to Section 208 hereof;

c. The Title Company (referenced in Section 211 hereof) shall be in the position to issue the Title Policy (as defined in Section 211) for the Developer Parcel;

d. Completion of acquisition of the Developer Parcel (or, if applicable, filing of orders for immediate possession);

e. Submission by the Developer and approval by the City of the Developer's Unit Plan, and, if requested by the Developer, a vesting tentative map, for such Developer Parcel being conveyed, in accordance with and pursuant to Sections 304 and 305 hereof;

f. The Developer shall determine the soil conditions of the Site and suitability of the soil conditions for the improvements to be constructed thereon, pursuant to Section 215.3 hereof;

g. The Developer shall have obtained financing adequate for the Developer's costs of acquisition of and construction of the improvements on the Developer Parcel being conveyed;

h. All required REA/CC&Rs required by the Agency and/or City shall have been prepared and recorded against those Developer Parcels, or portions thereof, to be developed for residential uses, as provided in Section 704 hereof;

i. Approval, adoption and effectiveness of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals; and

j. Procurement from the applicable regulatory agency of the notice pursuant to Health and Safety Code Section 33459.3(c) (the Polanco Act Immunity) with respect to the Developer Parcel, if applicable pursuant to Section 215.

E. [§207] Form of Grant Deeds and Ground Leases

The Agency shall convey to the Developer title to the respective Developer Parcels in the condition provided in Section 208 of this Agreement by grant deeds in substantially the form set forth in Attachment No. 5 and incorporated herein by reference or, with respect to the B/C Ground Lease Parcels, by Agency/Developer Sub-Ground Leases in forms to be prepared as set forth in Section 201.4.

F. [§208] Condition of Title

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall submit to the Developer for review and approval a preliminary title report, together

with a copy of all underlying documents referred to therein (the "Preliminary Title Report") applicable to the entire Site (the "Initial Title Review Period"). In addition, within the times set forth in the Schedule of Performance (Attachment No. 3) and prior to the conveyance of the respective Developer Parcels, the Agency shall submit to the Developer for review and approval a preliminary title report, applicable to the respective Developer Parcels (the "Subsequent Title Review Period"). The Developer shall approve or disapprove the Preliminary Title Report for the entire Site or an applicable Developer Parcel within the Initial Title Review Period or the Subsequent Title Review Period for that Developer Parcel, respectively. Failure by the Developer to disapprove within such time shall be deemed an approval.

If the Developer disapproves a Preliminary Title Report, it shall specify the exception(s) to title contained in the Preliminary Title Report that it finds unacceptable and that would need to be removed in order for the Developer to be willing to accept conveyance of the applicable Developer Parcel (the "Unacceptable Title Exceptions"). The parties shall confer within fifteen (15) days after the Agency's receipt of the disapproval of the Preliminary Title Report to seek in good faith to agree upon a method to remove the Unacceptable Title Exceptions, and any such agreement shall be set forth in an Operating Memorandum executed in accordance with Section 709. Thereafter, the parties shall perform their respective obligations under such Operating Memorandum to cause removal of such Unacceptable Title Exceptions.

If the Developer disapproves a Preliminary Title Report as a result of the existence of Unacceptable Title Exceptions and the parties do not enter into an Operating Memorandum to remove such Unacceptable Title Exceptions within thirty (30) days after the Agency's receipt of such disapproval (or such longer period as the parties may agree upon in writing), the Developer may elect to terminate this Agreement in accordance with Section 510 hereof with respect to the affected Developer Parcel(s) only, or may elect to proceed with the acquisition of the Developer Parcel(s) without removal of the Unacceptable Title Exceptions. The Agency agrees that it will not cause, permit or suffer any liens, encumbrances or other matters affecting title to the Developer Parcels (or applicable portion thereof being conveyed) after the date of the Preliminary Title Report unless approved in writing by the Developer, which approval shall not be unreasonably withheld.

The Agency shall convey to the Developer good and marketable fee simple title to (or, in connection with the B/C Ground Lease Parcels, good and marketable sub-ground leasehold interest in) the respective Developer Parcels free and clear of all recorded liens, encumbrances, assessments, leases and taxes (including Unacceptable Title Exceptions to be removed pursuant to an Operating Memorandum), except as are specifically set forth in this Agreement and other easements and matters of record reflected in the Preliminary Title Report approved by the Developer, or which have been otherwise approved by the Developer in writing.

Notwithstanding any other provision of this Agreement, the Agency shall cause termination of any leasehold interest on a Developer Parcel (other than the City/Agency Ground Leases with respect to the B/C Ground Lease Parcels) prior to conveyance of the Developer Parcel to the Developer.

G. [§209] Time for and Place of Delivery of Grant Deeds and Ground Leases

Subject to any mutually agreed upon extensions of time, the Agency shall deposit the grant deeds for the respective Developer Parcels, and the Agency/Developer Sub-Ground Leases for the B/C Ground Lease Parcels, as applicable, with the Escrow Agent on or before the date established for the conveyance of each Developer Parcel in the Schedule of Performance (Attachment No. 3).

H. [§210] Recordation of Deeds and Lease Memoranda

The Escrow Agent shall file the grant deeds (or a memorandum of lease with respect to the B/C Ground Lease Parcels) for recordation among the land records in the Office of the County Recorder of Solano County and shall deliver to the Developer title insurance policies insuring title in conformity with Section 211 of this Agreement.

I. [§211] Title Insurance

Concurrently with recordation of the grant deed (or memoranda of leases with respect to the B/C Ground Lease Parcels) for each Developer Parcel to be conveyed by the Agency, First American Title Company, or some other title insurance company satisfactory to the Agency and the Developer having equal or greater financial responsibility ("Title Company"), shall provide and deliver to the Developer, a title insurance policy issued by the Title Company (the "Title Policy") insuring that the fee title to the respective Developer Parcels (or the sub-ground leasehold interest with respect to the B/C Ground Lease Parcels) is vested in the Developer in the condition required by Section 208 of this Agreement. The Title Company shall provide the Agency with a copy of the title insurance policy and the title insurance policy shall be in the amount requested by the Developer.

The Agency shall pay only for that portion of the title insurance premium attributable to a C.L.T.A. standard form policy of title insurance in the amount of the Preliminary Purchase Price (prior to deduction of any Purchase Price credits) for each Developer Parcel being conveyed. The Developer shall pay for all other premiums for title insurance coverage or special endorsements that it may request.

The Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the applicable Developer Parcel(s). The Developer shall pay the entire premium for all title insurance policies, including any increase in coverage and special endorsements that may be requested by it.

J. [§212] Taxes and Assessments

Ad valorem taxes and assessments, if any are imposed on the Agency, on the Developer Parcels, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title to the Developer shall be paid for by the Agency. All ad valorem taxes and assessments levied or imposed on the Developer Parcels for any period commencing after closing of the escrow for conveyance of title to the Developer shall be paid by the Developer.

K. [§213] Conveyance Free of Possession

Except as otherwise provided in the Scope of Development (Attachment No. 4), the Developer Parcels shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements and matters of record.

L. [§214] Zoning of the Site

As provided and subject to the exceptions set forth in Section 102 hereof, this Agreement is conditioned upon, and the obligations of the Parties hereunder are specifically contingent upon, among other things, the City ~~approving the Required Approvals and the Required Approvals thereafter becoming effective, including any necessary amendments to the City's Zoning Ordinance. Upon approval of such amendments~~approval and subsequent effectiveness following expiration of the applicable referendum period of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals. Upon approval and effectiveness of such Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals, the zoning of the Site will be such as to permit the development of the Site and construction of the improvements in accordance with the provisions of this Agreement. The Agency and Developer shall cooperate and use best efforts to obtain such approvals from the City, and further to obtain or cause the issuance of any other approvals and permits necessary for the use, operation and maintenance of the improvements, including without limitation the joint use of parking facilities, in accordance with the provisions of this Agreement.

M. [§215] Condition of the Site

1. Overview; Parcel A. Prior investigations of the Site by the Agency have revealed contamination on Parcels A, S and T. The Agency has provided the Developer with information regarding Parcel A and shall not be responsible for any corrective action to remediate any contamination on Parcel A.

2. Parcels S and T. The parties shall cause remediation of contamination with respect to Parcels S and T in accordance with Section IV.A of the Scope of Development (Attachment No. 4).

The parties intend that such remediation work shall be undertaken and completed in such a manner as to entitle the Agency to receive the written acknowledgment of immunity pursuant to Health and Safety Code Section 33459.3(c). The parties intend and the Agency shall use good faith efforts to assure that, upon acquisition of Parcels S and T by the Developer, the Developer, the Developer's successors-in-interest and lenders with respect to such Developer Parcels shall be beneficiaries of the immunities contained in Health and Safety Code Section 33459.3(e) relating to such remediation work ("Polanco Act Immunity"). The parties understand and acknowledge that, to the extent any remedial work is undertaken pursuant to Health and Safety Code Section 33459, et seq., the Agency may in its discretion employ the provisions set forth therein in connection with efforts to require responsible parties to perform and/or contribute funds to the remediation. The performance of any remediation actions by the Agency pursuant to this Section 215.2 is designed to place Parcels S and T in the condition upon

which the Purchase Prices for such Developer Parcels are determined in accordance with Section 201.2.

3. Other Developer Parcels. Except as set forth herein with respect to Parcels A, S and T or in Phase 1 or Phase 2 environmental assessment reports separately prepared by the Developer, the Agency represents that, to its best knowledge, no other portions of the Site contain or have contained soil or groundwater contamination requiring remediation work in order to permit such other portions of the Site to be developed and used in the manner contemplated in this Agreement and that it has made available to Developer copies of all information, studies and reports in its possession with respect to any contamination on the Site.

Except as otherwise set forth in Section 215.2 above with respect to Parcels S and T, in an Operating Memorandum described below in this Section 215.3, or in the Scope of Development (Attachment No. 4), the Developer Parcels shall be conveyed from the Agency to the Developer in an "as is" condition. The Agency shall not be responsible for any items of site work within the Developer Parcels except those described above in Section 215.2 with respect to Parcels S and T, those described in an Operating Memorandum, and those which are listed in the Scope of Development as the Agency's responsibilities.

The Developer shall have the right, within the time set forth in the Schedule of Performance (Attachment No. 3) to conduct or cause to be conducted any and all soils or groundwater tests and analyses, engineering studies, environmental audits, and any other tests or analyses of the Developer Parcels required by the Developer at its sole and absolute discretion to determine the presence of uncompacted fill, the condition of the soil or groundwater, the geology, seismology, hydrology or other similar matters on, under or affecting the respective Developer Parcels, the condition of any buildings or improvements located thereon, the presence or absence of any hazardous or toxic substances, wastes or materials, and the suitability of the respective Developer Parcels for the Developer's contemplated use (collectively, the "Parcel Conditions"). It shall be the sole responsibility of the Developer to investigate and determine the Parcel Conditions of the respective Developer Parcels (other than Parcels S and T) and the suitability of such Parcel Conditions for the improvements to be constructed by the Developer.

If the Developer determines that any Parcel Conditions are such as to make the development of any particular Developer Parcel(s) economically infeasible, it shall notify the Agency, specifying such condition(s) (the "Unacceptable Physical Conditions") and, if possible, the corrective action(s) it reasonably believes would need to be completed to remediate such Unacceptable Physical Conditions so that development of the particular Developer Parcel(s) could proceed in an economically feasible manner. The parties shall confer within fifteen (15) days after the Agency's receipt of such notice to seek in good faith to agree upon a method to remediate the Unacceptable Physical Conditions, and any such agreement shall be set forth in an Operating Memorandum executed in accordance with Section 709. At the request of the Developer, an Operating Memorandum shall contain provisions substantially similar to those set forth in the second paragraph of Section 215.2 (in connection with Parcels S and T) related to Agency actions to procure Polanco Act Immunity with respect to remediation of the applicable Developer Parcel. Thereafter, the parties shall perform their respective obligations under such Operating Memorandum to cause remediation of such Unacceptable Physical Conditions.

If the Developer delivers a notice of the existence of Unacceptable Physical Conditions and the parties do not enter into an Operating Memorandum to remediate such Unacceptable Physical Conditions within thirty (30) days after the Agency's receipt of such notice (or such longer period as the parties may agree upon in writing), or if the Developer cannot determine with a reasonable degree of certainty the costs to remediate any Unacceptable Physical Conditions, the Developer may elect to terminate this Agreement in accordance with Section 510 hereof with respect to the entire Site or the affected Developer Parcel(s) only, or may elect to proceed with the acquisition of the Developer Parcel(s) without removal of the Unacceptable Physical Conditions and/or despite such uncertainty about costs of remediation.

Except with respect to Parcels S and T, if the Developer does not provide the Agency with a notice of Unacceptable Physical Conditions for a particular Developer Parcel within the time set forth in the Schedule of Performance (Attachment No. 3), then thereafter, if the Parcel Conditions are not in all respects entirely suitable for the use or uses to which the particular Developer Parcel will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the Parcel Conditions of the particular Developer Parcel in a condition suitable for the development of the particular Developer Parcel.

N. [§216] Preliminary Work by the Developer

Prior to the conveyance of title to the respective Developer Parcels from the Agency, representatives of the Developer shall have the right of access to the Site, or those portions owned by or under the control of the Agency or City, at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Agency shall take all reasonable actions as may be necessary to allow the Developer such access to the Site for purposes of determining the condition of the Site. With respect to those portions of the Developer Parcels which are not then owned by the Agency or City, the Agency shall cooperate with the Developer in an effort to obtain any approvals and authorizations necessary for the Developer to gain access to those portions of the Developer Parcels as provided in this Section 216; provided, however, that the Developer acknowledges and agrees that any such approvals and authorizations may be beyond the control of the Agency and access may be delayed until such time as the Agency obtains the authority for access to those portions of the Developer Parcels; and provided further, however, that the Agency shall use diligent good faith efforts to obtain such access, including seeking court orders if deemed necessary by the Agency in its reasonable judgment to enable timely access to portions of the Developer Parcels not owned by the Agency or City. Prior to any access pursuant to this Section 216, the Developer shall give reasonable notice to the Agency, and any such access shall not interfere with the activities of the Agency or others having access rights to the Developer Parcels. The Developer shall indemnify and hold the Agency and City harmless for any injury or damages arising out of the right of access or any activity pursuant to this Section 216. The Developer shall have access to all data and information on the Site available to the Agency, but without warranty or representation by the Agency as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title to the Developer Parcels shall be done only after written consent of the

Agency, and others with jurisdiction or control over the Developer Parcels, as the case may be, and at the sole expense of the Developer (but subject to reimbursement or credit as may be otherwise specifically provided in this Agreement or an Operating Memorandum). The Agency shall not refuse to consent to any tests reasonably necessary to accomplish the purposes of this Agreement by the Developer. The Developer shall indemnify, save and protect the Agency against any claims resulting from such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the Agency, but without warranty or representation by the Developer as to the completeness, correctness or validity of such data, surveys and tests. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

Without limiting the generality of the foregoing portions of this Section and subject to compliance with the terms of the Section 404 Permit, at any time following the Action Dismissal Date, including prior to the processing of an application for a Unit Plan for Parcel A, and upon execution of a right-of-entry agreement, license agreement or other similar agreement reasonably acceptable to the Agency and the Developer, the Developer shall have the right to enter upon Parcel A and to place thereon clean fill for purposes of surcharging that parcel, provided the final grades are consistent with the maximum building finish floor elevations set forth in Section II.A.1 of the Scope of Development (Attachment No. 4).

O. [§217] Submission of Evidence of Financing

The financing of the acquisition and development of the respective Developer Parcels shall be subject to the approval of the Agency, which approval will not be unreasonably withheld and which approval or disapproval shall be limited to the issue of the creditworthiness of the provider of such financing.

No later than the time specified in the Schedule of Performance (Attachment No. 3), the Developer shall have secured financing necessary to assure acquisition and development of applicable Developer Parcel(s) in accordance with the provisions of this Agreement.

P. [§218] Cooperation With Subdivision

The Agency, as owner of applicable portions of the Site, shall reasonably cooperate with and assist the Developer, as applicant for various subdivisions and/or lot line adjustments of the Site contemplated by this Agreement and the Project Approvals, and shall execute such documents and consents and take such other actions as are reasonably required to enable the Developer to apply for and obtain approval, filing, and recordation of such subdivisions and/or lot line adjustments.

3. ~~III.~~ [§300] DEVELOPMENT OF THE SITE

A. [§301] Development of the Site by the Developer

1. [§302] Scope of Development

The Site shall be developed as provided in the Scope of Development (Attachment No. 4).

2. [§303] [Intentionally Omitted]
3. [§304] Unit Plans and Related Documents

The Developer shall prepare and submit to the City a Unit Plan, in accordance with Section 16.116.070 et seq. of the Vallejo Municipal Code and any applicable provisions of this Agreement (with particular reference to the Scope of Development (Attachment No. 4)) and the Settlement Agreement, for each Developer Parcel within the times established in the Schedule of Performance (Attachment No. 3). At the Developer's election, a Unit Plan submission may be accompanied by a Developer application for a vesting tentative map for the applicable Developer Parcel, which application shall be reviewed and processed in accordance with normal City procedures (subject to the terms of the Development Agreement). Any necessary surveys required for the preparation of the Unit Plan or vesting tentative map shall be prepared by the Developer concurrently with the Unit Plan. All Unit Plans shall conform to this Agreement, including the Scope of Development (Attachment No. 4). The Developer may, at its election, apply for, seek approval of, and obtain recordation of a master subdivision or lot line adjustment with respect to one or more Developer Parcels prior to applying for or obtaining a Unit Plan with respect to such Developer Parcel(s).

The Developer shall also prepare and submit to the City for its approval one or more final subdivision maps, as necessary, to cause subdivision of the applicable Developer Parcels as envisioned by this Agreement, including the Scope of Development (Attachment No. 4). Such final subdivision map(s) shall be prepared and submitted within the times established in the Schedule of Performance (Attachment No. 3), subject to extensions as are authorized herein or as mutually agreed to by the parties hereto.

~~The~~As further provided below, the Agency shall cause the City to consider approval or disapproval of the Unit Plan (and, if applicable, the vesting tentative map and final subdivision map(s)) for each Developer Parcel within the times established in the Schedule of Performance (Attachment No. 3) and in a manner consistent with this Agreement, including the Scope of Development (Attachment No. 4), and the Amended Required Approvals, including the Development Agreement. The Developer and the Agency mutually agree that following consideration by the City Planning Commission or Design Review Board of a Unit Plan for any major project (as determined by the Development Services Director) for any Developer Parcel, the Developer and the Agency shall file a timely appeal of the decision of the Planning Commission or the Design Review Board, as applicable, in order for the City Council to consider approval or disapproval of such Unit Plan as authorized by the Vallejo Municipal Code. The Agency shall pay any appeal fee related to the Project.

During the preparation of all Unit Plans, Agency and City staff and the Developer shall hold regular progress meetings and shall regularly consult with each other to coordinate the preparation of, submission to, and review of such plans and related documents by the City. The Agency, the City and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

[In accordance with the procedures set forth in Section 16.116.070 et seq. of the Vallejo Municipal Code, the Developer shall be notified by the City if the Unit Plan application is complete or not. If the Unit Plan application is not complete, the City shall notify the Developer of the reason such packet is incomplete and what element is missing or what action must be taken by the Developer for the City to accept such packet as complete.]

In general, the Schedule of Performance (Attachment No. 3) for each Developer Parcel establishes the following procedure that the Agency shall cause the City to implement in connection with Design Review Board and the City Council consideration of the Unit Plan for any major project on a Developer Parcel that will ultimately be appealed to the City Council for City Council's consideration of approval:

a. Upon submittal by the Developer of a complete application (a "Complete Application") for such Unit Plan and any accompanying vesting tentative map (following performance of the staff/Developer consultation process and the City notification process described in the preceding paragraphs), the City shall schedule an initial hearing before the Design Review Board (the "Study Session") to take place within thirty (30) days after City receipt of such Complete Application. At the Study Session, the Developer shall present the proposed Unit Plan (and any accompanying vesting tentative map) and shall receive any comments from the Design Review Board, City staff, and members of the public.

b. After the Developer assimilates comments from the Study Session and submits any proposed modifications to the Complete Application (a "Revised Application"), the City shall schedule a subsequent hearing before the Design Review Board (the "Action Session") to take place within thirty (30) days after City receipt of such Revised Application. At the Action Session, the Developer shall present the Revised Application, the Design Review Board shall receive any comments from City staff and members of the public, and the Design Review Board shall make its final recommendation/decision regarding the Revised Application.

c. The Developer and the Agency shall file a timely appeal (as further provided above) of the final recommendation/decision of the Design Review Board on the Revised Application, and the City shall schedule a City Council hearing on such appeal to take place within thirty (30) days after the Design Review Board's Action Session. After concluding the hearing, the City Council shall approve or disapprove the Revised Application for the Unit Plan and any accompanying vesting tentative map.

By signing the Third Restatement of this Agreement, the City acknowledges and agrees to implement the foregoing procedure in connection with Design Review Board and City Council consideration of Unit Plans for any major project in a Developer Parcel.

If any revisions or corrections of Unit Plans previously approved by the City shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Developer and the Agency shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

4. [§305] Agency Approval of Unit Plans and Related Documents

Subject to the terms of this Agreement and the Development Agreement, the Agency and City shall have the right of architectural and site planning review of all plans and drawings, including any changes therein. The Agency agrees that the Developer need submit plans and submissions only to the City, in compliance with the City's requirements for review and approval of Units Plans (Section 16.116.070 et seq. of the Vallejo Municipal Code), and approval by the City of such plans shall be deemed an approval by the Agency and shall satisfy the requirements under this Section 305. In addition, the Developer shall be obligated to submit plans and submissions for special development permits or building permits to City departments or other public agencies.

~~{In accordance with the procedures set forth in Section 16.116.070 et seq. of the Vallejo Municipal Code, the Developer shall be notified by the City if the Unit Plan application is complete or not. If the Unit Plan application is not complete, the City shall notify the Developer of the reason such packet is incomplete and what element is missing or what action must be taken by the Developer for the City to accept such packet as complete.}~~

If the Developer desires to make any substantial change in the construction drawings after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the construction drawings, as modified by the proposed change, conform to the requirements of Section 304 of this Agreement and the approvals previously granted by the City under this Section 305 and the Scope of Development (Attachment No. 4), the City shall not unreasonably withhold its approval of the proposed change and shall notify the Developer in writing within thirty (30) days after submission of a complete packet to the City. Such change in the construction plans shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice thereof by the City to the Developer setting forth in detail the reasons therefor, and such rejection shall be made within the said 30-day period.

5. [§306] Cost of Development

The costs of developing the improvements on the Site shall be borne by the parties as set forth in this Agreement, including the Scope of Development (Attachment No. 4) and the Method of Financing (Attachment No. 6).

6. [§307] Construction Schedule

After the conveyance of title to the respective Developer Parcels to the Developer, the Developer shall promptly begin and thereafter diligently prosecute to completion the development as provided for under this Agreement, including the Schedule of Performance (Attachment No. 3).

The Agency's Executive Director or his designee is authorized to approve any changes to the Schedule of Performance (Attachment No. 3) on behalf of the Agency, as further provided in Sections 604 and 709.

During the periods of construction, but not more frequently than once a month, the Developer shall submit to the Agency a written progress report of the construction if requested by the Agency. The report shall be in such form and detail as may reasonably be required by the Agency and shall, if requested by the Agency, include a reasonable number of construction photographs taken since the last report submitted by the Developer.

7. [§308] Bodily Injury, Property Damage and Workers' Compensation—~~Insurance~~ Insurance

Prior to the commencement of construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of commercial general liability insurance in the amount of at least $1,000,000 combined single limit for bodily injury and property damage and $2,000,000 general aggregate limit, naming the Agency as an additional insured. The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section 308 shall remain in effect only until a Final Certificate of Completion has been issued covering the entire Site as hereinafter provided in Section 323 hereof.

The policies or certificates required herein shall provide that, not less than thirty (30) days prior to cancellation or any material change in the policy, notices of such cancellation or material change shall be given to the Executive Director of the Agency at the address set forth in Section 601 hereof, by registered mail, return receipt requested. If at any time any of said policies shall be unsatisfactory to the Agency, at the Agency's reasonable discretion, as to form or substance or if a company issuing such policy shall be unsatisfactory to the Agency, at the Agency's reasonable discretion, the Developer shall promptly obtain a new policy, submit the same to the Executive Director for approval, which shall not be unreasonably withheld, and submit a certificate thereof as hereinabove provided. Upon failure of the Developer to furnish, deliver or maintain such insurance and certificates as above provided the Agency may deliver a notice of default in accordance with the first sentence of Section 501 and thereafter exercise the rights and remedies provided in Section 500 et seq. hereof if such default is not timely cured. Failure of the Developer to obtain and/or maintain any required insurance shall not relieve the Developer from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Developer concerning indemnification. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the Agency, and its agents, officers, employees and volunteers, for losses arising from work performed by the Developer for the Agency. The Developer's insurance policy(ies) shall include provisions that the coverage is primary as respects the Agency; shall include no special limitations to coverage provided to additional insureds; and shall be placed with insurer(s) with acceptable Best's rating of A VII or better or with approval of the Executive Director and shall be a California-admitted carrier(s).

8. [§309] City and Other Governmental Agency Permits

Except as provided below and in Section IV.A of the Scope of Development (Attachment No. 4), before commencement of construction or development of any buildings, structures or other work of improvement upon the Developer Parcels (unless such construction, development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City, Vallejo Sanitation and Flood Control District ("VSFCD"), San Francisco Bay Conservation and Development Commission ("BCDC"), California State Department of Transportation, or any other governmental agency affected by such construction, development or work. The Agency shall provide reasonable cooperation to the Developer in securing these permits, including acting as the "lead agency" in any instances where a public agency is required to be the lead agency in obtaining such permits, provided that the Agency shall have no obligation to incur out-of-pocket expenses to third parties in connection with such cooperation. Prior to commencement of construction or development of the Developer Parcels, the Developer shall also provide performance and payments bonds in the amount of one hundred percent (100%) of the construction contract. The Developer may propose alternative forms of security, such as letters of credit or completion guarantees for the approval of the Agency, which approval shall not be unreasonably withheld.

Notwithstanding the foregoing, the Agency shall be responsible for obtaining a Section 404 Permit from the U. S. Army Corps of Engineers (the "Section 404 Permit") relating to Parcel A (the Mariner's Cove Site) within the time set forth in the Schedule of Performance (Attachment No. 3). Through the Second Restatement of this Agreement, the parties acknowledge and agree that the Agency has satisfied the requirement of the previous sentence through procurement of the Section 404 Permit dated February 13, 2003. In addition, the Agency shall use best reasonable efforts to complete and enter into a settlement and exchange agreement with the SLC relating to Parcels S and T within the time set forth in the Schedule of Performance (Attachment No. 3), and in the manner more fully set forth in Section IV.A of the Scope of Development (Attachment No. 4).

In addition, before commencement of construction or development of any buildings, structures or other works of improvement upon the City/Agency Parcels, the Agency shall, without expense to the Developer, secure or cause to be secured any and all permits which may be required by the City, VSFCD, BCDC, California State Department of Transportation, or any other governmental agency affected by such construction, development or work. The Developer shall provide reasonable cooperation to the Agency in securing such permits, provided that the Developer shall have no obligation to incur out-of-pocket expenses to third parties in connection with such cooperation.

9. [§310] Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the Agency shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the Agency shall be those who are so identified in writing by the Executive Director of the Agency. The Agency shall indemnify the

Developer, its partners, shareholders, officers and employees, and hold it harmless from any damage caused or liability arising out of this right to access.

10. [§311] Local, State and Federal Laws

The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

The Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of Developer or its contractors to pay prevailing wages if and to the extent required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulation of the Department of Industrial Relations in connection with construction of the improvements on the Site. The indemnity provided for in this Section 311 is expressly limited as follows: (1) the indemnity does not include any improvements where the City or the Agency has represented in a writing to the Developer that such improvements are not, or should not be considered, public works under Labor Code Section 1720 et seq.; and (2) the indemnity does not include any improvements where the City or the Agency contracted for the work directly.

11. [§312] Anti-discrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, ancestry or national origin.

B. [§313] Responsibilities of the Agency

The Agency, without expense to the Developer or assessment or claim against the Site, shall perform all work specified herein and in the Scope of Development (Attachment No. 4) for the Agency to perform within the times specified in the Schedule of Performance (Attachment No. 3). In addition, the Agency shall grant such public utility easements over property owned by the Agency as are reasonably necessary to implement the Project in accordance with this Agreement and the Project Approvals.

C. [§314] Taxes, Assessments, Encumbrances and Liens

The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Developer Parcels for any period subsequent to conveyance of title to or delivery of possession of the Developer Parcels. Prior to the issuance of a Partial Certificate of Completion for a particular Developer Parcel, the Developer shall not place or allow to be placed on that Developer Parcel any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement, and the Developer shall remove or have removed any levy or attachment made on a particular Developer Parcel that is not specifically authorized by this Agreement, or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the

Developer in respect thereto; provided, however, that prior to commencing any such contest, the Agency, in its reasonable discretion, may require the Developer to post bond in an amount sufficient to cover the tax, assessment, encumbrance or lien, or such portion thereof, to be contested and shall thereafter proceed in good faith to contest the validity or amount of such tax, assessment, encumbrance or lien. The prohibitions of this Section 314 shall not apply with respect to a particular Developer Parcel following issuance of a Partial Certificate of Completion for that Developer Parcel.

The Developer understands that under certain conditions, its control of the Developer Parcels or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Developer agrees to pay when due any such possessory interest tax.

D. [§315] Prohibition Against Transfer of Developer Parcels, the Buildings or Structures Thereon and Assignment of Agreement

Prior to the issuance by the Agency of a Partial Certificate of Completion pursuant to Section 323 with respect to a particular Developer Parcel or Parcels, the Developer shall not, except as expressly permitted by this Agreement, complete a Transfer with respect to the applicable Developer Parcel(s) without the prior written approval of the Agency. For purposes of this Agreement, "Transfer" means any sale, transfer, conveyance, assignment, or lease of (i) this Agreement, including the rights of the Developer to receive a conveyance of the applicable Developer Parcel(s), and/or (ii) the applicable Developer Parcel(s) and the buildings and improvements thereon.

The Agency agrees not to unreasonably withhold its approval of any Transfer under this Section 315 so long as (i) the Agency reasonably determines that any such Transfer shall in no way diminish the Agency's rights under this Agreement; (ii) Developer shall not be in default of this Agreement with respect to the Developer Parcels subject to such Transfer; (iii) such Transfer in no way diminishes Developer's ability to perform under this Agreement with respect to the Developer Parcel(s) not subject to the Transfer; (iv) at the time of such Transfer, the transferee (a "Transferee") must have agreed to take title to the applicable Developer Parcel(s) subject to this Agreement, and shall have executed an assignment and assumption agreement in form and content satisfactory to the Agency, assuming all of the obligations of the Developer with respect to the applicable Developer Parcel(s), and agreeing to be subject to all the conditions and restrictions to which the Developer is subject with respect to the applicable Developer Parcel(s); and (v) the proposed Transferee shall have the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the Agency, to fulfill the obligations undertaken in this Agreement by the Developer with respect to the applicable Developer Parcel(s). The Agency Executive Director, or his designee, on behalf of the Agency, shall approve or disapprove (stating in writing with specificity the reasons for any disapproval) a Transfer requested by the Developer within thirty (30) days after the Developer submits such request and supporting documentation reasonably sufficient to enable the Agency Executive Director to determine the compliance of the requested Transfer with the objective criteria set forth in the preceding sentence.

Upon Agency approval of a Transfer, CALLAHAN/DESILVA VALLEJO, LLC, as the initial Developer, shall have no further obligations under this Agreement with respect to

the Developer Parcel(s) to which the Transfer applies, and the term "Developer", as used in this Agreement with respect to the Developer Parcel(s) to which the Transfer applies, shall mean and refer to the Transferee.

Notwithstanding the foregoing and subject to the provisions of Section 107 hereof, any Transfer by the Developer for purposes of obtaining financing to develop a Developer Parcel or Parcels is permitted without prior Agency approval so long as CALLAHAN/DESILVA VALLEJO, LLC, or an affiliate thereof, or an approved Transferee maintains control and management of the Developer Parcel(s) to which the Transfer for the purposes of obtaining financing applies.

The prohibition against Transfers shall not apply subsequent to the issuance of the Partial Certificate of Completion for any Developer Parcel. The prohibition against Transfers also shall not apply and shall not be deemed to prevent, prohibit or restrict (i) the granting of easements or permits to facilitate the development of the Site, (ii) the leasing or preleasing of any part or parts of a building or structure for occupancy when said improvements are completed, or (iii) the sale of residential units within a building or structure for occupancy upon completion. This prohibition shall not be deemed to prevent, prohibit or restrict the leasing of the Hotel Improvements to a Hotel Operator, or any portion of the Project to a prospective tenant or user, prior to construction of any such improvements on a Developer Parcel.

E. [§316] Security Financing; Rights of Holders

1. [§317] No Encumbrances Except Mortgages, Deeds of Trust, Sales {~~and Leases-Back or Other Financing for Development~~}
[and Leases-Back or Other Financing for Development]

Notwithstanding Sections 314 and 315 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted with respect to a particular Developer Parcel before issuance of a Partial Certificate of Completion for that Developer Parcel but only for the purpose of securing loans of funds to be used for financing the acquisition of the Developer Parcel and/or the construction of improvements on the Developer Parcel and any other expenditures necessary and appropriate to develop the Developer Parcel under this Agreement. The Developer shall notify the Agency in advance of any mortgage, deed of trust, sale and leaseback or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Partial Certificate of Completion with respect to the applicable Developer Parcel. The Developer shall not enter into any such conveyance for financing without the prior written approval of the Agency (unless such lender shall be one of the ten (10) largest banking institutions doing business in the State of California, or one of the ten (10) largest insurance lending institutions in the United States qualified to do business in the State of California), which approval the Agency agrees to give if any such conveyance is given to a responsible financial or lending institution or other creditworthy person or entity. Such lender shall be deemed approved unless rejected in writing by the Agency within ten (10) days after notice thereof to the Agency by the Developer. In any event, the Developer shall promptly notify the Agency of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on a Developer Parcel whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed

of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

2. [§318] Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the grant deed for a Developer Parcel be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote a Developer Parcel to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3. [§319] Notice of Default to Mortgage, Deed of Trust or Other Security ~~{Interest Holders; Right to Cure}~~
[Interest Holders; Right to Cure]

Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the Agency therefor. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 319 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 319. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Agency by written agreement satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the Agency, to the applicable Certificate of Completion from the Agency.

4. [§320] Failure of Holder to Complete Improvements

On a parcel by parcel basis, in any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon a Developer Parcel has not exercised the option to construct, or if it has exercised the

option and has not proceeded diligently with construction, the Agency may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of a particular Developer Parcel has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance of the particular Developer Parcel from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following:

a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

b. All expenses with respect to foreclosure;

c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the particular Developer Parcel Site;

d. The costs of any authorized improvements made by such holder; and

e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

5. [[§321] Notice of Default to Agency; Right of Agency to Cure]
~~5. {[§321] Notice of Default to Agency; Right of Agency to Cure}~~
Mortgage, Deed of Trust or Other Security Interest Default

Whenever any holder of any mortgage, deed of trust or other security interest with respect to a particular Development Parcel shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer, such holder shall at the same time deliver a copy of such notice or demand to the Agency.

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to a particular Developer Parcel prior to the completion of development, and the holder has not exercised its option to complete the development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the particular Developer Parcel to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the particular Developer Parcel as authorized herein.

F. [§322] Right of the Agency to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title and prior to the issuance of a Partial Certificate of Completion for construction and development of a particular Developer Parcel, and after the Developer has had a reasonable time to cure or satisfy any liens or encumbrances on that Developer Parcel, which period of time shall be the shorter of any period set by law or the cure period set forth in Section 501 hereof, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall prevent the Developer from challenging or contesting any tax, assessment, lien or charge so long as the Developer pays or makes provision for the payment of any such tax, assessment, lien or charge and thereafter in good faith contests the validity or amount thereof.

G. [§323] Certificate of Completion

Upon the completion of construction and development of any Developer Parcel by the Developer, the Developer shall send a written request to the Agency and the Agency shall furnish the Developer with a "Partial Certificate of Completion" for such Developer Parcel in form suitable for recording in the Official Records of Solano County, California. The Partial Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of such Developer Parcel as required by this Agreement. The issuance of Partial Certificates of Completion for portions of the Site shall have no effect on the remainder of the Site not covered by such Partial Certificates of Completion.

Promptly after completion of all construction and development to be completed by the Developer upon the Site, the Agency shall furnish the Developer with a "Final Certificate of Completion" upon written request therefor by the Developer. Such Final Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Solano County.

A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site, or a specified Developer Parcel, as the case may be, and of full compliance with the terms hereof. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site, or the specified Developer Parcel, covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the REA/CC&Rs and any deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Sections 401-405 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Site, neither the Agency nor any other person shall have any rights, remedies or controls with respect to the Site that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties with reference to the Site shall be as set forth in the grant deeds of the Developer Parcels from the Agency to the Developer (or the Agency/Developer Sub-Ground Leases with respect to the B/C Ground Lease Parcels), which shall be in accordance with the provisions of Sections 401-405 of this Agreement, and the REA/CC&Rs, referred to in Section 704 hereof.

The Agency shall not unreasonably withhold any Certificate of Completion. If the Agency refuses or fails to furnish a Certificate of Completion for the Site, or any portion thereof, after written request from the Developer, the Agency shall, within ten (10) days of the next scheduled Agency meeting after such written request, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for minor work or landscaping, the Agency will issue its Certificate of Completion upon the posting of a bond by the Developer with the Agency in an amount representing a fair value of the work not yet completed. If the Agency shall have failed to provide such written statement within said 10-day period after such Agency meeting, the Developer shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

4. ~~IV.~~ [§400] USE OF THE SITE

A. [§401] Uses

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Developer, its successors and assignees shall devote the Developer Parcels to the uses specified in the Redevelopment Plans, the grant deeds, the Agency/Developer Sub-Ground Leases (with respect to the B/C Ground Lease Parcels), and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the land.

B. [§402] Obligation to Refrain From Discrimination

The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Parcels, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Developer Parcels. The foregoing covenants shall run with the land.

C. [§403] Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of the Developer Parcels on the basis of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, ancestry or national origin of any person. All such deeds, leases or

contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

D. [§404] Effect and Duration of Covenants

Except as otherwise provided, the covenants contained in this Agreement and the grant deeds shall remain in effect until the deadlines for effectiveness of the Redevelopment Plans, as such Redevelopment Plans may be amended pursuant to this Agreement. The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Agreement and the grant deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, the City and any successor in interest to the Site or any part thereof.

The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in

whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the Agency without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Developer Parcels, or in the applicable Project Area. The Agency shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

E. [§405] Rights of Access -- Public Improvements and Facilities

The Agency, for itself and for the City, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Developer, and the Agency or the City shall indemnify and hold the Developer, its partners, shareholders, officers and employees, harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the Agency or City.

5. ~~V.~~ [§500] DEFAULTS, REMEDIES AND TERMINATION

A. [§501] Defaults – General

Subject to the extensions of time set forth in Section 604, failure or delay by either party to perform any obligation of such party under this Agreement constitutes a default under this Agreement; provided, however, that no party shall be deemed to be in default under this Agreement unless and until such party has received notice of default as provided in the following paragraph and the applicable cure period has expired without a cure being effected. The party who so fails or delays must promptly commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence or within the time specifically set forth in this Agreement, and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 507 and 508 of this Agreement, the injured party may not institute proceedings against the party in default during the applicable cure period set forth in the preceding paragraph.

Except as otherwise expressly provided in Section 512 of this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§502] Legal Actions

1. [§503] Institution of Legal Actions.

Subject to and after the applicable notice and cure periods and subject to any limitations on remedies set forth in this Agreement, in addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Solano, State of California, in an appropriate municipal court in that County.

2. [§504] Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§505] Acceptance of Service of Process.

In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. [§506] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§507] Damages

If the Developer or the Agency defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or the cure is not being diligently prosecuted to completion by the defaulting party within forty-five (45) days after service of the notice of default, and provided that the nondefaulting party has not terminated and does not terminate this Agreement (with respect to a particular Developer Parcel or the Site, as applicable) in connection with such default, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default, subject to any limitations on damages set forth in this Agreement (including, without limitation, the liquidated damages provisions of Section 511). Such damages shall not include either future property taxes or anticipated return on investment which the proposed development could have generated.

E. [§508] Specific Performance

If the Developer or the Agency defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or is not being diligently prosecuted to completion by the defaulting party within forty-five (45) days of service of the notice of default and provided that the nondefaulting party has not terminated and does not terminate this Agreement (with respect to a particular Developer Parcel or the Site, as applicable) in connection with such default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement; provided, however, that this Section 508 shall not apply with respect to the failure of a party to acquire all or a portion of the Developer Parcels from third parties. The City shall not be deemed to be a "third party" for purposes of the preceding sentence.

F. [§509] Remedies and Rights of Termination Prior to Conveyance of the Developer Parcels to the Developer

1. [§510] Termination by the Developer

In the event that prior to conveyance of title to a particular Developer Parcel to the Developer:

a. The Agency does not tender conveyance of a Developer Parcel or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within forty-five (45) days after written demand by the Developer; or

b. The Agency is unable or, for any reason, does not acquire a Developer Parcel, if the Developer Parcel is to be acquired by the Agency, and any such failure is not cured within forty-five (45) days after written demand by the Developer; or

c. There occurs a Post Office Relocation Termination Event pursuant to Section 201.6.a.(2), in which event the Developer's termination right shall be limited to termination of this Agreement with respect to Parcel L only; or

d. After efforts to acquire property, including the use of the procedures set forth in Article 1 [commencing with Section 1245.010] of Chapter 4 of Title 7 of the California Code of Civil Procedure have been unsuccessful, the Agency or the City, as applicable, elects not to adopt a resolution of necessity (pursuant to Article 2 [commencing with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire the Post Office Site and/or the Restaurant Site by eminent domain, it being expressly understood that the Agency ~~has~~and the City have reserved ~~its~~their discretion to approve or disapprove any such resolution of necessity and that the Developer's exclusive remedy for the failure of the Agency to adopt a resolution of necessity shall be the termination of this Agreement with respect to Parcel L and/or J only pursuant to this Section 510; or

e. The Developer's Conditions to Closing set forth in Section 206 of this Agreement have not been either satisfied or waived by the Developer prior to the close of

escrow, or such earlier date as set forth in Section 206, for conveyance of a Developer Parcel to the Developer; or

f. The Developer notifies the Agency of Unacceptable Physical Conditions and the parties do not enter into an Operating Memorandum to remediate such Unacceptable Physical Conditions as provided in Section 215.3; or

g. There occurs a ~~Required Approvals~~Settlement Failure Event pursuant to Section 102.4; or

h. There occurs a Developer Southern Waterfront Termination Event pursuant to Section IV.A.5.d of the Scope of Development (Attachment No. 4), in which event the Developer's termination right shall be to terminate this Agreement with respect to the Contaminated Area within the Southern Waterfront Area only and the further rights set forth in Section IV.A.9.d of the Scope of Development shall also apply; or

i. The Developer, despite its good faith reasonable efforts, is unable to obtain a binding commitment from a Hotel Operator as required by Section 705 hereof; or

j. The Agency is in breach or default with respect to any other obligation of the Agency under this Agreement, and such breach or default is not cured within 45 days, or the Agency does not in good faith commence to cure such default within such 45 days;

k. [Intentionally Omitted]; or

l. The Developer or the Agency, as applicable, after diligent efforts, is unable to obtain any governmental approval for a Developer Parcel, including without limitation any land use or design approvals or any resources or regulatory agency approvals required under this Agreement (including, without limitation, any applicable Polanco Act Immunity as further described in Section 206.j); or

m. The Agency, despite its good faith reasonable efforts, is unable to obtain any governmental approval for which it is responsible under this Agreement with respect to a Developer Parcel or any other portion of the Site; or

n. The Developer (1) furnishes evidence satisfactory to the Agency that the Developer, after and despite diligent efforts, has been unable to obtain firm and binding commitments for financing the acquisition of a Developer Parcel and for financing the development of the improvements to be constructed on such Developer Parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), or (2) submits evidence of financing or other documents with respect to a Developer Parcel pursuant to Section 217 hereof within the time established therefor in the Schedule of Performance, but the Agency does not approve such evidence and Developer does not submit satisfactory evidence of financing within forty-five (45) days of being notified that the Agency has not approved such evidence; or

o. The Developer disapproves a Preliminary Title Report for a Developer Parcel and the parties do not subsequently enter into an Operating Memorandum to remove all Unacceptable Title Exceptions as provided in Section 208 hereof;

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Agency; provided, however, that such termination shall be effective only with respect to those Developer Parcels which have not yet been conveyed to the Developer, and shall not affect those Developer Parcels or portions of the Site, if any, which have already been conveyed to the Developer so long as the Developer is not in default under this Agreement with respect to such parcels or portions of the Site; and provided, further, however, if, in the Developer's determination, the event described above leading to the Developer's right to terminate applies only to a certain Developer Parcel or Parcels, the Developer may terminate this Agreement only with respect to such Developer Parcel(s) specified by the Developer and this Agreement shall thereafter remain in effect for all other Developer Parcels and portions of the Site regardless of whether or not the Developer Parcels for which this Agreement will remain in effect have yet been conveyed to the Developer (but subject to the Developer's right to subsequently terminate this Agreement under this Section 510 for one or more additional Developer Parcels if an event described above subsequently occurs); and provided, further, however, that the Agency shall continue to perform all of its obligations under this Agreement that are reasonably related to the Developer Parcels and all other portions of the Site for which this Agreement has not been terminated; and provided, finally, however, that the terms of the following paragraph of this Section 510 shall supersede the foregoing and control the Developer's right to terminate this Agreement to the extent of any inconsistency with the foregoing. Upon a termination pursuant to this Section 510, neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to those Developer Parcels or portions of the Site affected by such termination, and the Agency shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section 108.2. If and only if the Developer does not elect to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, pursuant to the provisions of this Section 510, the Developer may exercise its rights under Sections 507 and 508 hereof.

Notwithstanding the foregoing terms of this Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area shall be separate and independent of the performance by the Agency of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Southern Waterfront Area; and neither a failure by the Agency to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Southern Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Northern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area. Also, notwithstanding the foregoing terms of this Section 510, the Developer's obligations with respect

to purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area shall be separate and independent of the performance by the Agency of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area; and neither a failure by the Agency to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Southern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area.

2. [§511] Termination by the Agency. In the event that prior to conveyance of title to a particular Developer Parcel to the Developer:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement and the Developer has not cured such violation within 45 days after the date of written demand by the Agency to the Developer; or

b. There is any significant change in the ownership or identity of the Developer or the parties in control of the Developer or the degree thereof in violation of the provisions of Section 107 hereof and the Developer has not cured such violation within 45 days after the date of written demand by the Agency to the Developer; or

c. The Developer does not submit evidence that it has diligently and in good faith attempted to obtain financing for the acquisition and development of a Developer Parcel, and such failure is not cured within 45 days after the date of written demand by the Agency to the Developer; or

d. The Developer (1) furnishes evidence satisfactory to the Agency that the Developer, after and despite diligent efforts, has been unable to obtain firm and binding commitments for acquisition of a Developer Parcel and financing the improvements to be constructed on the such Developer parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), or (2) submits evidence of financing or other documents with respect to a Developer Parcel pursuant to Section 217 hereof within the time established therefor in the Schedule of Performance, but the Agency does not approve such documents and the Developer does not submit satisfactory evidence of financing within forty-five (45) days of being notified that the Agency has not approved such evidence; or

e. [Intentionally Omitted]; or

f. The Developer fails to submit to the City a Unit Plan or any other required plans and specifications with respect to a Developer Parcel as required by this

Agreement, and such failure is not cured within 45 days after the date of written demand by the Agency to the Developer; or

g. The Developer does not take title to a Developer Parcel under tender of conveyance by the Agency pursuant to this Agreement, and such failure is not cured within 45 days after the date of written demand by the Agency to the Developer; or

h. There occurs a Post Office Relocation Termination Event pursuant to Section 201.6.a.(2), in which event the Agency's termination right shall be limited to termination of this Agreement with respect to Parcel L only; or

i. [Intentionally Omitted]; or

j. After efforts to acquire property, including the use of the procedures set forth in Article 1 [commencing with Section 1245.010] of Chapter 4 of Title 7 of the California Code of Civil Procedure have been unsuccessful, the Agency or the City, as applicable, elects not to adopt a resolution of necessity (pursuant to Article 2 [commending with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire the Post Office Site and/or the Restaurant Site by eminent domain (it being expressly understood that the Agency ~~has~~and the City have reserved ~~its~~their discretion to approve or disapprove any such resolution of necessity), in which case the Agency may terminate this Agreement with respect to Parcel L only; or

k. The Agency or City is unable, after and despite diligent efforts, to issue bonds or obtain other financing to finance the construction of the L3 Public Garage within the time established therefor in the Schedule of Performance (Attachment No. 3), provided, however, that at the request of either party, the right to terminate this Agreement for such cause under this subsection k. shall be suspended for a period of sixty (60) days following the date it is determined that the Agency or City is unable to obtain such financing for the parties to explore and attempt to negotiate in good faith an alternative development approach and appropriate amendments to this Agreement in lieu of termination, and provided further than the Agency may terminate this Agreement with respect to Parcel L only; or

l. The Agency's Conditions to Closing set forth in Section 205 of this Agreement have not been either satisfied or waived by the Agency prior to the close of escrow for conveyance of a Developer Parcel to the Developer; or

m. The Developer does not make the Additional Deposit (or a portion thereof) in the amount and at the time required under Section 108.2 and such failure is not cured within 15 days of written notice thereof from the Agency; or

n. The Developer is in breach or default with respect to any other obligation of the Developer under this Agreement, and such breach or default is not cured within 45 days or the Developer does not in good faith commence to cure such default within such 45 days; or

o. The parties are unable to agree upon a Parcel L4 Operating Memorandum pursuant to Section III.A.4 of the Scope of Development (Attachment No. 4), in which event the Agency's termination right shall be limited to termination of this Agreement with respect to Parcel L4 only;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Agency may, at the option of the Agency, be terminated by the Agency by written notice thereof to the Developer; provided, however, that such termination shall be effective only with respect to those Developer Parcels which have not yet been conveyed to the Developer, and shall not apply to those Developer Parcels or portions of the Site, if any, which have already been conveyed to the Developer so long as the Developer is not in default under this Agreement with respect to such parcels or portions of the Site; and provided, further, however, if the Agency terminates this Agreement as a result of an event described in subsections d., h., j., k., l. or o. above, then the Developer may elect to cause such termination to apply only to those Developer Parcel(s) to which it determines the terminating event applies and this Agreement shall thereafter remain in effect for all other Developer Parcels and portions of the Site regardless of whether or not the Developer Parcels for which this Agreement will remain in effect have yet been conveyed to the Developer; and provided, further, however, that the Agency shall continue to perform all of its obligations under this Agreement that are reasonably related to the Developer Parcels and all other portions of the Site for which this Agreement has not been terminated. If and only if, the Agency does not elect to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, pursuant to the provisions of this Section 511, the Agency may exercise its rights under Sections 507 and 508 hereof.

In the event of termination pursuant to subsection d., h., j., k., l. or o. of this Section 511, neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to the Developer Parcels and the portions of the Site to which the termination applies, and the Agency shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section 108.2.

IN THE EVENT OF TERMINATION UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511 IN CONNECTION WITH A DEVELOPER DEFAULT, THEN THE WORK PRODUCT PAID FOR WITH THE INITIAL DEPOSIT AND ANY EXPENDED PORTION OF THE ADDITIONAL DEPOSIT, TOGETHER WITH THE CASH AMOUNT OF ANY UNEXPENDED PORTION OF THE ADDITIONAL DEPOSIT (INCLUDING INTEREST EARNED THEREON), MAY BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES FOR SUCH DEVELOPER DEFAULT AND AS THE AGENCY'S PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER.

IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS AS DESCRIBED ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE (OR THE APPLICABLE DEVELOPER

PARCELS, AS THE CASE MAY BE) IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE) WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE VALUE OF THE APPLICABLE WORK PRODUCT THERETOFORE ACQUIRED BY THE AGENCY FROM EXPENDITURES OF THE INITIAL DEPOSIT AND THE ADDITIONAL DEPOSIT, TOGETHER WITH ANY UNEXPENDED PORTION OF THE ADDITIONAL DEPOSIT SET FORTH ABOVE IN THIS SECTION 511 AND HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE APPLICABLE UNEXPENDED AMOUNTS OR PORTIONS OF SUCH ADDITIONAL DEPOSIT AS SET FORTH ABOVE IN THIS SECTION 511 SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AND, TOGETHER WITH THE ABOVE DESCRIBED WORK PRODUCT, SHALL CONSTITUTE THE TOTAL OF ALL LIQUIDATED DAMAGES FOR THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, AND NOT AS A PENALTY. SUCH LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE AGENCY WITH RESPECT TO THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW, AS LIMITED BY SECTION 507 HEREOF.

THE DEVELOPER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

DEVELOPER:	**AGENCY:**
By: _____	**By:** _____
By: _____	

In no event shall either the Agency or the Developer terminate this Agreement based on the default of the other party without first having provided the other party with a notice of default and the other party having had the opportunity to cure said default subject to the provisions of this Agreement. In the event that either the Agency or Developer provides notice of intent to terminate this Agreement, the other party shall have thirty (30) days to provide a notice of default to the terminating party, or thereafter be deemed to have waived its right to claim that the terminating party was in default of this Agreement.

G. [§512] Special Termination Provisions

In no event shall either the Agency or the Developer terminate this Agreement with respect to a particular Developer Parcel or the Site based on the default of the other party without first having provided the other party with a notice of default with respect to the particular Developer Parcel or the Site, as applicable, and the other party having had the opportunity to cure said default subject to the provisions of this Agreement. In the event that either the Agency or the Developer provides notice of intent to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, the other party shall have thirty (30) days to provide a notice of default to the terminating party, or thereafter be deemed to have waived its right to claim that the terminating party was in default of this Agreement with respect to the particular Developer Parcel or the Site, as applicable.

H. [§513] Option to Repurchase, Reenter and Repossess

The Agency shall have the right at its option to repurchase, reenter and take possession of a particular Developer Parcel, or any portion thereof, with all improvements thereon, if after conveyance of title to that particular Developer Parcel, and prior to the issuance of the Partial Certificate of Completion for that particular Developer Parcel, the Developer shall:

1. Fail to proceed with the construction of the improvements for that particular Developer Parcel as required by this Agreement for a period of three (3) months after written notice thereof from the Agency; or

2. Abandon or substantially suspend construction of the improvements for that particular Developer Parcel, for a period of three (3) months after written notice of such abandonment or suspension from the Agency; or

3. Transfer or suffer any involuntary transfer of that particular Developer Parcel, or any part thereof in violation of this Agreement;

provided, however, that for purposes of items 1 and 2, above, the Agency may not exercise its right under this Section 513 so long as the Developer is diligently and in good faith pursuing a remedy to correct such failure to proceed or abandonment or suspension of construction.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

3. The rights of the Hotel Operator under the Hotel Operating Agreement.

Such right to repurchase, reenter or repossess shall not apply to any Developer Parcel except the Developer Parcel for which an event described in the first sentence of this Section 513 has occurred.

To exercise its right to repurchase, reenter and take possession with respect to a Developer Parcel or portion thereof, for which an event described in the first sentence of this Section 513 has occurred, the Agency shall pay to the Developer in cash an amount equal to:

1. The Purchase Price for that particular Developer Parcel, or portion thereof, actually paid by the Developer; plus

2. All costs incurred by the Developer after the date of this Agreement for the on-site labor and materials for the construction of the improvements existing on that particular Developer Parcel or such portion thereof, at the time of the repurchase, reentry and repossession; plus

3. All architectural, engineering, consultant and legal fees and costs incurred by the Developer in connection with the acquisition and development of that particular Developer Parcel, or portion thereof, provided, however, that the Developer first shall deliver to the Agency copies of all of the Developer's plans, studies and tests prepared and performed in connection with the acquisition and development of that particular Developer Parcel; less

4. Any gains or income withdrawn or made by the Developer from that particular Developer Parcel, or portion thereof, or the improvements thereon.

I. [§514] Right of Reverter

The Agency shall have the additional right, at its option, to reenter and take possession of a particular Developer Parcel, or any portion thereof, with all improvements thereon and revest in the Agency the estate theretofore conveyed to the Developer, if after conveyance of title to that particular Developer Parcel, or portion thereof, and prior to issuance of the Partial Certificate of Completion for that particular Developer Parcel, the Developer shall:

1. Fail to proceed with the construction of the improvements for that particular Developer Parcel as required by this Agreement for a period of three (3) months after written notice thereof from the Agency;

2. Abandon or substantially suspend construction of the improvements for that particular Developer Parcel for a period of three (3) months after written notice of such abandonment or suspension from the Agency; or

3. Transfer or suffer any involuntary transfer of that particular Developer Parcel or any part thereof in violation of this Agreement;

provided, however, that for purposes of items 1 and 2, above, the Agency may not exercise its right under this Section 514 so long as the Developer is diligently and in good faith pursuing a remedy to correct such failure to proceed or abandonment or suspension of construction.

Such right to reenter, repossess and revest to the extent provided in this Agreement shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. any rights or interest provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

3. The rights of the Hotel Operator under the Hotel Operating Agreement.

Such right to reenter, repossess and revest shall not apply to any Developer Parcel except the Developer Parcel for which an event described in the first sentence of this Section 514 has occurred.

The grant deeds conveying the respective Developer Parcels shall contain appropriate reference and provision to give effect to the Agency's right, as set forth in this Section 514 under specified circumstances prior to the issuance of the Partial Certificate of Completion for each respective Developer Parcel to reenter and take possession of a particular Developer Parcel with all improvements thereon and to terminate and revest in the Agency the estate conveyed to the Developer, subject to the limitations and conditions set forth in this Section 514.

Upon the revesting in the Agency of title to a particular Developer Parcel or any part thereof as provided in this Section 514, the Agency shall, pursuant to its responsibilities under state law, use its best efforts to resell the particular Developer Parcel or part thereof as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plans to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Agency and in accordance with the uses specified for that particular Developer Parcel or part thereof in the Redevelopment Plans. Upon such resale of the particular Developer Parcel, the proceeds thereof shall be applied:

1. First, to reimburse the Agency on its own behalf or on behalf of the City for all costs and expenses incurred by the Agency directly associated with the recapture, management and resale of the Developer Parcel, or part thereof and not previously reimbursed to the Agency or received by the Agency (but less any income derived by the Agency from the particular Developer Parcel or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the particular Developer Parcel or part thereof (or, in the event the particular Developer Parcel is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges [as determined by the County assessing official] as would have been payable if the particular Developer Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens with respect to the particular Developer Parcel due to obligations, defaults or acts of the Developer; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the particular Developer Parcel or part thereof; and any amounts otherwise owing the Agency by the Developer with respect to the particular Developer Parcel; and

2. Second, to reimburse the Developer up to the amount equal to the sum of: (a) the Purchase Price for the particular Developer Parcel, or part thereof; plus (b) the costs incurred by the Developer for the development of the particular Developer Parcel, or part thereof, and for the improvements existing on the particular Developer Parcel, or part thereof, at the time of the reentry and repossession; plus (c) all architectural, engineering, consultant and legal fees and costs incurred by the Developer in connection with the acquisition and development of the particular Developer Parcel, or part thereof, provided, however, that the Developer first shall deliver to the Agency copies of all of the Developer's plans, studies and tests prepared and performed in connection with the acquisition and development of the particular Development Parcel; less (d) any gains or income withdrawn or made by the Developer from the particular Developer Parcel, or part thereof, or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property.

To the extent that the rights established in this Section involve a forfeiture, it must be strictly interpreted against the Agency, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that the Agency will convey the respective Developer Parcels to the Developer for development and not for speculation in undeveloped land.

6. ~~VI.~~ [§600] GENERAL PROVISIONS

A. [§601] Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the Agency and the Developer, as required by this Agreement, must be in writing and may be delivered either by telefacsimile (with original forwarded by regular U. S. Mail), by registered or certified mail, postage prepaid, return receipt requested, or by Federal Express or other similar courier promising overnight delivery. If given by facsimile transmission, a notice or communication

shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Such notices or communications shall be sent to the parties to the following addresses:

To the Agency:
Executive Director
Redevelopment Agency of the City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

To the City:
City Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

with a copy to:
~~Director of Community~~Economic Development Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

To the Developer:
Callahan / DeSilva Vallejo, LLC
11555 Dublin Boulevard
Dublin, CA 94568
Attn: James Summers

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time-to-time designate by mail.

B. [§602] Conflicts of Interest

No member, official or employee of the Agency or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

C. [§603] Nonliability of Agency or City Officials and Employees

No member, official, employee or agent of the Agency or City shall be personally liable to the Developer in the event of any default or breach by the Agency or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

D. [§604] Enforced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default (and the times for performance under this Agreement shall be extended as provided below) where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, architect, engineer, or other service provider or supplier; acts of another party; delays due to existence and remediation of hazardous materials or contaminants, or other soils conditions on the Site which prevents Developer from performing its obligations under and within the manner and time set forth in this Agreement; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City or Agency shall not excuse performance by the Agency); bankruptcy of any contractor, subcontractor or other provider other than the Developer; the filing of any court action to set aside or modify this Agreement or any of the Project Approvals; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall not necessarily be calculated on a day-for-day basis, but shall be for that period of delay caused by such enforced delay as reasonably determined by the Agency and Developer. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

Times of performance under this Agreement may also be extended in writing through Operating Memoranda executed by the Agency and the Developer. The Agency's Executive Director, or his designee, is authorized to approve any such extension on behalf of the Agency. The parties understand and agree that development of this multiphased Project involves numerous actions, both within and outside their direct control, and that flexibility will be necessary in adjusting to evolving circumstances that may delay or modify the means of performance under this Agreement. Therefore, each party will consider in good faith requests for extensions of time for performance or modifications in the means of performance that are reasonably required in order to achieve the parties' mutual objective to complete the Project in the face of such evolving circumstances and the need for independent actions by third parties.

E. [§605] Inspection of Books and Records

The Agency has the right, upon not less than seventy-two (72) hours prior written notice from the Agency's Executive Director or his designee, at all reasonable times, to inspect

the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement, except for the Developer's proprietary information, notes, memoranda and financial analyses, whether or not such information pertains to the Site, and the Developer's financial records not specifically related to the Site. The Agency covenants and agrees to keep and hold as proprietary any information (identified in writing by the Developer as confidential) of the Developer, delivered to or inspected by the Agency pursuant to the terms of this Agreement. Such information which the Developer has identified in writing as confidential or proprietary shall not be disclosed by the Agency except as may be required by law, except to its authorized officers, agents and employees on a confidential basis, to the extent necessary in connection with any approval required under this Agreement.

The Developer also has the right, upon not less than seventy-two (72) hours prior written notice, at all reasonable times, to inspect the books and records of the Agency pertaining to the Site and the Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) as pertinent to the purposes of this Agreement.

F. [§606] Plans and Data

Where the Developer does not proceed with the purchase and development of a particular Developer Parcel, and when this Agreement with respect to that Developer Parcel is terminated pursuant to subparagraph a., b., c., f., g., m. or n. of Section 511 hereof, the Developer shall, to the extent legally permissible, deliver to the Agency any and all plans and data concerning the particular Developer Parcel to the extent such plans and data have been paid for, and the Agency or any other person or entity designated by the Agency shall be free to use such plans and data, including plans and data previously delivered to the Agency, for any reason whatsoever without cost or liability therefor to the Developer or any other person.

G. [§607] Approvals and Consents by the Parties

Except as otherwise provided for herein to the contrary, neither the Agency nor the Developer shall unreasonably withhold or delay any approvals or consents required to be given or otherwise provided for herein.

H. [§608] Attorneys' Fees

In the event that suit is brought for the enforcement of this Agreement or any provision contained herein or as the result of any alleged breach thereof, the prevailing party to such suit shall be entitled to be paid reasonable attorneys' fees by the losing party.

I. [§609] Representations of the Parties

The Agency and Developer each represents to the other that (i) it has the authority to enter into this Agreement, (ii) it has taken all necessary action for the valid execution and delivery of this Agreement, and (iii) this Agreement is legally binding on the representative party.

J. [§610] Changes in Law

In the event of a future change in the California Community Redevelopment or other state or federal law or regulation, the effect of which is to materially affect or impair the ability of one or both parties to perform, fund, or observe obligations or rights under this Agreement or the Project Approvals, the parties shall confer in good faith to seek a mutually acceptable modification to this Agreement and/or the Project Approvals that provides, under the circumstances of such change in law or regulation, for the performance, funding, and observance of each party's obligations and rights in a manner as closely as possible comparable to the performance, funding, and observance that was intended under this Agreement and the Project Approvals prior to such change in law or regulation.

7. ~~VII.~~ [§700] SPECIAL PROVISIONS

A. [§701] Amendment of Redevelopment Plans

~~The Agency intends to undertake all actions necessary to process for approval by~~By ordinances approved on November 28, 2006, the City Council adopted amendments to the Redevelopment Plans ~~to merge{the Waterfront Redevelopment Project} and~~and approval of a merged Redevelopment Plan to, among other things, merge the Marina Vista Redevelopment Project ~~with,~~[the Waterfront Redevelopment Project] ~~and~~, and the adjacent Vallejo Central Redevelopment Project (the "2006 Plan Amendments/Merger").

With the exception of the Total Reimbursable Developer ~~EIR/Required Approvals~~ Advance paid ~~or to be paid~~ for by the Developer as provided in Section 109 hereof, the Agency shall be responsible for all costs and expenses necessary to prepare and process for approval all the necessary documents and take all actions necessary for the approval of such 2006 Plan Amendments ~~and merger~~/Merger; provided, however, the parties understand and agree that final approval of any such ~~amendments to the Redevelopment Plans for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project is dependent upon appropriate actions being made by the City's Planning Commission and adoption of all appropriate findings and determinations by the City Council, which actions are~~2006 Plan Amendments/Merger is dependent upon the passage of the applicable referendum period without a successful referendum to defeat the 2006 Plan Amendments/Merger, which occurrence is beyond the control of the Agency. The Developer agrees that it will cooperate with the Agency and will not object to ~~any Redevelopment~~the 2006 Plan Amendments ~~and mergers~~/Merger, nor will Developer challenge any approvals relating to ~~Redevelopment Plan Amendments and mergers, that are consistent with the purpose, scope and terms of the proposed Redevelopment Plan Amendments and merger contemplated by the Agency as of the execution of this Agreement.~~ the 2006 Plan Amendments/Mergers. By execution of the Third Restatement of this Agreement, the parties acknowledge and agree that they have performed their respective obligations under this Section with respect to the 2006 Plan Amendments/Merger.

Except as provided above, pursuant to the provisions of the Redevelopment Plan for modification or amendment thereof, the Agency agrees that no amendment which changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site or otherwise directly ~~affect~~affects the development or use of the Site shall be made or

become effective without the prior written consent of the Developer. Amendments to the Redevelopment Plans applying to other property in the Redevelopment Project Areas shall not require the consent of the Developer.

B. [§702] Submission of Documents for Approval

Whenever this Agreement requires a party to submit plans, drawings or other documents to the other party (the "Approving Party") for approval, which shall be deemed approved if not acted on by the Approving Party within a specified time as provided in the Schedule of Performance (Attachment No. 3) or as otherwise provided in this Agreement, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the Approving Party within the stated time. If there is no time specified herein, either in the Schedule of Performance or elsewhere in this Agreement, for such Approving Party action, the submitting party may submit a letter requiring approval or rejection of documents within thirty (30) days after submission to the Approving Party or such documents shall be deemed approved.

C. [§703] Amendments to this Agreement

The Developer and the Agency agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. Any requests made pursuant to this Section 703 shall be made in writing.

D. [§704] Reciprocal Easement and Access Agreement; Covenants, Conditions and Restrictions

Within the times set forth in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and execute any reciprocal easement agreements and/or declaration of covenants, conditions and restrictions (the "REA/CC&Rs") relating to the residential portions of the Project. The REA/CC&Rs shall be in such form and content as may be acceptable to the Agency, and shall be recorded against those portions of the Developer Parcels to be developed with residential uses.

E. [§705] ~~Hotel—Operating Agreement~~Agreements with Respect to Hotel Improvements

The Developer shall enter into a lease or other operating agreement (the "Hotel Operating Agreement") with a Hotel Operator in form and content satisfactory to the Agency, for the operation and maintenance of the Hotel Improvements; provided, however, that the Developer, at its election, may enter into a separate lease or operating agreement with persons or entities other than the Hotel Operator for those portions of the Hotel Improvements constituting the restaurant and/or the conference center (a "Restaurant Operating Agreement" or a "Conference Center Operating Agreement", as applicable). The Agency shall provide its written approval or reasons for disapproval of any proposed Hotel Operating Agreement ~~within ten (10~~, Restaurant Operating Agreement and/or Conference Center Operating Agreement within thirty (30) days after receipt of the proposed agreement.

F. [§706] Arbitration of Specified Disputes

1. Scope of Obligation To Arbitrate. The following disputes and matters under this Agreement are subject to final and binding arbitration as provided in this Section 706:

a. Disputes and matters regarding the form of a City/Agency Ground Lease or an Agency/Developer Sub-Ground Lease to be prepared pursuant to Section 201.4.a or the amount of Annual Rent Payments determined in accordance with Section 201.4.b;

b. Disputes and matters regarding the form of the Parcel C2 REA or the Parcel E/F REA to be prepared pursuant to Section II.B~~C~~.2 and II.B~~C~~.5, respectively, of the Scope of Development (Attachment No. 4);

c. Disputes and matters regarding approval of Design Plans or Modified Design Plans for the Northern Waterfront Public Park and Open Space Improvements or the Southern Waterfront Public Park and Open Space Improvements pursuant to Section II.B~~C~~.3 and IV.C.2, respectively, of the Scope of Development (Attachment No. 4);

d. Disputes and matters regarding the form of the Southern Waterfront Soft Cost Work Operating Memorandum to be prepared pursuant to Section IV.A.9.b of the Scope of Development (Attachment No. 4);

e. Disputes and matters related to the determination of the Purchase Price for any Developer Parcel pursuant to Section 201.2; and

f. Such other disputes and matters as the parties, each in the exercise of its sole discretion, mutually agree in writing to submit to arbitration.

This arbitration provision is expressly limited to the above specified disputes and matters. The Arbitrator shall dismiss any dispute or matter submitted to him/her for determination if such determination is not expressly authorized in this Section 706.1 or in another written agreement executed by both parties.

2. Precursor To Arbitration. Before initiating arbitration, a party shall provide written notice to the other party of the existence of a dispute or matter that is eligible for and may require arbitration, stating with specificity the nature of the dispute or matter. Within ten (10) days after such notice, the parties shall confer in good faith to seek a mutually acceptable resolution to such dispute or matter. If the parties are unable to resolve the dispute or matter in this manner, then either party may initiate formal arbitration proceedings as set forth below.

3. Arbitration Procedure. A party shall initiate arbitration by written notice to the other party. The date such notice is given shall be the "Initiation Date." Except as expressly modified in this Section 706, the arbitration proceeding shall be conducted by a single arbitrator (the "Arbitrator") in accordance with the provisions of Section 1280 et seq. of the California Code of Civil Procedure, as amended or replaced by any successor sections (the "CCP"). Unless the parties mutually agree otherwise, the Arbitrator shall be selected by mutual agreement of the parties from a panel provided by the San Francisco office of the American

Arbitration Association (the "AAA"), and if the parties cannot so agree within fifteen (15) days after the Initiation Date, or if the AAA does not offer a selection of potential arbitrators having the requisite qualifications, either party may apply to the Solano County Superior Court for the appointment of the Arbitrator. If the dispute primarily involves design and construction matters, the Arbitrator shall have at least ten (10) years experience in the resolution of construction disputes (or such other or additional qualifications as the parties may agree upon). If the dispute primarily involves any other matters, the Arbitrator shall have at least ten (10) years experience in the resolution of commercial real estate disputes (or such other or additional qualifications as the parties may agree upon).

The date on which the Arbitrator is selected or appointed is referred to as the "Selection Date". The Arbitrator shall set the matter for hearing within forty-five (45) days after the Selection Date, and shall try any and all issues of law or fact that are the subject of the arbitration, and report a statement of decision upon them, if possible, within sixty (60) days of the Selection Date.

The parties to the arbitration shall bear equally all fees and costs assessed by the Arbitrator, and shall each bear their own costs and attorneys' fees in the arbitration proceeding, except as the Arbitrator may otherwise award attorneys' fees consistent with the provisions of Section 608.

No discovery shall be permitted in connection with the arbitration except that each of the parties to the arbitration shall, no later than fifteen (15) days after the Selection Date, provide the other party or parties with copies of all documents which it believes supports its claims, defenses, or positions with respect to the arbitration. No later than fifteen (15) days prior to the arbitration hearing, each of the parties to the arbitration may, if it desires, submit an arbitration brief not to exceed fifteen (15) pages, not including exhibits. Such brief and exhibits shall be served upon the opposing party or its counsel of record. No reply brief shall be permitted.

The arbitration hearing shall be limited to eight (8) hours in length. Each side shall have no more than four (4) hours to present its case. In calculating the four (4) hours of presentation time, all oral presentations of a party shall be included (including without limitation cross-examination of an opposing witness, addressing questions from the arbitrator, and argument). Upon completion of each party's presentation, the arbitration hearing will be closed.

The parties to the arbitration shall execute all documents necessary to submit the dispute to arbitration pursuant to this Section 706 in conformity with the procedures set forth in this Section 706.

The following time periods set forth in the CCP shall be shortened as follows: Section 1288 - four years to 90 days, and 100 days to 30 days; Section 1288.2 - 100 days to 30 days. The Arbitrator shall be required to determine all issues in accordance with the existing case law and the statutory laws of the United States and the State of California. The Arbitrator shall be empowered to: (1) enter equitable as well as legal relief; (2) provide all temporary and/or provisional remedies; and (3) enter equitable orders that will be binding upon

the parties. The Arbitrator shall issue a single written decision at the close of the arbitration proceeding which shall dispose of all of the claims of the parties that are subject of the arbitration, and an order or judgment upon that decision may be obtained by either party in a court of competent jurisdiction. The parties expressly reserve their appeal rights under CCP Sections 1294(b), (c) and (d).

4. Notice. BY INITIALING IN THIS SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OR SPECIFIED DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 706. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS SECTION 706, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THE ARBITRATION PROVISIONS OF THIS SECTION 706 IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS SET FORTH IN THIS SECTION 706 TO NEUTRAL ARBITRATION.

DEVELOPER: _____ AGENCY: _____

DEVELOPER: _____

G. [§707] Affordable Housing Funds

To the extent the Developer constructs and/or renovates residential units outside of the Redevelopment Project Areas, the Developer may submit a request to the Agency to use funds from the Agency's Low and Moderate Income Housing Fund to assist with such construction and/or renovation. The Agency agrees to consider, in good faith, any such request by the Developer to the extent such construction and/or renovation complies with the Agency's affordable housing programs, and appropriate affordability covenants and restrictions are recorded against any such residential units.

H. [§708] Agency Approval

Whenever this Agreement calls for or permits Agency approval, consent, or waiver, the written approval, consent, or waiver of the Agency Executive Director, or his designee, shall constitute the approval, consent, or waiver of the Agency, without further authorization required from the Agency Board unless required by law.

I. [§709] Operating Memoranda

The parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The parties desire, therefore, to retain a certain degree of flexibility with respect to the details of

performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the parties find that ~~nonsubstantive~~non-substantive refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, and "Operating Memorandum", and collectively, "Operating Memoranda") approved by the parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

Operating Memoranda may be executed on the Agency's behalf by its Executive Director, or his designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Both the Agency and the Housing and Redevelopment Commission shall be provided with a copy of any executed Operating Memorandum.

Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 800 hereof, and must be approved by the Agency Board.

J. [§710] Legal Action

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the Agency to enter into this Agreement or perform its obligations hereunder, either the Agency or the Developer may, but shall have no obligation to defend such action. Upon commencement of such action, the Agency and the Developer shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

K. [§711] Master Labor Agreement

The parties hereby acknowledge that the Developer has voluntarily entered into a Master Labor Agreement (the "MLA") with the Napa Solano Building and Construction Trades Council (the "Trades Council") and its affiliated local trade unions, and that the MLA applies to the private improvements to be constructed on the Developer Parcels. The Agency further understands that any assignee or transferee of the Developer shall assume the MLA, in whole or in part, as provided in the MLA, in connection with a permitted assignment or transfer of a Developer Parcel or this Agreement. This acknowledgement shall be included in the Original DDA Memorandum and the Memorandum of DDA Third Restatement recorded or to be recorded pursuant to Section 712.

L. [§712] Recordation of Original DDA Memorandum and Memorandum of DDA Third Restatement

In connection with the Second Restatement of this Agreement, the parties caused to be recorded a Memorandum of Disposition and Development Agreement dated as of October 27, 2005 (the "Original DDA Memorandum"). Within ten (10) days after the later to occur of the ~~Required Approvals Effective~~Action Dismissal Date or acquisition by the Agency or City of fee title to each Developer Parcel or portion thereof, the Agency shall cause a memorandum of this

Third Restatement of this Agreement (the "Memorandum of DDA Third Restatement"), in the form attached to this Agreement as Attachment No. 7, to be recorded against ~~each Developer Parcel~~the property described in Section 1.4 of the Development Agreement in the land records of Solano County as a covenant and restriction that runs with the land and is binding on successors in title to each Developer Parcel. The Agency and the Developer each consent to such recordation of the Memorandum of DDA Third Restatement, and to the performance of the same actions with respect to the Memorandum of DDA Third Restatement as are set forth in Section 1.4 of the Development Agreement with respect to the Development Agreement. The parties intend that, upon recordation, the Memorandum of DDA Third Restatement will amend and supersede the Original DDA Memorandum. The Developer acknowledges and agrees that the existence of the lien and encumbrance of the Original DDA Memorandum or the Memorandum of DDA Third Restatement in a Preliminary Title Report (as defined in Section 208) with respect to any Developer Parcel shall not constitute an Unacceptable Title Exception (as defined in Section 208) or constitute a basis for the Developer to disapprove a Preliminary Title Report pursuant to Section 208.

Promptly following the Agreement Termination Date (as defined below) with respect to a particular Developer Parcel, the Agency and the Developer shall cooperate to cause reconveyance and removal of the lien and encumbrance of the Original DDA Memorandum and the Memorandum of DDA Third Restatement from title to the applicable Developer Parcel through execution and recordation of a quitclaim deed or other instrument recordable in the official records of Solano County and reasonable acceptable to the Agency and the Developer. As used herein, "Agreement Termination Date" means, with respect to a particular Developer Parcel, the occurrence of either of the following:

1. Issuance of a Partial Certificate of Completion for the Developer Parcel by the Agency pursuant to Section 323; or

2. Termination of this Agreement with respect to the Developer Parcel without conveyance of the Developer Parcel by the Agency.

8. ~~VIII.~~ [§800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ~~72~~85, inclusive, and Attachment Nos. 1 through 8, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the Executive Director, or his designee, on behalf of the Agency and/or by the Developer, as applicable. All amendments hereto must be in writing, approved by the Agency Board, and signed by the appropriate authorities of the Agency and the Developer; provided, however, the

parties may enter into Operating Memoranda without formal amendment of this Agreement for the purposes, in the manner, and with the effect set forth in Section 709 hereof.

9. ~~IX.~~ [§900] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within ten (10) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement is the date when this Agreement has been signed by the Agency. Through the ~~Second~~Third Restatement of this Agreement, the Parties acknowledge and agree that this Agreement in its initial form (the "Original Agreement") was initially fully executed and became effective in accordance with its terms as of October 17, 2000.

By execution below, the parties hereby approve the ~~Second~~Third Restatement of this Agreement as of ~~October~~February 27, ~~2005.~~2007. The parties further acknowledge and agree that the Agreement as amended and restated by the ~~Second~~Third Restatement shall be binding on the parties as of ~~October 27, 2005~~the Action Dismissal Date; provided, however, that if the ~~Second~~Third Restatement is determined to be invalid, void, ineffective, or otherwise unenforceable by a final ~~unappealable~~non-appealable judgment of a court of competent jurisdiction, the Original Agreement, as previously amended, shall thereupon be deemed to be in effect and binding upon the parties as of the effective date of such final ~~unappleable~~non-appealable judgment. Nothing in the ~~Second~~Third Restatement shall modify or affect the initial execution date of this Agreement as of October 17, 2000.

AGENCY:

REDEVELOPMENT AGENCY
THE CITY OF VALLEJO

By: _____
~~Robert Nichelini~~
Joseph M. Tanner
~~Acting~~ Executive Director

APPROVED AS TO FORM:

_____
Frederick G. Soley
Agency Counsel

ATTEST:

_____
Allison Villarante
Agency Secretary

APPROVED AS TO INSURANCE
REQUIREMENTS:

_____
Will Venski
Risk Manager, City of Vallejo

DEVELOPER:

CALLAHAN/DeSILVA VALLEJO, LLC,
a California limited liability company

By: The DeSilva Group, Inc.,
a California corporation, Member

By: _____
~~James B. Summers~~
Ernest D. Lampkin
Vice President

By: Joseph W. Callahan, Jr.,
an individual, Member

By: _____
Joseph W. Callahan, Jr.

ACKNOWLEDGEMENT AND ACCEPTANCE BY
CITY OF VALLEJO OF UNIT PLAN PROCESSING METHOD
SET FORTH IN SECTION 304:

Joseph M. Tanner
City Manager

ATTACHMENT NO. 1

MAPS OF THE SITE

This Attachment No. 1 consist of three Area maps as follows:

Attachment No. 1A	Northern Waterfront Area
Attachment No. 1B	Central Waterfront Area
Attachment No. 1C	Southern Waterfront Area

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE DEVELOPER PARCELS

[To be inserted from time to time as provided in Section 104]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

The following is an updated Schedule of Performance that has been approved as part of the ~~Second~~Third Restatement of this Agreement dated as of ~~October~~February 27, ~~2005~~2007 (the "~~Second~~Third Restatement"). This updated Schedule of Performance indicates, as of the date of the ~~Second~~Third Restatement: ~~(1),~~ revisions to the dates for performance of certain actions from the dates shown in the Agreement as initially executed on October 17, 2000, as previously amended and restated as of October 1, 2002, ~~and~~ as further amended by the amendments entered into as of October 24, 2003, and August 24, ~~2004; (2) actions that have been performed or partially performed since the initial execution of the Agreement on October 17, 2000 (such performance is indicated in bold, bracketed type in the Date column for each applicable action).~~2004, and as further amended and restated for a second time as of October 27, 2005. This updated Schedule of Performance may be further revised from time-to-time through execution of an Operating Memorandum as provided in ~~Sections~~Section 604 and 709 of the Agreement.

The action items described below constitute a summary only of the responsibilities and obligations of the parties under this Agreement. Reference is made to the operative provisions of this Agreement (typically indicated in parentheses at the end of each Action item) for a complete statement of the parties' respective responsibilities and obligations. To the extent of any conflict between the terms of this Schedule of Performance and the operative provisions of this Agreement (including the other Attachments hereto), the operative provisions of this Agreement shall control.

Section A of this Schedule of Performance sets forth action items related to the Site and the Project in general. Sections B, C, and D address action items related to disposition and development of the Northern Waterfront Area, the Southern Waterfront Area, and the Central Waterfront Area, respectively.

Action	Date
A. GENERAL	
1. Execution and Delivery of ~~Second~~Third Restatement. The Developer shall execute and deliver the ~~Second~~Third Restatement of this Agreement to the Agency.	Prior to the public hearing to approve the ~~Second~~Third Restatement of this Agreement. ~~[Completed]~~
2. Execution of ~~Second~~Third Restatement by Agency. The Agency and City Council shall hold a public hearing to authorize execution of the ~~Second~~Third Restatement of this Agreement by the Agency, and, if so authorized, the Agency shall execute and deliver this Agreement to the Developer. (Section 900)	Within 10 days after delivery of the ~~Second~~Third Restatement of this Agreement by the Developer.
3. ~~Required Approvals (Including EIR Certification)~~Settlement-Related Ordinances; Action Dismissal. (a) The ~~Agency and~~ City shall consider the Settlement-Related Ordinances for	(a) ~~October 25, 2005 (as may be continued to October 27, 2005).~~Consideration of introduction and first reading of Settlement-Related Ordinances on February 27, 2007;

Action	Date
adoption ~~and certification, as applicable, all of the Required Approvals (including certification of the EIR). (b) All of the Required Approvals~~, (b) The Settlement-Related Ordinances shall become effective and the ~~Required Approvals Effective~~Action Dismissal Date shall occur. (Section 102)	consideration of second reading and adoption of Settlement-Related Ordinances on March 13, 2007. (b) By ~~January 31, 2006.~~April 13, 2007.
4. Memorandum of DDA Third Restatement Recordation. The Agency shall cause recordation of the Memorandum of DDA Third Restatement. (Section 712)	(a) Within 10 days after the ~~Required Approvals Effective~~Action Dismissal Date for Developer Parcels or portions thereof then owned by the City or the Agency. (b) Within 10 days after acquisition for Developer Parcels or portions thereof subsequently acquired by the City ~~or~~of the Agency.
5. Action Dismissal Date Operating Memorandum. The parties shall execute an Operating Memorandum setting forth the Action Dismissal Date. (Section 102.2)	Within 30 days after the Action Dismissal Date.
6. ~~5.~~ Completion of Acquisition of Site. The Agency shall complete acquisition of the applicable parcels comprising the Site (or if applicable, shall obtain orders for immediate possession), and shall complete relocation of all tenants and occupants. [Note: Item ~~87-104~~94-111 below set ~~for~~forth the detailed schedule for acquisition and relocation with respect to the Post Office Site and the Restaurant Site.] (Sections 201.1 and 208)	On a schedule to allow for conveyance of the Developer Parcels to the Developer and construction of the improvements pursuant to this Agreement. ~~[Underway]~~
7. Internal Return Methodology Operating Memorandum. The parties shall execute an Operating Memorandum setting forth the internal rate of return methodology in connection with the Method B Appraisal calculations. (Section 201.1.a.(6)(A)(ii))	Within 30 days after the Action Dismissal Date.
8. Additional Appraisal Instructions Operating Memorandum. The parties shall execute an Operating Memorandum setting forth mutually acceptable additional appraisal instructions. (Section 201.1.b)	Within 30 days after the Action Dismissal Date.
9. ~~6.~~ Appraisal of Developer Parcels. The Method A Appraisals (Baseline), Method A Appraisals	At the times specified in Section 201.2.b.

Action	Date
(Final), and Method B Appraisals (Unadjusted) shall be prepared and delivered to the parties. (Section 201.2)	
10. ~~7.~~ Opening of Escrow. The Agency shall open an escrow account(s) for conveyance of the ~~Developer~~Develop-er Parcels to the Developer. (Section 202)	Within 30 days after the ~~Required Approvals Effective~~ Action Dismissal Date.
11. ~~8.~~ Submission-Preliminary Title Reports. The Agency shall submit to the Developer Preliminary Title Reports for the Developer Parcels for Initial Title Review. (Section 208)	Within 30 days after the ~~Required Approvals Effective~~Action Dismissal Date.
12. ~~9.~~ Approval-Preliminary Title Report. (a) The Developer shall approve or disapprove the Preliminary Title Reports. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date. (b) Within the time specified in Section 208.
13. Developer Parcel Legal Description Operating Memoranda. The parties shall execute an Operating Memorandum setting forth the legal description for each Developer Parcel. (Section 104)	Upon establishment of each Developer Parcel as a legal parcel.
14. ~~10.~~ Physical Conditions Investigation For Developer Parcels Other Than Parcels S and T. (a) The Developer shall conduct any geotechnical and structural investigation and soils tests it determines necessary, and determine whether the Parcel Conditions are suitable and whether it wishes to proceed with acquisition of the Developer Parcels (other than Parcels S and T). (b) If the Developer determines there are Unacceptable Physical Conditions, the parties shall seek to prepare an Operating Memorandum to address such Unacceptable Physical Conditions. (Section 215.3)	(a) Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date for Developer Parcels (or portions thereof) currently owned by the Agency or the City. Within 90 days after access is obtained for Developer Parcels (or portions thereof) not currently owned by the Agency or the City. ~~[Underway. The Developer has caused preparation of the specified investigations and tests and obtained a Phase 1 and Phase 2 environmental assessment reports for all of the applicable Developer Parcels. The parties are cooperating to review the reports and any necessary follow-up actions. The Developer has not yet determined whether the Parcel Conditions are suitable and whether it wishes to proceed with acquisition of the Developer Parcels.]~~ (b) Within the time specified in Section 215.3.
15. ~~11.~~ LLMD Formation. The Agency and the City	Prior to sale of the initial residential unit within

Action	Date
shall take all steps necessary to cause formation and effectiveness of the LLMD. (Method of Financing Section I.D)	Parcel A.
16. ~~12. Additional~~ Deposit. The Developer shall pay the ~~Additional~~Initial Deposit to the Agency. (Section 108.2)	(a) $200,000 within 5 days after the ~~Required Approvals Effective~~Action Dismissal Date. (b) $300,000 at the close of escrow for Parcel A.
17. Additional Deposit Expenditure Operating Memoranda. The parties shall execute an Operating Memorandum setting forth a budget for expenditure of (a) the initial $200,000 portion of the Additional Deposit, and (b) the balance of the Additional Deposit. (Scope of Development Section IV.A.9.a)	(a) Within 30 days after the Action Dismissal Date. (b) Prior to expenditure of any of the balance of the Additional Deposit.
18. ~~13. Submission-~~Certificates of Insurance. The Developer shall furnish to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 308)	Prior to the date set forth herein for commencement of construction of the improvements on the Site.
19. ~~14. Issuance-~~Certificates of Completion. The Agency shall furnish the Developer with Partial or Final Certificates of Completion, as applicable. (Section 323)	Promptly after completion of all construction required for any Developer Parcel or portion of the Project to be completed by the Developer on the Site and upon written request therefor by the Developer.
B. NORTHERN WATERFRONT	
PARCEL A	
20. ~~15. Section~~ 404 Permit. (a) The Agency shall obtain a Section 404 Permit from the U. S. Army Corps of Engineers relating to Parcel A. (Section 309) (b) The Developer shall complete the Section 404 Permit Site Work to perfect the Section 404 Permit. (Scope of Development Section ~~II.~~11.A.~~14~~)	(a) ~~[~~Completed~~]~~. (b) ~~Within 180 days after the close of escrow for Parcel A exclusive of periods of time in which weather conditions do not reasonably permit performance~~Prior to the expiration date of the Section 404 Permit ~~Site Work~~(currently, December 31, 2009).

Action	Date
21. Parcel A Exchange Agreement Amendment. The parties shall prepare and use good faith efforts to obtain City and SLC approval of the Parcel A Exchange Agreement Amendment. (Scope of Development Section II.D.1)	Within 180 days after the Action Dismissal Date.
22. Public Workshops Regarding Parcel A Townhouse Architectural Design. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on Parcel A townhouse architectural design. (Scope of Development Section II.A.1)	Prior to submission of an application for the Parcel A Unit Plan.
23. ~~16.~~ Submission-Unit Plan For Parcel A and Vesting Tentative Map for Northern ~~Waterfront~~Water-front Area. The Developer shall prepare and submit to the City a Complete Application for a Unit Plan ~~application~~ for Parcel A and a vesting tentative map ~~application~~ for the Northern Waterfront Area, including any necessary survey. (Section 304)	Within ~~15 days~~2 years after ~~City Council approval of the Planned Development Master Plan. The provisions of this Item 16 are expressly made immediately effective upon execution of the Second Restatement of this Agreement, and shall apply prior to and pending the Required Approvals Effective~~the Action Dismissal Date.
24. ~~17.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and shall approve or disapprove the Unit Plan for Parcel A and vesting tentative map for the Northern Waterfront Area, including any necessary survey, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	~~As expeditiously as possible under applicable City ordinances following City Council approval of the Required Approvals~~(a) Within 30 days after City receipt of the Complete Application. ~~The provisions of this Item 17 are expressly made immediately effective upon execution of the Second Restatement of this Agreement, and shall apply prior to and pending the Required Approvals Effective Date.~~ (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
25. ~~18.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for Parcel A, if necessary. (Section 208)	Within 30 days after ~~the Required Approvals Effective Date~~submittal by the Developer of a Complete Application for the Unit Plan and vesting tentative map.
26. ~~19.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove	(a) Within 30 days after submittal by the Agency.

Action	Date
the updated Preliminary Title Report for Parcel A. (b) If Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(b) Within the time specified in Section 208.
27. ~~20.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within ~~150~~30 days after ~~the Required Approval Effective Date~~City approval of the Unit Plan and Vesting tentative map.
28. ~~21.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within 30 days after receipt thereof.
29. ~~22.~~ Submission and Approval-Subdivision of North-ern Waterfront Area. (a) The Developer shall submit an application for any final subdivision or parcel map(s) required for development of the Northern Waterfront Area. (b) The City shall grant or deny all required approvals for final subdivision or parcel map(s) for the Northern Waterfront Area. (Section 304)	(a) Within 120 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Within 30 days after submittal by the Developer.
30. ~~23.~~ BCDC Permit Amendment. The parties shall (a) submit an application for and (b) use good faith efforts to obtain any BCDC permit amendments for construction of improvements in the Northern Waterfront Area. (Scope of Development Section II.~~C~~D.2)	(a) Within 30 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Prior to the close of escrow for Parcel A.
~~24. Parcel A Exchange Agreement. The parties shall prepare and obtain City and SLC approval of the Parcel A Exchange Agreement. (Scope of Development Section II.C.1)~~	~~Within 90 days after the Required Approvals Effective Date.~~
31. ~~25.~~ Deposit of Grant Deed for Parcel A. The Agency shall acquire Parcel A from the City and shall deposit the grant deed for Parcel A into escrow. (~~Sections~~Section 202, 208)	Prior to the close of escrow.
32. ~~26.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of Parcel A have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow.

Action	Date
33. ~~27.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/ CC&Rs as applicable for Parcel A. (Section 704)	Prior to issuance of a building permit for the applicable residential improvements.
34. ~~28.~~ Close of Escrow. Fee title to Parcel A shall be conveyed to the Developer. (Section 203)	Within 60 days after ~~approval~~recordation of final subdivision map(s) and evidence of financing, but not later than ~~540 days~~4 years after the ~~Required Approvals Effective~~Action Dismissal Date.
35. ~~29.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable improvements on Parcel A. (Section 309)	Prior to the date set forth herein for the commencement of construction of the applicable improvements on Parcel A.
36. ~~30.~~ Commencement of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall commence demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A. (Section 307)	Within 30 days after close of escrow for conveyance of Parcel A to the Developer; provided that, if weather does not reasonably permit commencement at this time, then commencement shall occur as soon as weather does reasonably permit.
37. ~~31.~~ Completion of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall ~~complete~~commence demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A.	Within 18 months after commencement thereof by the Developer.
38. ~~32.~~ Completion of Developer Parcel Public Improvements and Private Development for Parcel A. Developer shall complete construction of all Developer Parcel Public Improvements for Parcels A, B and C and all private improvements for Parcel A.	No later than ~~6~~4 years after ~~the Required Approvals Effective Date~~City approval of the final subdivision map(s) for the Northern Waterfront Area.
B/C GROUND LEASE PARCELS	
39. ~~33.~~ Forms of Leases. The parties shall agree on the forms of the City/Agency Ground Lease and the Agency/Developer Sub-Ground Lease for each of the B/C Ground Lease Parcels. (Section 201.4)	Within 90 days after the close of escrow for Parcel A.

Action	Date
40. ~~34.~~ Completion of Building Pads. The Developer shall complete rough grading and provision of utilities to create building pads for the B/C Ground Lease Parcels.	Within 120 days after substantial completion of construction of realigned Harbor Way pursuant to Item ~~51.~~57.
41. ~~35.~~ Submission-Unit Plans for B/C Ground Lease Parcels. (a) The Developer shall prepare and submit to the City a ~~Unit Plan~~Complete Application for a Unit Plan for the first-to-be ~~developed~~developer B/C Ground Lease Parcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed B/C Ground Lease Parcel. (Section 304)	(a) Within ~~120 days~~1 year after completion of the Northern Waterfront Public ~~Parks~~Park and Open Space Improvements pursuant to Item ~~50.~~56. (b) Within a time period to enable conveyance and completion of construction of the applicable B/C Ground Lease Parcel by the deadline set forth in Item ~~46.~~52.
42. ~~36.~~ Approval-Unit Plans. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan, including any necessary survey, for the applicable B/C Ground Lease Parcel. ~~(Section 305,~~ in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	~~Wthin 90~~(a) Within 30 days after ~~submittal by the Developer~~City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
43. ~~37.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable B/C Ground Lease Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
44. ~~38.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable B/C Ground Lease Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.

Action	Date
45. ~~39.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
46. ~~40.~~ Approval – Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	Within 30 days after receipt thereof.
47. ~~41.~~ Lease With City; Deposit of Sub-Lease for B/C Ground Lease Parcels. The Agency shall enter into the City/Agency Ground Lease and shall deposit the Agency/Developer Sub-Ground Lease for the applicable B/C Ground Lease Parcel into escrow. (Section 202, 208)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
48. ~~42.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of the applicable B/C Ground Lease Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
49. ~~43.~~ Close of Escrow. The Agency/Developer Sub-Ground Lease shall be executed and the sub-ground leasehold interest in the applicable B/C Ground Lease Parcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to the conveyance for the applicable B/C Ground Lease Parcel.
50. ~~44.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~**and** other governmental agency **permits that the Developer is responsible to obtain under this Agreement** for the development of the applicable B/C Ground Lease Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable B/C Ground Lease Parcel.
51. ~~45.~~ Commencement of Construction-B/C Ground Lease Parcels. The Developer shall commence demolition and construction of the improvements on the first-to-be developed B/C Ground Lease Parcels. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed B/C Ground Lease Parcel.
52. ~~46.~~ Completion of Construction-B/C Ground Lease Parcels. The Developer shall complete construction of the improvements on the B/C	For the first-to-be developed B/C Ground Lease Parcel, within 12 months after commencement of construction. For final construction of all

Action	Date
Ground Lease Parcels.	improvements on the B/C Ground Lease Parcels, no later than ~~6~~4 years after the ~~Required Approvals Effective Date~~City approval of the final subdivision map(s) for the Northern Waterfront Area.
NORTHERN WATERFRONT PUBLIC IMPROVEMENTS	
53. ~~47.~~ Public Participation Design Process; Concept Design and Preliminary Budget. The Agency and the City shall (a) commence and (b) complete the public participation design process and shall prepare the Concept Design and Preliminary Budget for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section II.~~B~~C.3)	(a) Within 6 months after the ~~Required Approvals Effective~~Action Dismissal Date. (b) Within 12 months after the Action Dismissal Date.
54. ~~48.~~ Submission-Detailed Plans and Construction Cost Estimate. The Developer shall submit to the Agency the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section ~~II.B~~11.C.3)	Within 6 months after receipt of the Concept Design and Preliminary Budget for the Northern Waterfront Public Parks and Open Space Improvements.
55. ~~49.~~ Approval-Detailed Plans or Modified Detail Plans. The Agency shall approve the Detailed Plans submitted by the Developer or specify the form of Modified Detailed Plans for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section II.~~B~~C.3)	Within 3 months after the Developer submits the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements.
56. ~~50.~~ Construction of Northern Waterfront Public Park and Open Space Improvements. The Developer shall complete construction of the Northern Waterfront Public ~~Parks~~Park and Open Space Improvements (subject to subsequent grow-in of landscaping features and improvements). (Scope of Development Section II.~~B~~C.3)	~~Within 1 year after the later to occur of (a) Agency approval of the Design Plans or Modified Design Plans for the Northern Waterfront Public Parks and Open Space Improvements, or (b) completion of construction of the~~Prior to issuance of a certificate of occupancy for the 140th residential unit on Parcel ~~C2 and Parcel E parking lots pursuant to Item 54.~~A.
57. ~~51.~~ Construction of Harbor Way. The Developer shall substantially complete the construction of realigned Harbor Way. (Scope of Development Section II.~~B~~C.1)	Prior to issuance of the first certificate of occupancy for a residential unit within Parcel A.

Action	Date
58. ~~52.~~ ~~Construction of Parcel D2 Improvements~~Wetland Park. The Developer shall complete construction of the ~~open space improvements on Parcel D2~~Wetland Park (subject to subsequent ~~grow~~growing-in of landscaping features and improvements), and cease all staging activities. (Scope of Development Section II.~~B~~A.3)	~~Within 30 months after commencement of construction of the Developer~~At the earlier of either: (a) one full construction season after the Wetland Park area is no longer needed for construction staging as provided in Section II.A.3 of the Scope of Development (Attachment No. 4), or (b) one full construction season after the issuance of the certificate of occupancy for the 140th residential unit on Parcel ~~Public Improvements for the first phase of Parcel A pursuant to Item 30.~~A.
59. ~~53.~~ Form of REAs. The parties shall agree upon the forms of the Parcel C2 REA and the Parcel E/F REA. (Scope of Development ~~Sections~~Section II.~~B~~C.2 and 5)	Concurrently with approval of the forms of Agency/ Developer Sub-Ground Leases as provided in Item ~~33~~39 (i.e., within 90 days after close of escrow for Parcel A).
60. ~~54.~~ Construction of Parcel C2 and Parcel E/F Parking Lots. The Developer shall complete construction of the reconfigured Parcel C2 and Parcel E/F parking lots. (Scope of Development Sections II.~~B~~C.2 and 5)	Within 120 days after substantial completion of construction of realigned Harbor Way pursuant to Item ~~51.~~57.
~~55. Construction of Pedestrian Walkway Improvements. The Developer shall complete construction of the pedestrian walkway improvements under the Mare Island Causeway. (Scope of Development Section II.C.3)~~	~~By the date required in Item 50 for completion of construction of the Northern Waterfront Public Parks and Open Space Improvements.~~
61. ~~56.~~ Construction of Mare Island Causeway and Mare Island Way Widening Improvements. The Agency and the City shall cause Lennar to complete the Mare Island Causeway and Mare Island Way Widening Improvements. (Scope of Development Section II.~~C~~D.4~~3~~)	At the time required for completion pursuant to the Lennar Project Documents.

C. SOUTHERN WATERFRONT

SOUTHERN WATERFRONT PREPARATORY WORK

62. ~~57.~~ Southern Waterfront ~~Area Exchange Agreement~~Soft Cost Work Operating Memorandum. The parties shall ~~prepare and obtain City and SLC approval of~~execute the Southern Waterfront ~~Area Exchange Agreement~~Soft Cost Work Operating	~~By June 2006.~~Within 90 days after the Action Dismissal Date.

	Action	Date
	Memorandum. (Scope of Development Section IV.A.~~8~~9.b)	
63.	~~58. BCDC~~ Southern Waterfront Area ~~Approvals~~Exchange Agreement. The parties shall ~~apply for and~~prepare and use good faith efforts to obtain City and SLC approval of the ~~BCDC~~ Southern Waterfront Area ~~Approvals~~Exchange Agreement. (Scope of Development Section IV.A.8)	By ~~June~~September ~~2006.~~2007.
64.	BCDC Southern Waterfront Area Approvals. The parties shall apply for and use good faith efforts to obtain (a) a BCDC Bay Plan Amendment, and (b) any necessary BCDC Permit Amendments. (Scope of Development IV.A.8)	(a) Completed. (b) By September 2007.
65.	~~59.~~ Water Board Clearance For Non-Contaminated Area. The Agency shall obtain Water Board regulatory clearance for development of the Non-Contaminated Area. (Scope of Development Section IV.A.4)	By ~~June~~September ~~2006.~~2007.
66.	~~60.~~ PG&E Settlement. The Agency shall complete negotiation of and shall enter into the settlement agreement with PG&E. (Scope of Development Section IV.A.5)	By ~~June~~September ~~2006.~~2007.
67.	~~61.~~ RAP. The Agency shall prepare and obtain Water Board approval of the RAP. (Scope of Development Section IV.A.5)	By ~~December~~March ~~2006.~~2008.
68.	~~62.~~ Other Pre-Remediation Tasks. The Agency shall execute the Southern Waterfront Remediation Contract, obtain the Southern Waterfront Pollution Risk Insurance, and prepare the Physical Remediation Tasks Budget. (Scope of Development Section IV.A.5)	By ~~March~~June ~~2007.~~2008.
69.	~~63.~~ Commencement of Physical Remediation Tasks. The Agency shall commence the Physical Remediation Tasks to remediate the Contaminated Area. (Scope of Development Section IV.A.6)	Within 30 days after completion of the Other Pre-Remediation Tasks described in Item ~~62.~~68.

Action	Date
70. ~~64.~~ Completion of Physical Remediation Tasks. The Agency shall complete the Physical Remediation Tasks and obtain the necessary closure document for the Contaminated Area from the Water Board. (Scope of Development Section IV.A.6)	Within 1 year after the required commencement date pursuant to Item ~~63.~~69.

S/T DEVELOPER SUBPARCELS

[Note: As used below, the "S/T Developer Subparcels" means collectively, Parcel S, Parcel T1 (and up to ~~three~~four subparcels within Parcel T1), and Parcel T3. Development of Parcel T2 is separately addressed in Items ~~96-104~~102-110 below.]

70A. Affordable Housing Component for Parcel T1. The parties shall prepare and present to the Agency and City Council (a) a preliminary analysis of affordable housing alternatives, and (b) a specific program for affordable housing related to development of Parcel T1. (Scope of Development Section IV.B.2)	(a) Within 6 months after the Action Dismissal Date. (b) 6 months prior to submittal of a Unit Plan application for Parcel T1.

Action	Date
71. ~~65.~~ Submission of Unit Plan (and Vesting Tentative Map). (a) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan ~~application~~ for the first-to-be developed of the S/T Developer Subparcels (together with any desired vesting tentative map or lot line adjustment application). (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed S/T Developer Subparcel (together with any desired vesting tentative map application). (Section 304)	(a) ~~Within 90 days after completion of the Physical Remediation Tasks pursuant to Item 64.~~As economically feasible, but in any event within a time period to enable conveyance and completion of construction of the first-to-be developed S/T Developer Subparcel by the deadline set forth in Item 87. (b) Within a time period to enable conveyance and completion of construction of the applicable S/T Developer Subparcel by the deadline set forth in Item ~~80.~~87.
72. ~~66.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map or lot line adjustment (if applicable), including any necessary survey, for the applicable S/T Developer Subparcel~~.~~ , in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/decision and shall approve or disapprove the Revised Application. (Section ~~305~~304)	(a) Within ~~90~~30 days after ~~submittal by the Developer for the applicable S/T Developer Subparcel~~City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
73. Boat Launch Parcel Easement Rights Operating Memorandum. The parties shall execute an Operating Memorandum regarding easement access rights over Parcel S in favor of the Boat Launch Parcel. (Scope of Development Section IV.B.1.)	By not later than City approval of the Unit Plan for Parcel S.
74. ~~67.~~ Submission-Updated Preliminary Title Report~~.~~ The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable S/T Developer Subparcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable S/T Developer Subparcel.

Action	Date
75. ~~68.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable S/T Developer Subparcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
76. ~~69.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of the applicable S/T Developer Subparcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable S/T Developer Subparcel.
77. ~~70.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable S/T Developer Subparcel. (Section 217)	Within 30 days after receipt thereof.
78. ~~71.~~ Submission and Approval-Subdivision of Parcels S and T. (a) The Developer shall submit an application for final subdivision and parcel maps (or lot line adjustment, as applicable) for the S/T Developer Subparcels. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps (or lot line adjustment, as applicable) for the S/T Developer Subparcels.	(a) Within 90 days after approval of the Unit Plan and vesting tentative maps in connection with the first-to-be developed S/T Developer Subparcel. (b) Within 30 days after submittal by the Developer.
79. ~~72.~~ Acquisition from City. The Agency shall acquire the portion of the applicable S/T Developer Subparcel owned by the City and shall cause termination of all leasehold interests with respect to the applicable S/T Developer Subparcel. (Sections 201.7 and 201.8)	Prior to time that the Developer has satisfied all conditions to close of escrow for the applicable S/T Developer Subparcel.
80. ~~73.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/CC&Rs as applicable for Parcel T1.	Prior to or concurrently with close of escrow for the conveyance of Parcel T1 to the Developer.
81. ~~74.~~ Deposit of Grant Deed. The Agency shall deposit the grant deed for the applicable S/T Developer Subparcel into escrow. (Sections 202, 208)	Prior to the close of escrow for the applicable S/T Developer Subparcel.

Action	Date
82. ~~75.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable S/T Developer Subparcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable S/T Developer Subparcel.
83. ~~76.~~ Close of Escrow. Fee title to the applicable S/T Developer Subparcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to conveyance for the applicable S/T Developer Subparcel (including completion of remediation pursuant to the RAP, as applicable).
84. ~~77.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable S/T Developer Subparcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable S/T Developer Subparcel.
85. ~~78.~~ Commencement of Construction-Developer Parcel Public Improvements. The Developer shall commence demolition and construction of the Developer Parcel Public Improvements for the applicable S/T Developer Subparcel. (Section 307)	Within 30 days after close of escrow for conveyance of the applicable S/T Developer Subparcel to the Developer.
86. ~~79.~~ Completion of Construction-Developer Parcel Public Improvements. The Developer shall complete construction of the Developer Parcel Public Improvements for the applicable S/T Developer Subparcel.	Within 18 months after commencement thereof by the Developer.
87. ~~80.~~ Completion of Construction-S/T Developer Subparcels. The Developer shall complete construction of all phases of the Developer Parcels Public Improvements and all private development on the S/T Developer Subparcels.	By the last to occur of: (a) the 10th anniversary of the ~~Required Approvals Effective~~Action Dismissal Date; (b) the 8th anniversary of execution and effectiveness of the Southern Waterfront Area Exchange Agreement; (c) the 8th anniversary of procurement of the BCDC Southern Waterfront Area Approvals; or (d) the 8th anniversary of completion of the Physical Remediation Tasks and procurement of the necessary closure document for the Contaminated Area from the Water Board.

Action	Date

SOUTHERN WATERFRONT PUBLIC IMPROVEMENTS

88. ~~81.~~ Public Participation Design Process; Concept Design and Preliminary Budget. The Agency and the City shall complete the public participation design process and shall prepare the Concept Design and Preliminary Budget for the Southern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section IV.C.2)	Within 6 months after approval of the Unit Plan (and any desired vesting tentative map) for the first-to-be developed of the S/T Developer Subparcels pursuant to Item ~~66.~~72.
89. ~~82.~~ Submission-Detailed Plans and Construction Cost Estimate. The Developer shall submit to the Agency the Detailed Plans and the Construction Cost Estimate for the Southern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section IV.C.2)	Within 6 months after receipt of the Concept Design and Preliminary Budget for the Southern Waterfront Public Parks and Open Space Improvements.
90. ~~83.~~ Approved-Detailed Plans or Modified Detailed Plans. The Agency shall approve the Detailed Plans submitted by the Developer or specify the form of Modified Detailed Plans for the Southern Waterfront Public Parks and Open Space Improvements~~.~~ (Scope of Development Section IV.C.2)	Within 3 months after the Developer submits the Detailed Plans and the Construction Cost Estimate for the Southern Waterfront Public Parks and Open Space Improvements.
91. ~~84.~~ Construction of Southern Waterfront Public Parks and Open Space Improvements. The Developer shall complete construction of the Southern Waterfront Public Parks and Open Space Improvements (subject to subsequent grow-in of landscaping features and improvements). (Scope of Development Section IV.C.~~2.~~2)	Within 1 year after the later to occur of (a) Agency approval of the Design Plans or Modified Design Plans for the Southern Waterfront Public Parks and Open Space Improvements, or (b) completion of all Southern Waterfront Preparatory Work pursuant to Items ~~57~~62-~~64.~~70.
92. ~~85.~~ Southern Waterfront Public Street Improvements. The Developer shall substantially complete construction of the Southern Waterfront Public Street Improvements. (Scope of Development Section IV.C.1)	(a) For ~~Solano Avenue Extension,~~**the portions of the Southern Waterfront Public Street Improvements necessary to serve the Post Office Relocation Facility on Parcel T2,** by the time the Developer is required to complete construction of the Post Office Relocation Facility on Parcel T2. (b) For the balance of the Southern Waterfront Public Street Improvements, prior to issuance of the first certificate of occupancy for a residential unit within Parcel T1.

Action	Date
93. ~~86.~~ Boat Launch Improvements. The Agency shall complete construction of the Boat Launch Improvements. (Scope of Development (Section IV.C.3)	By the date required in Item ~~84~~91 for completion of construction of the Southern Waterfront Public Parks and Open Space Improvements.

D. CENTRAL WATERFRONT

POST OFFICE SITE/RESTAURANT SITE ACQUISITION AND RELOCATION

94. ~~87.~~ Voluntary Acquisition. The Agency shall seek voluntary acquisition of, and acquire fee title to, the Post Office Site and the Restaurant Site. (Sections 201.6.a and b)	By ~~March~~September ~~2006.~~2007.
95. ~~88.~~ Resolution of Necessity. If voluntary acquisition is not feasible, the Agency or the City shall schedule and conduct a hearing and consider adoption of a resolution of necessity for condemnation of the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	By ~~April~~October ~~2006.~~2007.
96. ~~89.~~ Filing of Action and Order For Possession. If a resolution of necessity is approved, the Agency shall file the condemnation action, including a request for order of immediate possession, for the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	By ~~May~~November ~~2006.~~2007.
97. ~~90.~~ Order of Possession. The Agency shall obtain possession of the Post Office Site and/or Restaurant Site under order of possession. (Sections 201.6.a and b)	By ~~September~~January ~~2006.~~2008.
98. ~~91.~~ Post Office LOI Budget Operating Memorandum. The parties shall execute the Post Office LOI Budget Operating Memorandum. (Section 201.6.a)	Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date.~~.~~
99. ~~92.~~ Post Office LOI. The parties shall negotiate and execute the Post Office LOI with the USPS. (Section 201.6.a)	By ~~July~~November ~~2006.~~2007.
100. ~~93.~~ Post Office Development Budget Operating Memorandum. The parties shall execute the Post Office Development Budget Operating Memorandum. (Section 201.6.a)	Within 30 days after approval/execution of the Post Office LOI.

Action	Date
101.~~94.~~ Post Office Facility Relocation Lease and Final Plans. The parties (a) shall negotiate and execute the Post Office Facility Relocation Lease with USPS, and (b) shall prepare and obtain USPS approval of the final plans and specifications for the Post Office Relocation Facility. (Section 201.6.a)	(a) By ~~August 2006.~~December 2007. (b) By ~~October~~February ~~2006.~~2008.
102.~~95.~~ Negotiation of Parcel T2 Relocation Obligations. The parties shall negotiate the terms of the Parcel T2 Relocation Obligations and execute all necessary documentation. (Section 201.6.a)	By ~~April~~October ~~2006.~~2007.
103.~~96.~~ Parcel T2 Vesting Tentative Map. The Developer shall process and obtain City approval of a vesting tentative map, site plan, and related documents for development of the Post Office Relocation Facility on Parcel T2. (Section 201.6.a)	By ~~July~~December ~~2006.~~2007.
104.~~97.~~ Implementation of Parcel T2 Relocation Obligations. The Agency shall perform and complete the Parcel T2 Relocation Obligations to relocate all tenants and occupants from Parcel T2. (Section 201.6.a)	By ~~October~~February ~~2006.~~2008.
105.~~98.~~ Completion of Design/Procurement of Building Permit. The Developer shall complete design and procure the building permit for construction of the Post Office Relocation Facility on Parcel T2. (Section 201.6.a)	By ~~October~~March ~~2006.~~2008.
106.~~99.~~ Parcel T2 Final Map. The Developer shall cause recordation of the final map for Parcel T2. (Section 201.6.a)	By ~~October~~March ~~2006.~~2008.
107.~~100.~~ Satisfaction of All Conditions Precedent to Conveyance-Parcel T2. All conditions precedent to conveyance of Parcel T2 have either been satisfied or waived. (~~Sections~~Section 205, 206)	By ~~October~~March ~~2006.~~2008.
108.~~101.~~ Close of Escrow. Fee title to Parcel T2 shall be conveyed to the Developer. (Section 203)	By ~~October~~March ~~2006.~~2008.

Action	Date
109.~~102.~~ Completion of Construction-Parcel T2. The Developer shall (a) commence and (b) complete construction of the Post Office Relocation Facility and the Developer Parcel Public Improvements for Parcel T2.	(a) By ~~November 2006.~~March 2008. (b) By ~~September~~January ~~2007.~~2009.
110.~~103.~~ Installation of Equipment/Commencement of Lease. The parties and the USPS shall cause installation of equipment and relocation of the USPS facility from Parcel L to the Post Office Relocation Facility on Parcel T2. The Post Office Relocation Facility Lease shall commence. (Section 201.6.a)	By ~~December~~February ~~2007.~~2009.
111.~~104.~~ Relocation of Restaurant Site Business. The Agency shall cause relocation of the business from the Restaurant Site, if applicable. (Section 208)	By ~~December~~February ~~2007.~~2009.
~~PARCEL L~~ PARCEL L	
112.~~105.~~ Secure Financing for L3 Public Garage/Public Paseo. The Agency and City shall secure financing for (a) the design and (b) construction of the L3 Public Garage and the public paseo improvements on Parcel L5.	~~By~~(a) Completed. (b) September ~~2007.~~2008.
113.~~106.~~ Design and Construction of L3 Public Garage/Public Paseo. The Agency and the City shall (a) complete design, (b) commence demolition and substantial construction, and (c) complete construction of the L3 Public Garage and the public paseo improvements on Parcel L5. (Scope of Development Sections ~~III~~II.A.3 and 5)	(a) By September ~~2007.~~2008. (b) By ~~January 2008.~~March 2009. (c) By ~~January~~March ~~2010.~~2011.
114.~~107.~~ Parcel L4 Operating Memorandum. The parties shall negotiate and execute the Parcel L4 Operating Memorandum. (Scope of Development Section III.A.4)	Within 60 days after execution of the construction contract for the L3 Public Garage.
115. Public Workshops Regarding Architecture. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on architectural design. (Scope of Development Section III)	Prior to submission of any Unit Plan application for Parcel L.
116. Hotel Improvements Description and Feasibility	Prior to submission of a Unit Plan application

Action	Date
Study. The Developer shall submit to the City a description and feasibility study with respect to the Hotel Improvements on Parcel L4, and the study shall be presented to the City Council at a regularly noticed public hearing. (Scope of Development Section III.A.4)	for Parcel L4.
117.~~108.~~ Submission-Unit Plan and Vesting Tentative Map. (a) The Developer shall prepare and submit to the City a Complete Application for a vesting tentative map ~~application~~ for all of the L Developer Parcels and a Unit Plan for the first-to-be developed L Developer Parcel ~~L1.~~. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed L Developer Parcel. (Section 304)	(a) By the time the Agency and City commence substantial construction of the L3 Public Garage. (b) Within a time period to enable conveyance and completion of the applicable L Developer Parcel by the deadline set ~~froth~~forth in Item ~~124.~~133.
118.~~109.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map (if applicable), including any necessary survey for the applicable L Developer Parcel. ~~(Section 305~~, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation./decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within ~~90 days after submittal by the Developer for the applicable L Developer Parcel~~30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
119.~~110.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable L Developer Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.

Action	Date
120.~~111.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable L Developer Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
121. ~~112.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.
122.~~113.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after receipt thereof.
123.~~114.~~ Submission and Approval-Subdivision of Parcel L. (a) The Developer shall submit an application for final subdivision and parcel maps for Parcel L. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps for Parcel L.	(a) Within 90 days after approval of the Unit Plan (and vesting tentative map) in connection with Parcel L1. (b) Within 30 days after submittal by the Developer.
124.~~115.~~ Acquisition from City. The Agency shall acquire the portion of Parcel L owned by the City. (Section 201.6.c)	Prior to the time the Developer has satisfied all conditions to close of escrow for the applicable L Developer Parcel~~ L1.~~.
125.~~116.~~ Deposit of Grant Deed. The Agency shall deposit the grant deed for the applicable L Developer Parcel. (~~Sections~~Section 202, 208)	Prior to the close of escrow for the applicable L Developer Parcel.
126.~~117.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable L Developer Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable L Developer Parcel.
127.~~118.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/CC&Rs as applicable for Parcel L1. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of Parcel ~~L~~1 to the Developer.

Action	Date
128.~~119.~~ Vallejo Station REA. The parties shall cause recordation of the Vallejo Station REA against the applicable subparcels within Parcel L. (Scope of Development Section III.A.4)	Concurrently with the close of escrow for conveyance of Parcel L4.
129.~~120.~~ Hotel Operating Agreement. The Developer shall enter into the Hotel Operating Agreement with the Hotel Operator. (Section 705)	Prior to the close of escrow for Parcel L4.
130.~~121.~~ Close of Escrow. Fee title to the applicable L Developer Parcel shall be conveyed to the Developer. (Section 203)	(a) For the first-to-be developed L Developer Parcel~~ L1,~~ within 30 days after satisfaction of all conditions precedent to conveyance, but in any event within ~~6~~12 months after commencement of substantial construction of the L3 Public Garage. (b)~~ For Parcels L2 and L4,~~ For each later developed L Developer Parcel, within 30 days after satisfaction of all conditions precedent to conveyance for the applicable L Developer Parcel.
131.~~122.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable L Developer Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction on the applicable L Developer Parcel.
132.~~123.~~ Commencement of Construction-L Developer Parcels. The Developer shall commence demo-lition and construction on the applicable L Developer Parcel. (Section 307)	Within 30 days after close of escrow for conveyance of the applicable L Developer Parcel to the Developer.
133.~~124.~~ Completion of Construction-L Developer Parcels. The Developer shall complete construction of the improvements on the applicable L Developer Parcel.	Within 24 months after commencement thereof, but in any event by the later to occur of: (a) the 10th anniversary of the ~~Required Approvals Effective~~Action Dismissal Date; or (b) the 8th anniversary of completion of construction of the L3 Public Garage.
134.~~PARCEL J~~Retail Tenanting Of Arcade Area. The Developer shall use commercially reasonable efforts to lease the Arcade Area in Parcel L4 for Category 1 Uses. (Scope of Development Section III.A.4)	For a period ending no earlier than 12 months from the date of completion of the retail building shell.

Action	Date
PARCEL J	
135.~~125.~~ Acquisition of Parcel J. The Agency shall acquire Parcel J from the City and cause termination of all leasehold interests.	~~Not later than the commencement of construction of the L3 Public Garage~~Prior to the time that the Developer has satisfied all conditions to the close of escrow for the first-to-be developed J Developer Subparcel.
136. Public Workshops Regarding Architecture. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on architectural design. (Scope of Development Section III)	Prior to submission of any Unit Plan application for the Parcel J.
137. Study Regarding Removal of Civic Center Drive/Georgia Street Intersection. The Developer and the City shall study the possibility of removing the intersection of Civic Center Drive and Georgia Street. (Scope of Development Section III.B)	Prior to submission of any Unit Plan application for Parcel J.
138.~~126.~~ Submission-Unit Plan and Vesting Tentative Map. (a) The Developer shall prepare and submit to the City a Complete Application for a vesting tentative map ~~application~~ for Parcel J and a Unit Plan for the first-to-be developed J Developer Subparcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the later developed J Developer Subparcel. (Section 304)	(a) Within 60 days after completion of construction of the City Hall Garage Required Elements. (b) Within a time period to enable conveyance and completion of construction of the later developed J Developer Subparcel by the deadline set forth in Item ~~139.~~151.
139.~~127.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map (if applicable), including any necessary survey, for the applicable J Developer Subparcel. ~~(Section 305~~, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/ decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's	(a) Within ~~90~~30 days after ~~submittal by the Developer for the applicable J Developer Subparcel~~City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.

Action	Date
recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	
140.~~128.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable J Developer Subparcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable J Developer Subparcel.
141.~~129.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable J Developer Subparcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
142.~~130.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable J, Developer Subparcel.
143.~~131.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after receipt thereof.
144.~~132.~~ Submission and Approval-Subdivision of Parcel J. (a) The Developer shall submit an application for final subdivision and parcel maps for Parcel J. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps for Parcel J.	(a) Within 90 days after approval of the Unit Plan and vesting tentative map in connection with ~~Parcel J3.~~the first-to-be developed J Developer Subparcel. (b) Within 30 days after submittal by the Developer.
145.~~133.~~ Deposit of Grant Deed. The Agency shall deposit the grant deed for the applicable J Developer Subparcel into escrow. (Sections 202, 208)	Prior to the close of escrow for the applicable J Developer Subparcel.
146.~~134.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable J Developer Subparcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable J Developer Subparcel.

Action	Date
147.~~135.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/CC&Rs as applicable for each J Developer Subparcel. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of the applicable J Developer Subparcel to the Developer.
148.~~136.~~ Close of Escrow. Fee title to the applicable J Developer Subparcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to conveyance for the applicable J Developer Subparcel.
149.~~137.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable J Developer Subparcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable J Developer Subparcel.
150.~~138.~~ Commencement of Construction – Parcel J. The Developer shall commence demolition and construction of the improvements on Parcel J. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed J Developer Subparcel.
151.~~139.~~ Completion of Construction-Parcel J. The Developer shall complete construction of the improvements on Parcel J.	For construction on the first-to-be developed J Developer Subparcel, within 24 months after commencement thereof. For the final phase of construction on Parcel J, by the later to occur of: (a) the 10th anniversary of the ~~Required Approvals Effective~~Action Dismissal Date; or (b) the 8th anniversary of completion of construction of the City Hall Garage Required Elements.
CENTRAL WATERFRONT PUBLIC IMPROVEMENTS	
152.~~140.~~ Parcel O Bus Transfer Center. The Agency ~~shall~~and the City shall (a) issue a request for services for design, and (b) cause completion of the Bus Transfer Center on Parcel O. (Scope of Development Section III.C.1)	(a) Completed. (b) By January 2008.
153.~~141.~~ Other Transit-Related Improvements. The Agency shall cause completion of the Other Transit-Related Improvements. (Scope of Development Section III.C.2)	By the time required for completion of the L3 Public Garage ~~(January 2010)~~.

Action	Date
154.~~142.~~ Central Waterfront Public Street Improvements. The Agency shall cause completion of the Central Waterfront Public Street Improvements. (Scope of Development Section III.C.3)	(a) By the time required for completion of the L3 Garage~~ (January 2010)~~, for the Mare Island Way modifications and the reconfiguration of Maine Street. (b) By the time required for, and as part of, completion of construction of the City Hall Garage Required Elements pursuant to Item ~~144~~,156, for the Capitol Street Second Segment.
155.~~143.~~ Central Waterfront Public Parks and Open Space Improvements. The Agency shall cause completion of (a) design ~~and~~of the Central Waterfront Public Parks and Open Space Improvements, (b) construction of the Festival Green parcel improvements, and (c) construction of the balance of Central Waterfront Public Parks and Open Space Improvements. (Scope of Development Section III.C.4)	(a) By ~~June 2007.~~September 2008. (b) Within 1 year after the time required for completion of the L3 Public Garage pursuant to Item ~~106~~113(c). (c) Within 2 years after the time required for completion of the L3 Public Garage pursuant to Item 113(c).
156.~~144.~~ City Hall Garage Required Elements. The Agency shall (a) design, (b) commence substantial construction, and (c) complete construction of the City Hall Garage Required Elements. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	(a) Within a time period to enable commencement of construction as set forth in (b) below. (b) Within 60 days after substantial completion of the L3 Public Garage. (c) Within 12 months after the required commencement date as set forth in (b) above.
157.~~145.~~ Phase II Element of City Hall Garage. The Agency shall design and construct the Phase II Element of the City Hall Garage. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	Within a time period determined by the Agency and the City to accommodate parking needs for additional ferry service.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL

A. Basic Development Standards

1. General. The Developer and the Agency agree that the Site shall be developed and improved in accordance with the provisions of this Agreement, the plans, drawings and related documents approved by the Agency pursuant hereto, and the Project Approvals (as defined and described in Section 102.5). The provisions of this Agreement, including the Scope of Development, are intended to be consistent with the Project Approvals. In the event of any express conflict between the provisions of this Agreement, including the Scope of Development, and the Project Approvals, the provisions of the Project Approvals shall control to the extent of such conflict.

The Developer, its supervising architect, engineer and contractor, shall work with Agency and City staff to coordinate the overall design, architecture and color of the improvements on the Site.

2. Water Conservation Measures. In connection with the initial construction of the Project, water conservation measures shall be incorporated into residential and commercial structures by the City and CDV in accordance with the following:

a. Residential Indoor Water Conservation Measures: All minimum Building Code and Water Division requirements for indoor water conservation in effect at the time of the effective date of the Settlement Agreement shall be exceeded by no less than twenty percent (20%).

b. Commercial Indoor Water Conservation Measures: Any and all indoor fixtures shall at a minimum be installed as motion sensory devices with technology equivalent to or better than those devices available on the commercial market as of the effective date of the Settlement Agreement.

c. Commercial Outdoor Water Conservation Measures: All landscaping initially installed on private development shall use climate sensitive irrigation controls which aim to minimize or eliminate irrigation during cloudy and/or rainy days.

All landscaping initially installed on private development shall be planted in hydrozones. Hydrozones create an irrigation pattern that groups drought tolerant plants on separate irrigation loops from high water users; such as turf.

d. Public Rights-of-Way Water Conservation Measures: All landscaping initially installed by the City in the Project's public-rights-of-way, including thoroughfare medians and public sidewalks, shall maximize the use of drought tolerant and

California Native Plants and shall use climate sensitive irrigation controls that aim to minimize or eliminate irrigation during cloudy and/or rainy days. The City shall continue to use good faith, best efforts to implement these same (or improved) water conservation measures in connection with its ongoing and future maintenance of such landscaping.

3. Green Building Design Measures. The Developer will actively pursue the integration of green building materials, green construction methods and green site preparation in all Unit Plan applications, where application of such methods and materials integrate with or seamlessly replace more traditional methods as described in the Waterfront Design Guidelines under Chapter III, Waterfront District Guidelines, Section A, 2.1 "Green Site and Building Design". The Developer will discuss the use of green building design measures and methods pursuant to the Design Guidelines at the community design workshops called for in Sections II.A.1 and III below. The Developer's architect will prepare written materials describing the extent to which a Unit Plan application employs the techniques and methods set forth in the Waterfront Design Guidelines (Chapter III, Section A, 2.1, "Green Site and Building Design"). Where such activities would compromise the feasibility of a Unit Plan application or reduce the marketability of the ultimate land use, the Developer will not be required to accommodate such methods. In this event, the Developer's architect or engineer shall furnish the Coalition with written documentation showing the infeasibility. Since green building design is a voluntary practice and not a requirement of the Vallejo Building or other Codes, the Developer will not be considered in breach of this or any other clause of this Agreement if incorporation of these concepts, techniques, and methods cannot be attained.

B. The Project

The entire Site is comprised of real property, a portion of which is owned by or to be acquired by the Agency or City and a portion of which is to be conveyed to the Developer, as more particularly described in Sections 104 and 201. As part of the planning process and development contemplated by this Agreement, some of the parcels comprising the Site will be created or reconfigured in order to create the specific parcels referenced herein.

It is the intent of the parties that the Site shall be developed as a master planned mixed-use development, including residential, commercial, hotel, conference center, light industrial and retail uses, public and private parking areas, open space and park uses, as more fully defined and described in Recitals ~~C~~H and ~~D~~I, and Section 101 (the "Project").

C. Organization of Scope of Development

Parts II, III, and IV of this Scope of Development ~~sets~~set forth, by Area (North Waterfront, Central Waterfront, and South Waterfront, respectively), the proposed development of the Project on the Site, including various actions of the parties to prepare the Site for development, a description of the various private and public parcels, the intended owner of each parcel, the intended use and development of each parcel, the roles and responsibilities of the parties in causing design, construction and funding of the intended use and development, and other pertinent information to guide the development by the parties of each parcel and the related public improvements. Part V addresses alternative construction management methods.

Attachments to this Attachment No. 4 referred to in the text below are set forth at the end of this Attachment No. 4.

II. NORTHERN WATERFRONT

Public and private redevelopment of the Northern Waterfront Area under this Agreement (with particular reference to the shoreline area west of Harbor Way) will be undertaken to reinforce and assure mutually compatible use of the area by users and tenants of the adjacent City Marina, and public and private users of the development parcels under this Agreement.

Section II.A, below sets forth the scope of development for ~~the~~Developer Parcel A and City/Agency Parcel D2 (containing the Wetland Park, as further described below) and related off-site pedestrian-oriented improvements, because the design and development of these two parcels and related improvements are integrally related and best described together. Section II.B below sets forth the scope of development for the other Developer Parcels within the Northern Waterfront Area~~, while~~ . Section II.~~B~~C below addresses the scope of development for the public parcels and improvements in the Northern Waterfront Area (other than City/Agency Parcel D2). Section II.~~C~~D below describes responsibilities for certain actions of Area-wide benefit. Section II.~~D~~E below sets forth the Developer's independent obligation to perform the tasks and responsibilities assigned to the Developer under this Agreement with respect to the Northern Waterfront Area.

A. Developer ~~Parcels~~Parcel A and City/Agency Parcel D2 (Wetland Park)

~~{The following Developer Parcels within the Northern Waterfront Area shall be conveyed by the Agency to the Developer} (in fee or by ground lease, as noted below){ in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.}~~

~~1. Parcel A.~~

1. Overview of Development.

Parcel A (consisting of subparcels A1 and A2) is an approximately ~~14.9~~11.3-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel A to the Developer for the Purchase Price set forth in Section 201.3.

Parcel D2 is an approximately 4.0-acre parcel bounded by Parcel A to the north and south. Parcel D2 is to be owned by the City and developed by the Developer as provided below. The Agency shall cause the City to enter into a right-of-entry agreement or other similar access agreement with the Developer, in form reasonably acceptable to the City and the Developer, granting the Developer a right-of-entry onto Parcel D2 for construction staging for development of Parcel A and for development of the Wetland Park in the manner set forth below.

The Developer, at its cost (subject to a cost cap on specified related off-site improvements as further provided in Section II.C.3 below) and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel A, ~~and shall design and construct up to 175 single-family attached residential units (each with a two-car garage), the required public streets and private alleys (including visitor parking spaces), and associated private amenities (including swimming pool, private recreational facilities, {and private landscaped areas}) within Parcel A in accordance with~~Parcel D2 and the related off-site improvements described below, and shall design and develop Parcel A, Parcel D2 and the related off-site improvements generally as follows and as more fully provided in the Project Approvals~~.~~:

The residential development on Parcel A (as depicted in Attachment No. 4-1A) shall consist of a townhouse project with no more than 175 dwelling units distributed among two clustered neighborhoods. A 4.0 acre public wetland park (the "Wetland Park") shall be created on Parcel D2, a central location between the two townhouse neighborhoods on Parcel A (referred to as the "Northern Residential Neighborhood" adjacent to the Mare Island Causeway and the existing restaurant known as Zio Fraedo's, and the "Southern Residential Neighborhood" adjacent to Mare Island Way). The dwelling units on Parcel A shall be distributed among multiple buildings, comprised of traditional townhouses with stacked flats to be located at one or both ends of each building. Each building will provide grade level end units. The current site plan configuration for the development of Parcel A provides for a total of 30 buildings consisting of 15 six-plexes, 8 seven-plexes, 4 five-plexes, and 3 three-plexes. The number of buildings and the mix of the types of units (as depicted in Attachment No. 4-1A) may be reasonably modified during the Unit Plan review process.

All streets located within the residential development area of Parcel A (as depicted on Attachment No.4-1A) shall be public streets with a maximum 36 foot curb-to-curb distance and which allow for two-way traffic and parallel parking on each side of the street. The parking ratio for the residential development area of Parcel A shall not exceed 2.5 spaces per unit, and each unit shall be provided with a two car garage (including tandem garage spaces) with the remaining required parking spaces located on the interior public streets of the residential development area and Harbor Way adjacent to the Northern Residential Neighborhood.

To decrease the overall visual impact of the residential development on Parcel A, the taller pitched roof buildings shall be located in the Northern Residential Neighborhood with the lower pitched roof buildings located in the Southern Residential Neighborhood. Heights of the residential buildings shall not exceed 45 feet in the Northern Residential Neighborhood and 38 feet in the Southern Residential Neighborhood. Height measurements shall be calculated in accordance with the Project Approvals, which provide that the building heights in Parcel A shall be measured from the street or alley curb perpendicular to the midpoint of the street or alley to the ridge of the roof structure. Chimneys shall not be subject to this height measurement and shall be allowed to exceed the height limit.

Maximum building finish floor elevations (finish floor is the level of the surface of the concrete garage floor) shall be equal to or lower than the adjacent top of curb elevations along Mare Island Way and Mare Island Causeway. The measuring point will be taken from the street curb perpendicular to the midpoint of the building side that faces the street

curb. Generally, building finish floor elevations will decrease away from Mare Island Way and Mare Island Causeway allowing the storm water runoff from the drainage area to enter the Wetland Park.

Prior to submitting a Unit Plan application for the residential development of Parcel A, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide appropriate and reasonable public notice of, two (2) public community design workshops regarding the townhouse architectural design. The Coalition shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement.

Parcel A buildings shall have an equivalent level of architectural quality and articulation as that depicted in Attachment No. 4-1B.

The Developer shall provide in the REA/CC&Rs recorded in connection with the residential development of Parcel A (as further described in Section 704), or similar purchaser notification documentation, notification to future residents that public events including, but not limited to, an annual Jazz Festival, may occur on the Promenade Park (as described in Section II.C.3 below) and the Wetland Park.

2. Accessibility and Circulation. The site plan for the residential development area of Parcel A shall include public access through the new residential neighborhoods to the Wetland Park from Mare Island Way and the north end of Harbor Way. The public access points into the residential neighborhood are depicted in Attachment No. 4-1C. The design will invite pedestrians to walk through the new residential neighborhoods to the Wetland Park from the adjacent Mare Island Way and the Mare Island Causeway sidewalks.

A pedestrian pathway will be provided along the southern sidewalk of the Mare Island Causeway in approximately the same location as the existing pathway. The pathway will provide a connection from the Mare Island Causeway, through the residential neighborhood, crossing Harbor Way and marina parking in the proximity of Parcel B1, to the waterfront promenade and will be enhanced with paving and a stop sign or other traffic control mechanism at intersections with vehicle thoroughfares (as depicted in Attachment No. 4-1C).

The existing pedestrian pathway located under the Mare Island Causeway Bridge shall be improved with a new pathway surface, fencing, landscaping, and bollard lights to be operated in coordination with the Mare Island Causeway lights (as depicted in Attachment No. 4-1D) (the "Mare Island Causeway Underpass Pathway Improvements").

A three (3)-hour parking time limit (for daytime hours, seven (7) days a week) shall be included for the on-street parking spaces located along the west side of Harbor Way and any street abutting the Wetland Park.

3. Wetland Park on Parcel D2. The Wetland Park on Parcel D2 shall be centrally located and consist of a minimum of 4.0 contiguous acres, with approximately 1.5 to 1.7 acres comprised of vegetated swales, wetland terraces, and a tidal pond connected to the Mare Island Straight. The 4.0 acre size shall not be reduced to accommodate any non-Park use, including but not limited to the residential development described in Section II.A.1 above,

parking, public and private streets, and "paseos" or perimeters of the private development that are not contiguous to the Wetland Park open space. Emergency vehicle-only access will be constructed of grasscrete or similar material and will be located as depicted in Attachment No. 4-1A. Attachment No. 4-1E provides a conceptual plan for the Wetland Park on Parcel D2.

The Wetland Park on Parcel D2 will create a visual amenity with interpretive features, provide for passive recreation, and re-create a naturalistic drainage system. It will connect visually and functionally with the surrounding residences and the Promenade Park. An observation area will contain interpretive features, that will explain the wetland system, cleansing of stormwater, and tidal pond/brackish water ecology. The swale system will be surrounded by a series of meadows, usable for informal or passive recreation, and connected by a network of paths and bridges. The open space, while not formally programmed, will provide a variety of spaces for individuals and groups to relax and enjoy the natural surroundings. The surrounding residences will be connected to the open space by greenways or paseos. Evergreen planting and berms will screen the townhouse neighborhoods.

Planting in the Wetland Park on Parcel D2 will include trees, shrubs and grasses along the swales, informal clusters of canopy trees edging the meadows, evergreen screening, and street trees along Mare Island Way, Harbor Way, and the internal streets of the residential neighborhoods in Parcel A. The swales will range from ten (10) feet to forty (40) feet in width including vegetated buffer areas adjacent to the swales. At its narrowest, between the two townhouse neighborhoods in Parcel A, the Wetland Park will be a minimum of 120 feet wide.

In summary, the key components of the Wetland Park on Parcel D2 will be: (a) a corridor of swales and a tidal pond; (b) open meadows for passive and informal use; (c) interpretive elements; (d) paths, bridges, and seating; (e) screening of surrounding development; (f) an at-grade pedestrian and visual link to the Promenade Park; and (g) tidal function highlighting the connection to the Bay system.

The Wetland Park on Parcel D2 and the Promenade Park on Parcel D2 shall be connected via landscaping and paving features to create a visual corridor from the Mare Island Causeway to the Mare Island Strait. The parking along Harbor Way in the area between these two parks shall be reduced by twelve (12) spaces as depicted in Attachment No. 4-1A.

Upon completion of construction of the Wetland Park on Parcel D2 by the Developer, the Wetland Park shall be dedicated in fee to the City for park purposes and maintained by the City using assessments generated by the LLMD, or other similar funding mechanism, as provided for in this Agreement (with particular reference to the Method of Financing (Attachment No. 6)) and subject to the City's annual budgetary process.

Parcel D2 may be used by the Developer for construction staging during the initial site preparation for the development of Parcel A (estimated to occur over 18 to 24 months) and during the construction of the Northern and Southern Residential Neighborhoods (each of which is estimated to occur over an additional 12 to 18 months). The Developer shall complete construction of the Wetland Park, and cease all staging activities, within the time set forth in the Schedule of Performance (Attachment No. 3).

The Developer shall provide a guarantee to the City and the Agency for the completion of the Wetland Park on Parcel D2 through a performance bond or other equivalent form of security specified in the Vallejo Municipal Code as may be acceptable to the City and the Agency.

Upon completion of the Wetland Park, the Developer shall provide the Agency and the City with a certified statement, accompanied by reasonable supporting information, setting forth the total out-of-pocket costs paid by the Developer in connection with the design and construction of the Wetland Park (the "Developer's Wetland Park Contribution").

4. Section 404 Permit Work. The Agency has obtained the necessary Section 404 Permit from the U.S. Army Corps of Engineers to enable the Developer to conduct necessary grading activities on Parcel A and Parcel D2. The Section 404 Permit is in effect through December 31, 2009. The Developer shall perform the grading work in compliance with the Section 404 Permit (the "Section 404 Permit Work") within the time set forth in the Schedule of Performance (Attachment No. 3).

5. Developer Parcel Public Improvements. The parties anticipate that the development of Parcel A shall be accomplished in sub-phases. Prior to or concurrently with the development of each sub-phase, the Developer shall commence and complete the Developer Parcel Public Improvements (as such term is defined in the Method of Financing (Attachment No. 6) required for such sub-phase of private development on Parcel A. The Developer shall dedicate the improved public streets within Parcel A ~~(A Street, B Street, and C Street)~~and, to the extent required under applicable City ordinances and rules, the improvements comprising the Wetland Park on Parcel D2, in accordance with the terms and requirements of the Project Approvals.

B. Other Developer Parcels (B1, B2, and C1)

[The following Developer Parcels within the Northern Waterfront Area shall be conveyed by the Agency to the Developer] ~~(in fee or by ground lease, as noted below)~~ by ground lease[in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.]

~~2.~~1 Developer Parcels B1 and B2.

Parcel B1 is an approximately ~~0.7~~1.1-acre building pad parcel, and Parcel B2 is an approximately 0.7-acre building pad parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall enter into a City/Agency Ground Lease with the City and an Agency/Developer Sub-Ground Lease with the Developer for each of Parcels B1 and B2 in the manner provided in Section 201.4. The parties acknowledge and agree that the ground lease conveyances for Parcels B1 and B2 may occur at separate times.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcels B1 and B2, and shall design and construct a single-story commercial structure for retail and/or restaurant use, together with related private landscaping, on each of Parcels B1 and B2 in

accordance with the Project Approvals. The combined square footage of the two commercial structures on Parcels B1 and B2 shall not exceed 12,000 square feet.; provided, however, that the combined square footage of the two commercial structures on Parcels B1 and B2 may exceed 12,000 square feet if there is a corresponding reduction in the square footage of the commercial structure on Parcel C1, such that the combined square footage of all the commercial structures on Parcels B1, B2 and C1 does not exceed 22,000 square feet. The use of the commercial structures shall be oriented to water-related and recreational uses, including a possible use of the structure on Parcel B1 for the sale and rental of recreational equipment, and a possible full-service restaurant use for the structure on Parcel B2.

Parcel B1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on ~~Parcel E~~Parcels E and F and related parking areas in accordance with the Parcel E/F REA, as further described in Section II.~~B~~C.5 below. Parcel B2 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.~~B~~C.2 below.

~~3.~~2. Developer Parcel C1.

Parcel C1 is an approximately 0.5-acre building pad parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall enter into a City/Agency Ground Lease with the City and an Agency/Developer Sub-Ground Lease with the Developer for Parcel C1 in the manner provided in Section 201.4.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcel C1, and shall design and construct a single-story commercial structure for water-oriented commercial use, together with related private landscaping, within Parcel C1 in accordance with the Project Approvals. The square footage of such commercial structure on Parcel C1 shall not exceed 10,000 square feet; provided, however, that the square footage of the commercial structure on Parcel C1 may exceed 10,000 square feet if there is a corresponding reduction in the combined square footage of the commercial structures on Parcels B1 and B2, such that the combined square footage of all the commercial structures on Parcels B1, B2, and C1 does not exceed 22,000 square feet. Permitted uses on Parcel C1 shall include marina-serving retail, sale and rental of recreational equipment, a full-service restaurant, and other water-oriented uses.

Parcel C1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.~~B~~C.2 below.

C. ~~B.~~ Public Facilities and Improvements

The following City/Agency Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Harbor Way.

The Harbor Way Parcel is an approximately 2.3-acre parcel to be owned by the City as the right-of-way for the relocated and realigned Harbor Way, a public street. Without cost to the Developer and in a manner consistent with approved vesting tentative map for the Northern Waterfront Area, the Agency shall, or shall cause the City to:

a. abandon those portions of the current Harbor Way right-of-way that will no longer comprise a portion of the realigned Harbor Way;

b. contribute those portions of any property owned by the Agency or the City that are needed as right-of-way for the realigned Harbor Way and obtain clearance of any encumbrances from such property that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals; and

c. obtain title to any portions of the right-of-way for the realigned Harbor Way not currently owned by the Agency or the City, clear of any encumbrances that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3 of the Amended DDA), shall design and construct street and utility improvements to cause the relocation and realignment of the public street and utilities to the area within the right-of-way of the Harbor Way Parcel, together with reconstruction of the intersection of such realigned Harbor Way with Mare Island Way, in accordance with the Project Approvals. The Developer shall bear no costs or expenses with respect to acquisition of the Harbor Way Parcel.

2. Parcel C2.

Parcel C2 is an approximately 1.1-acre parcel to be owned by the City to serve as public parking lot between the commercial pad developments on Parcels B2 and C1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall design and reconstruct a surface parking lot and access driveway within Parcel C2 in accordance with the Project Approvals.

By Operating Memorandum, the Agency and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B2, C1, and C2 at the time of closing of the ground lease conveyance for the first to be conveyed of Parcels B2 or C1 (the "Parcel C2 REA"). Among other commercially reasonable terms, the Parcel C2 REA shall grant parking and access rights and easements over Parcel C2 and the improvement thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcels B2 and C1 and the improvements thereon, in order to make the private development and use of Parcels B2 and C1 commercially feasible. The Parcel C2 REA shall also grant such parking rights and easements over Parcel C2 and the improvements thereon to the users and tenants of the adjacent City Marina. In preparing the Parcel C2 REA, the parties shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel C2 REA.

The Parcel C2 REA shall provide for the Developer or the tenants of the improvements on Parcels B2 and C1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the Parcel C2 parking lot commensurate with the portion of the overall benefit of such parking lot received by Parcel B2 and Parcel C1, respectively, in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on Parcel C2.

If the parties are unable to agree upon the form of the Parcel C2 REA by the time the Developer is otherwise entitled to conveyance of the sub-ground leasehold interest for the first to be developed of Parcels B2 or C1, then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel C2 REA consistent with the terms of this Section II.~~B~~C.2.

3. Parcel D1.

Parcel D1 is an approximately ~~3.5~~4.0-acre parcel to be owned by the City to serve as a public park (sometimes referred to as the "Promenade Park") for the Northern Waterfront Area (and the entire Vallejo community) on the west side of Harbor Way adjacent to the waterfront. Attachment No. 4-1F provides a conceptual plan for the Promenade Park on Parcel D1, which is subject to review and refinement pursuant to the public design process described below.

The Developer, at its cost (subject to the limitation set forth below) and in accordance with the Schedule of Performance (Attachment No. 3), shall construct ~~a public park~~the Promenade Park on Parcel D1 and related public park and open space improvements in accordance with the Project Approvals, and in accordance with a design for such park and related open spaces to be developed as follows:

a. The Agency and the City shall conduct a public participation process, and from such public participation process shall prepare a conceptual design (the "Conceptual Design") for public park and open space improvements on Parcel D~~1, Parcel F,~~1 and the public promenade along the waterfront within the Northern Waterfront Area (collectively, the "Northern Waterfront Public Park and Open Space Improvements"). As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" shall consist of: (i) the Promenade Park improvements on Parcel D1; (ii) the Mare Island Causeway Underpass Pathway Improvements, as further described in Section II.A.2 above; (iii) the multipurpose switchback trail ramp providing direct access between the southern sidewalk of Mare Island Causeway and the existing promenade/trail along the water's edge, as further provided in the subsection entitled "Multi-purpose Trail Ramp from Causeway to Promenade Extension" within Section III.D.2.3.4.A of the Waterfront Design Guidelines accompanying the Planned Development Master Plan; and (iv) such other public park and open space improvements and features in the vicinity of the water's edge along the Northern Waterfront Area as may be included in the Conceptual Design. As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" does not include the Wetland Park improvements as further described in Section II.A.3 above. At the time it completes the Conceptual Design, the Agency and the City, in

cooperation with the Developer, shall also prepare an estimated budget for performance of the design tasks described in this subsection a. and subsection b. below, and for actual construction of the Northern Waterfront Public Park and Open Space Improvements in accordance with such Conceptual Design (the "Preliminary Budget").

b. Based on the Conceptual Design, the Developer shall prepare, for approval by the Agency and the City, detailed plans and specifications (the "Detailed Plans") and a detailed cost estimate (the "Construction Cost Estimate"), including a reasonable construction contingency, for the construction of the Northern Waterfront Public Park and Open Space Improvements.

c. The Agency and the City shall approve the Detailed Plans if they are materially consistent with the Concept Design and if the construction cost set forth in the Construction Cost Estimate, together with the costs incurred for performance of the tasks described in subsections a. and b. above (collectively, the "Design/Construction Costs"), do not exceed the total amount set forth in the Preliminary Budget. If the Detailed Plans are materially consistent with the Concept Design, but the Design/Construction Costs exceed the total amount set forth in the Preliminary Budget, the Agency and the City, in consultation with the Developer, shall either approve the Detailed Plans notwithstanding such excess cost or specify modifications to the Detailed Plans (the "Modified Detailed Plans") that will enable the Design/Construction Costs to be within the total amount of the Preliminary Budget, or such other total amount as is then acceptable to the Agency and the City, in consultation with the Developer.

If the parties are unable to agree upon the form of mutually acceptable Design Plans or Modified Design Plans within the time provided in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Design Plans or Modified Design Plans consistent with the terms of this Section II.~~B~~C.3.

The Developer shall construct the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in accordance with the Design Plans or the Modified Design Plans approved by the Agency and the City, and shall pay, when due, the soft and hard costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area), including the design tasks described in subsections a. and b. above; provided, however, that the maximum amount payable by the Developer for the design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 and other applicable parcels and areas within the Northern Waterfront Area shall be ONE MILLION SIX HUNDRED TWENTY-NINE THOUSAND ONE HUNDRED FIFTY DOLLARS ($1,629,150). The amount actually expended by the Developer for this purpose, as reviewed and approved by the City, is referred to as the "Developer's Northern Waterfront Public Park and Open Space Contribution." The Agency shall pay, when due, any costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in excess of the Developer's Northern Waterfront Public Park and Open Space Contribution.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D1.

4. Parcel D2.

Parcel D2 is an approximately ~~0.7~~4.0-acre parcel to be owned by the City ~~to serve as public open space for the Northern Waterfront Area on the east side of Harbor Way near the intersection with Mare Island Way. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of the Parcel D2 public open space improvements, and shall design and construct public open space improvements on Parcel D2 in accordance with the Project Approvals. The Developer shall pay, when due, the soft and hard costs of design and construction of the public open space improvements on Parcel D2~~and developed by the Developer to serve as the Wetland Park, as fully set forth in Section II.A.3 above.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D~~2~~.2, as further described in Section II.A.3.

5. Parcel E, Parcel F, and Related Parking Areas.

Parcel E is an approximately ~~1.4~~0.6-acre parcel and Parcel F (formerly known as "Jazz Festival Green") is an approximately 0.8-acre parcel to be owned by the City to serve as a public parking lot ~~between~~in the vicinity of the commercial pad development on Parcel B1 and the ~~public park~~Promenade Park on Parcel D1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct or reconstruct, as applicable, a surface parking lot and access driveway within Parcel E and Parcel F in accordance with the Project Approvals.

In order to facilitate the reconfiguration of parking in the Northern Waterfront Area west of Harbor Way generally in the manner shown on Attachment No. 4-1A, the City and the Agency may seek lease amendments (the "Parking-Related Lease Amendments") with Zio Fraedo's, the Sardine Can, and other tenants on the parcels north of Parcel F (the "Related Parking Areas"). The parties cannot predict whether the Parking-Related Lease Amendments will be obtained. Failure to obtain such Parking-Related Lease Amendments shall not be grounds for reducing the size of the Promenade Park on Parcel D1 or the Wetland Park on Parcel D2. If the Parking-Related Lease Amendments are obtained by the City and the Agency, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall resurface and re-stripe the parking lots and any access driveway(s) within the Related Parking Areas in a manner generally consistent with the reconfiguration of parking on such Related Parking Areas shown in Attachment No. 4-1A.

By Operating Memorandum, the Agency and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B1, D1, ~~and E~~E, F and the Related Parking Areas (if the Parking-Related Lease Amendments are obtained) at the time of closing of the ground lease conveyance for Parcel B1 (the "Parcel E/F REA"). Among other commercially reasonable terms, the Parcel E/F REA shall grant parking and access rights and easements over ~~Parcel E and the improvement~~Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained), and the improvements thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcel B1 and the improvements thereon, in order to make the private development and use of Parcel B1 commercially feasible. The Parcel E/F REA shall also grant such parking rights and easements ~~over Parcel E and the improvements thereon~~ to the users and tenants of the adjacent City Marina. In preparing the Parcel E/F REA, the parties shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel E/F REA.

The Parcel E/F REA shall provide for the Developer or the tenants of the improvements on Parcel B1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the ~~Parcel E~~ parking lot on Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained) commensurate with the portion of the overall benefit of such parking lot received by Parcel B1 in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on ~~Parcel E.~~Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained)

If the parties are unable to agree upon the form of the Parcel E/F REA by the time the Developer is otherwise entitled to conveyance of the sub-ground leasehold interest for Parcels B1, then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel E/F REA consistent with the terms of this Section II.B.~~5.~~5..

~~6. Parcel F (Jazz Festival Green).~~

~~Parcel F is an approximately 1.0-acre parcel to be owned by the City and designated and reserved for park use. To the extent the Design Plans for the Northern Waterfront Public Park and Open Space Improvements (prepared and approved in accordance with Section II.B.3 above) provide for development of improvements on Parcel F, the Developer shall construct, and the Developer and the Agency (if applicable), shall pay for the cost of design and construction of such improvements, in the time and manner provided in Section II.B.3 above for the overall Northern Waterfront Public Park and Open Space Improvements.~~

D. ~~C.~~ Area-Wide Actions

The following additional terms shall apply to the development of the Northern Waterfront Area pursuant to this Agreement.

1. State Lands Commission Action.

A small portion of Parcel A, in the vicinity of Mare Island Way and Mare Island Causeway, is within the boundary of the current State tidelands public trust administered by the SLC. While the tidelands public trust area within Parcel A encroaches only on land to be devoted to private streets and landscaped open space (and does not affect land intended for residential units), the parties desire to free the entirety of Parcel A from such tidelands public trust designation. To that end, the Agency, in cooperation with the Developer and at the Developer's cost, shall perform the following actions, within the time set forth in the Schedule of Performance (Attachment No. 3), to obtain SLC approval of a minor amendment to the existing settlement and exchange agreement with the SLC (the "Parcel A Exchange Agreement Amendment"), whereby in exchange for the release of public trust designation from Parcel A, the City will make available for public trust designation a greater amount of land to the west of Parcel A (including portions of Parcel D1 that are to be developed as ~~a public park~~the Promenade Park and open space, as described in Section II.~~B~~C.3 above):

a. Preparation of a proposed Parcel A Exchange Agreement Amendment, and necessary documentation, including an appraisal, legal descriptions of the proposed exchange properties, and other documents, to support City Council and SLC approval;

b. Presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the City Council for consideration of approval; and

c. If approved by the City Council, presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the SLC for consideration of approval.

2. Bay Conservation and Development Commission Approvals.

It is anticipated that the private and public development of Northern Waterfront Area within BCDC jurisdiction may require minor administrative amendments to existing BCDC development permits. In accordance with the Schedule of Performance (Attachment No. 3 ~~of the DDA~~), and at the Developer's cost, the parties shall cooperate to apply for and obtain any administrative amendments required from BCDC with respect to the applicable current BCDC development permits for the Northern Waterfront Area.

Without limiting the generality of the foregoing paragraph, the parties acknowledge that the parties may be required to seek an amendment of BCDC permit no. 1-86, as amended through Amendment No. 11, in order to accommodate a reconfiguration of the parking in the Northern Waterfront Area generally in the manner shown on Attachment No. 4-1A. The parties shall work cooperatively and in good faith to urge BCDC to agree to the reduction in parking required by the BCDC permit. The parties cannot predict whether any required amendments to BCDC permit no. 1-86 will be obtained. Failure to obtain such amendments shall not be grounds for reducing the size of the Wetland Park on Parcel D2 or the Promenade Park on Parcel D1.

~~3. Pedestrian Walkway Under Causeway.~~

~~The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain the necessary Project Approvals for, and shall design and construct, pedestrian walkway improvements under the Mare Island Causeway in accordance with the Project Approvals.~~ ~~4.~~ Mare Island Causeway and Mare Island Way Widening Improvements.

The Agency shall cause the City to implement the applicable requirements of the Mare Island Specific Plan (as may be amended), the Development Agreement (as may be amended) between the City and Lennar Mare Island, LLC ("Lennar"), and related environmental mitigation measures (collectively, the "Lennar Project Documents"), in turn to cause Lennar to complete the design and construction of certain improvements related to the widening of Mare Island Causeway and Mare Island Way (the "Widening Improvements") at the time and in the manner set forth in the Lennar Project Documents. The Agency ~~and~~shall or shall cause the City ~~shall~~to assure that the Widening Improvements, and the right-of-way required in connection therewith, shall not encroach across the intended boundary line for Parcel A adjacent to Mare Island Causeway and Mare Island Way as set forth in the boundary line diagram contained in Attachment No. 8 of this Agreement.

4. Parking Lots Landscaping.

The parking lots in the Northern Waterfront Area shall include landscaping as required by the Project Approvals.

E. ~~D.~~ Independent Obligation

As more fully set forth in Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area shall be separate and independent of the performance by the Agency of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Southern Waterfront Area; and neither a failure by the Agency to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Southern Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Northern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area.

III. CENTRAL WATERFRONT

Public and private redevelopment of the Central Waterfront Area under this Agreement will be undertaken to create Vallejo Station as a vibrant multi-modal transit center, to provide high intensity residential and commercial uses in the immediate vicinity of Vallejo Station, and to establish a strong, pedestrian-oriented linkage between the Downtown area and the Central Waterfront.

Section III.A below sets forth the scope of development for Parcel L (the core of the Vallejo Station development), while Section III.C addresses the scope of development for Parcel J. Section III.C below outlines the scope of development for the public parcels and improvements in the Central Waterfront Area. Following are standards and procedures of general applicability to the design and development of various parcels and improvements in the Central Waterfront Area.

The architecture in the Central Waterfront Area must be sensitive to the pedestrian scale and the nature of the waterfront experience. People arriving on the ferry, walking, or driving in from the surrounding areas should see highly articulated and well-defined architecture spanning the Mare Island Way street frontage from Capitol Street to Maine Street. Georgia Street is the retail commercial spine of the downtown and special care should be taken in defining the architectural treatment of this gateway to give it the emphasis it needs while maintaining an inviting and attractive appeal to the pedestrian.

Articulation and terracing of building massing shall be the primary ways to achieve the necessary architectural variation in massing. Emphasis shall be placed on designing highly articulated (both horizontally and vertically) and well-detailed buildings fronting all streets in the Central Waterfront Area. The primary goal of terracing and articulation is to avoid blank, minimally articulated building walls fronting Mare Island Way, Georgia Street, Santa Clara Street, and Maine Street and to avoid building facades on Mare Island Way that have only one continuous minimum setback without terracing of the building massing. This articulation shall apply to all levels fronting on all streets in the Central Waterfront Area, regardless of building height. The articulation and terracing in the building massing should be large enough to allow the residential or office uses on the upper floors to use this space as an outdoor terrace when appropriate for the associated use, in order to increase activity along these important building facades. Curvilinear buildings are not appropriate in the Central Waterfront Area, although curvilinear design features such as turrets and window details are acceptable. Attachment No. 4-2A depicts examples of developments that reflect this type of articulation and terracing.

Building heights generally shall step down in a westerly direction from Santa Clara Street to Mare Island Way, as depicted on Attachments No. 4-2B, 2C, 2D, and 2F, and as fully described in the Project Approvals (with particular reference to the Planned Development Master Plan and Waterfront Design Guidelines). Specific standards and requirements regarding building height limits (and the measurement of such height limits), as well as building setbacks, shall be those set forth in the Project Approvals (with particular reference to the Planned Development Master Plan and the Waterfront Design Guidelines).

The Unit Plan applications submitted for Parcel J and Parcel L shall each provide that no less than 20 percent of such parcel's surface area shall be public or private open space. Public and

private open space shall include sidewalks, public plazas, public[and private landscaped areas], private courtyards, pedestrian alleys, or such other equivalent spaces.

Prior to the submittal by the Developer of any Unit Plan application(s) for Parcels J and L, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide reasonable and appropriate public notice of a minimum of two (2) public community design workshops regarding architecture, including the L3 Public Garage (commonly referred to as the Vallejo Station garage) entrances. The Coalition shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement.

[To support long-term Agency financing of the L3 Public Garage (as described in Section III.A.3 below), the Schedule of Performance (Attachment No. 3) requires the Developer to acquire]~~Parcel L1 not later than six (6~~the first-to-be developed L Developer Parcel not later than twelve (12[) months after commencement of substantial construction of the L3 Public Garage]~~.~~.

As used below in connection with retail/commercial uses for Parcels J and L, the following terms have the following meanings:

"Category 1 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcel J1 (Frontage on Festival Green) and Parcel L2" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

"Category 2 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcels L1 and L4" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

A. Parcel L (Vallejo Station)

The L Developer Parcels (Parcels L1, L2, and L4) shall be conveyed by the Agency to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions. In addition, Parcels L3 and L5 shall be owned by the City or the Agency and developed by the Agency in accordance with the following general terms and conditions.

The City and the Agency are studying the feasibility of alternative strategies and opportunities for implementation of the Vallejo Station project on Parcel L, including a phased approach for parking in the Central Waterfront Area and Vallejo Station. The parties shall consider in good faith any proposed change in the scope, timing, phasing and funding of development of Vallejo Station resulting from such study of alternative strategies, with the objective of achieving the most timely and cost effective development of Vallejo Station that accomplishes as nearly as possible the planning and financial objectives of the parties as reflected in the current scope, timing, phasing and funding of such development. Any mutually acceptable modifications to the scope, timing, phasing and/or funding of the Vallejo Station project on Parcel L shall be set forth in a mutually acceptable Operating Memorandum executed in accordance with Section 709 and, as needed, in a mutually acceptable amendment to the Planned Development Master Plan (including accompanying Waterfront Design Guidelines).

1. Parcel L1.

Parcel L1 is an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel L1 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L1, and shall design and construct a ~~four-and-five-story~~ mixed-use residential/commercial structure on Parcel L1 in accordance with the Project Approvals. The Parcel L1 improvements shall consist of up to 140-condominium units as flats, approximately 241 parking spaces in a two-level garage, and up to 14,000 square feet of retail commercial space fronting Mare Island Way at the Maine Street intersection.

Uses on the ground floor of the building on Parcel L1 fronting on Mare Island Way shall be Category 2 Uses.

~~{To support long-term Agency financing of the L3 Public Garage (as described in Section III.A.3 below), the Schedule of Performance (Attachment No. 3) requires the Developer to acquire }Parcel L1 not later than six (6{) months after commencement of substantial construction of the L3 Public Garage}.~~

2. Parcel L2.

Parcel L2 is also an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel L2 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L2, and shall design and construct a two and three-story office/commercial structure on Parcel L2 in accordance with the Project Approvals. The Parcel L2 improvements shall consist of up to 63,000 square feet of office/commercial space above one level of subterranean parking containing approximately 215 parking spaces.

Uses on the ground floor of Parcel L2 shall be Category 1 Uses.

At the corner of Mare Island Way and Georgia Street, a set back of the building on Parcel L2 shall be provided to create a public open space area of no less than 1,900 square feet (as depicted in Attachment No. 4- 2E), which may include outdoor seating.

3. Parcel L3.

Parcel L3 is a parcel of space with a footprint of approximately 4.6 acres occupying the lower levels of a vertical subdivision that will also include Parcels L4 and L5 (with a combined footprint of approximately 4.25 acres) at upper levels above the parking garage

structure to be developed on Parcel L3 (the "L3 Public Garage", commonly referred to as the Vallejo Station Garage). Parcel L3 shall be owned and operated by the City or the Agency.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of the L3 Public Garage, and shall design and construct the L3 Public Garage within Parcel L3 in accordance with the Project Approvals and designs approved by the City. The L3 Public Garage shall consist of a two-level public parking structure containing approximately 1,190 parking spaces, related off-site public improvements, and support columns, utilities, and a podium deck to support the development of the public paseo and related public improvements atop the garage structure within vertical subdivision Parcel L5 (as further described in Section III.A.5 below).

If agreed by the parties pursuant to a Parcel L4 Operating Memorandum (as provided in Section III.A.4 below), or if independently elected by the Agency, the L3 Public Garage shall also contain support columns, utilities, and a podium deck (the "L3 Public Garage Support Facilities For Parcel L4") to support the private development contemplated within vertical subdivision Parcel L4 (as further described in Section III.A.4 below).

The Agency shall pay the costs of design and construction of the L3 Public Garage using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

4. Parcel L4.

Parcel L4 is a parcel of space with a footprint of approximately 2.8 acres atop the podium deck of the L3 Public Garage. Parcel L4 will be a part of the vertical subdivision that will also include Parcels L3 and L5.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the parties shall seek to negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Parcel L4 Operating Memorandum") containing the following:

a. The precise dimensions of Parcels L3, L4, and L5, based on engineered plans prepared by the Agency for the L3 Public Garage and in sufficient detail to process a subdivision map establishing the vertical subdivision of Parcels L3, L4, and L5;

b. The procedures to be followed and the roles and responsibilities of the parties to accomplish the vertical subdivision creating Parcels L3, L4, and L5 in accordance with applicable legal requirements;

c. The form of a Reciprocal Easement and Joint Facilities Operation and Maintenance Agreement (the "Vallejo Station REA") granting to Parcel L4 necessary easement rights with respect to the L3 Public Garage Support Facilities For Parcel L4, and setting forth various joint and several construction, operation, maintenance and use rights and responsibilities with respect to the complex of interrelated structures to be developed on Parcels L3, L4, and L5; and

d. Such other matters as the parties mutually determine will facilitate the timely and cost effective construction, operation, maintenance and use of the complex of interrelated structures to be developed on Parcels L3, L4, and L5.

If, despite good faith efforts, the parties are unable to execute a mutually acceptable Parcel L4 Operating Memorandum within the allotted time, then:

e. The Agency may terminate this Agreement with respect to Parcel L4 only and the Developer shall have no further rights to acquire or develop Parcel L4;

f. Following termination of this Agreement with respect to Parcel L4, the Agency, at its discretion, may cause construction of the L3 Public Garage with or without the L3 Public Garage Support Facilities For Parcel L4; and

g. If the Agency does include the L3 Public Garage Support Facilities For Parcel L4, then it will be free to market and convey Parcel L4 at the time, in the manner, at the price, and for such use (consistent with then applicable City land use standards and requirements) as the Agency may determine.

If the parties execute a Parcel L4 Operating Memorandum, then, upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel L4 to the Developer for the Purchase Price set forth in Section 201.6. In connection with such conveyance, the parties shall cause recordation of the Vallejo Station REA in substantially the form provided in the Parcel L4 Operating Memorandum.

Upon acquisition, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L4, and shall design and construct within Parcel L4 a mixed-use structure atop the L3 Public Garage at the level of Santa Clara Street. The Parcel L4 improvements shall be designed and constructed in accordance with the Project Approvals and any applicable terms of the Parcel L4 Operating Memorandum. The Parcel L4 improvements shall consist of a two and four story building containing the following elements:

(1) up to ~~25,000~~approximately 6,000 square feet of retail/commercial space on the first level of the building along the frontage of Santa Clara Street~~;~~ ~~and~~

(2) up to approximately 14,000 square feet of retail/commercial space in an arcade area fronting on Georgia Street (the "Arcade Area");

(~~2~~3) an additional 200,000 square foot hotel/restaurant/~~meeting~~conference center complex above the first level of the building, including a hotel of up to 200 rooms on the second to fourth levels (the "Hotel Improvements"), and a two-level restaurant and ~~meeting~~conference center facility of up to 32,000 square feet; and

(~~3~~4) a private parking garage on the first two levels of the building containing approximately 172 spaces to serve the uses described in items (1) and (2) above.

Prior to the submission of a Unit Plan application for the Hotel Improvements, the Developer shall submit to the City a description of the features of the Hotel Improvements and a market and feasibility study, prepared by an expert consultant, to identify the feasible hotel/conference market for the site and the amenities necessary to attract a high quality hotel operator. The Developer shall provide notice to the Coalition of the process for the selection of the consultant and provide an opportunity for pre-selection comments from the Coalition on the consultant. The consultant selected shall have experience in hotel/conference center marketing and feasibility studies. The study shall be presented to the City Council at a regularly noticed public hearing. A copy of the study shall be provided to the Coalition as specified in the Settlement Agreement.

Upon completion of the Hotel Improvements, the Developer shall have the option to sell or lease Parcel L4 (or a portion thereof) to a hotel operator (the "Hotel Operator") and, at the Developer's election, to a separate operator or operators for the restaurant and/or conference center who shall thereafter own and/or operate and maintain the Parcel L4 improvements (or the applicable portion thereof) in accordance with this Agreement and the provision of the Hotel Operating Agreement (and the Restaurant Operating Agreement and/or Conference Center Operating Agreement, as applicable) to be entered into pursuant to Section 705 of this Agreement. The Developer may also Transfer Parcel L4 (or subdivided portions thereof and the improvements thereon) as otherwise permitted in this Agreement for Transfers of the Developer Parcels (including procurement of Agency approval where such approval is required under applicable provisions of this Agreement).

As further described below, uses in the Arcade Area shall be Category 1 Uses or Category 2 Uses. The Developer shall, for a time period ending no earlier than twelve (12) months from the date of completion of the retail building shell, use good faith and commercially reasonable efforts to lease the Arcade Area space to tenants occupying their space for Category 1 Uses ("Category 1 Tenants"). If at the expiration of this twelve (12) month period, the Developer has been unable to fully lease the available Arcade Area space to Category 1 Tenants, the Developer shall be free to pursue tenants and to lease any remaining unleased Arcade Area space to tenants occupying their space for Category 2 Uses.

Uses on the first level of the building on Parcel L4 along the frontage of Santa Clara Street shall be Category 2 Uses.

5. Parcel L5.

Parcel L5 is a parcel of space with a footprint of approximately 1.45 acres atop the podium deck of the L3 Public Garage. Parcel L5 will be a part of the vertical subdivision that will also include Parcels L3 and L4. Parcel L5 will be owned and operated by the City or the Agency.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L5, and shall design and construct on Parcel L5 a public paseo connecting the Bus Transfer Station to be developed on Parcel O with the Ferry Facility, together with surface parking spaces and related landscaping and amenities. The Parcel L5 improvements shall

be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall pay the costs of design and construction of the Parcel L5 improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The parties acknowledge that, in accordance with the Settlement Agreement, the City and the Agency shall delay installation of the planned northern row of parking along the pedestrian paseo within Parcel L5 until, in the City's determination, the conference center or other uses in "Zone Two" (as such zone is shown in Attachment No. 4-2) require such additional parking spaces. Notwithstanding such delay, the City or the Agency shall be responsible for the cost of installing such parking spaces, as required above. Notwithstanding the above, in the event a phased approach is adopted for the construction of the L3 Public Garage, the City may reconfigure the parking adjacent to the paseo, maintaining a minimum eighteen foot (18') pedestrian paseo, until the second phase of the L3 Public Garage construction is completed.

B. Parcel J

The J Developer Subparcels (Parcels J1 and J2) shall be conveyed by the Agency to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

Parcels J1 and J2 are parcels of approximately 2.7 acres and 4.1 acres, respectively. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcels J1 and J2 to the Developer (either concurrently or at separate times as determined by the Developer) for the Purchase Price(s) set forth in Section 201.5.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcels J1 and J~~2~~,2 and Civic Center Drive, and shall design and construct Civic Center Drive and a total of up to 286 residential units in two to four level buildings constructed on top of one story podium garage structures, half below and half above grade. The development of Parcel J will occur in two phases on the two J Developer Subparcels. The units will be stacked flat residential condominiums containing one, two, and three-bedrooms. The garage structures will provide off-street secure, resident parking for approximately 516 vehicles, as well as residential unit storage space, a utility room, stairwells, and elevator areas. The development will include extensive at-grade perimeter landscaping and private recreation and landscaping on the podium decks. Consistent with the Project Approvals, the development of Parcel J ~~may include~~1 includes approximately 25,000 square feet of ground floor ~~retail uses~~Category 1 Uses fronting on the Mare Island Way and Festival Green edges of the parcel.

Prior to the Developer's submittal of any Unit Plan application for Parcel J, the Developer and the City shall study the possibility of removing the intersection of Civic Center Drive and Georgia Street. The Agency shall cause the City to obtain an independent opinion from a qualified traffic engineer regarding whether the intersection's level of service (the "LOS") anticipated in the EIR for the Project can be maintained without the extension of Civic Center

Drive through Festival Green to Georgia Street. The Agency shall cause the City to provide notice to the Coalition of the process for the selection of the traffic engineer and provide for pre-selection comments from the Coalition on the traffic engineer proposed for selection. The Agency shall cause the City to conduct a pre-study meeting to solicit comments from interested parties, including the Coalition, regarding the scope of the study. The Developer shall fund the cost of this study. In the event it is determined that such LOS cannot be maintained, and Civic Center Drive is to be extended through Festival Green to Georgia Street, the traffic engineering study also shall include an analysis of possible measures (such as removable bollards) to prevent bisecting the public park on the Festival Green Parcel and the adjacent pedestrian area during non-peak traffic times.

The parties acknowledge that, as of the ~~date of this Agreement~~Action Dismissal Date, Parcel J contains certain veteran's memorial plaques. The Developer shall coordinate with the Agency regarding the relocation of such plaques.

Notwithstanding the Schedule of Performance, the Developer, at the Agency's discretion, may acquire and develop Parcel J prior to completion of the L3 Public Garage, provided alternative parking for ferry users shall be provided for during construction of the L3 Public Garage.

C. Public Facilities and Improvements

The following City/Agency Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Parcel O (Bus Transfer Center).

Parcel O is an approximately 0.9-acre parcel. Parcel O will be owned and operated by the City or the Agency as part of Vallejo Station.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, a new Bus Transfer Center on Parcel O in accordance with the Project Approvals and designs approved by the City. The new Bus Transfer Center will include up to 12 bus bays, covered passenger waiting areas, seating, lighting, landscaping, and a 10,000 square foot transit office (including a ticket/pass office, a public information booth, and facilities for bus drivers). The Agency shall fund and perform any required site preparation and site remediation in connection with development of the new Bus Transfer Center. Also in connection with development of the new Bus Transfer Center, the Agency shall fund and cause reconfiguration of parking on nearby existing City Parking Lots F and G. The Agency shall pay the costs of design, site preparation/remediation, and construction of the new Bus Transfer Center improvements and related reconfigured public parking improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in the Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

2. Other Transit-Related Improvements.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following additional transit-related public improvements related to the Vallejo Station development (the "Other Transit-Related Improvements"):

a. Improvements to and expansion of the regional bus stops on Mare Island Way adjacent to the Ferry Facility; and

b. Improvement to and expansion of the existing pick-up/drop-off ("Kiss-and-Ride") area in the Kiss and Ride Parcel.

The Other Transit-Related Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation and site remediation in connection with provision of the Other Transit-Related Improvements. The Agency shall pay the costs of design, site preparation/remediation, and construction of the Other Transit Related Improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

3. Public Streets.

Through the Second Restatement of this Agreement, the parties acknowledge and agree that: (a) Capitol Street between Mare Island Way and Civic Center Drive has been fully improved pursuant to a separate disposition and development agreement (the "Parcel K DDA") between the Agency and CPC, one of the principals of the Developer; and (b) the Developer has completed all of its obligations toward the improvements on the Georgia Street Parcel and the Georgia Street Dedication Parcel in accordance with the intended scope of development for such improvements, and all aspects of the Georgia Street extension improvements have been satisfactorily completed.

Except as otherwise provided below, the Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of, and shall design and construct, the following public street improvements (the "Central Waterfront Public Street Improvements"):

a. Modifications to Mare Island Way to complete the landscaped median and other sidewalk and crosswalk improvements (as part of the Vallejo Station development);

b. Reconfiguration of Maine Street between its intersection with Mare Island Way and Santa Clara Street from four travel lanes to three travel lanes, and extension of the northerly curb line approximately six feet to the south (as part of the Vallejo Station development); and

c. Extension of Capitol Street between Santa Clara Street and its current terminus at Civic Center Drive, including provision of on-street parallel parking (the "Capitol Street Second Segment").

The Central Waterfront Public Street Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Street Improvements. The Agency shall pay the costs of design, site preparation/remediation, and construction of the Central Waterfront Public Street Improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

Notwithstanding the foregoing, the Developer shall be responsible for the design and construction of the Capitol Street Second Segment in accordance with design plans and specifications to be prepared by the Developer and approved by the City. The construction of the Capitol Street Second Segment shall be subject to all bidding requirements and prevailing wage requirements applicable to such improvements. The Agency and/or the City shall be responsible for all costs directly associated with the design and construction of the Capitol Street Second Segment. The Agency shall use best efforts to obtain and make available all funding to pay for the Capitol Street Second Segment within a timeframe that will enable the Capitol Street Second Segment to be constructed by the date set forth in the Schedule of Performance (Attachment No. 3). Section III.D of the Method of Financing (Attachment No. 6) sets forth a process to be implemented by the parties in the event the Agency reasonably determines that it will not have sufficient Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing) available within the necessary timeframe to complete construction of the City Hall Garage Required Elements (which include the Capitol Street Second Segment) by the date set forth in the Schedule of Performance. In no event shall the Developer be obligated to commence design and construction of the Capitol Street Second Segment until the Agency reasonably demonstrates the availability of sufficient Agency MOF Funds to pay all costs directly associated with such design and construction.

4. Public Parks and Open Spaces.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of, and shall design and construct public park and open space improvements and amenities on, the following publicly-owned parcels in the Central Waterfront Area (the "Central Waterfront Public Parks and Open Space Improvements"):

a. The approximately 4.2-acre Existing Service Club Park Parcel;

b. The approximately 0.8-acre Existing Georgia Street Mitigation Parcel;

c. The approximately 1.8-acre Future Expansion Parcel;

d. The approximately 1.4-acre Independence Park Expansion Parcel;

e. The approximately 1.3-acre Existing Independence Park Parcel;

f. The approximately 2.3-acre State Farm Mitigation Independence Park Parcel;

g. The Ferry Facility Parcel;

h. The Kiss and Ride Parcel;

i. The approximately 0.6-acre Unity Plaza Parcel;

j. The approximately 0.9-acre Festival Green Parcel; and

k. The approximately 0.7-acre Capitol Street Open Space Parcel.

The Central Waterfront Public Parks and Open Space Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Parks and Open Space Improvements. Also as part of the Central Waterfront Public Parks and Open Space Improvements, the Agency shall acquire the Wharf lease (within the Existing Service Club Park Parcel) and the Dentist Office lease (within the Independence Park Expansion Parcel), and shall design and construct public park and open space improvements on the parcels formerly encumbered by the Wharf lease and Dentist Office lease. The Agency shall pay the costs of design, site preparation/remediation, lease acquisition, and construction of the Central Waterfront Public Parks and Open Space Improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6) shall be responsible for the ongoing operation and maintenance of the Central Waterfront Public Park and Open Space Improvements.

5. City Hall Garage.

In accordance with the Schedule of Performance (Attachment No. 3), the Agency shall obtain all necessary Project Approvals for the development of, and shall design and construct, a public parking structure (the "City Hall Garage") on the City Hall Parking Lot Parcel. The City Hall Garage shall be constructed in two phases as follows:

a. The "Phase I Element" will consist of approximately 400 parking spaces within two parking levels, one level below the grade of Santa Clara Street and one level at the grade of Santa Clara Street. The Phase I Element of the City Hall Garage will replace City Hall parking lost as a result of private development of Parcel J in the manner provided in Section III.B above.

b. The "Phase II Element" will consist of approximately 200 parking spaces within a third level to be constructed approximately 12 feet above the grade of Santa Clara

Street. The Phase II Element of the City Hall Garage will serve parking demand for the Bay Link ferry service if and when a fourth ferry is placed in service.

The City Hall Parking Garage shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall perform any required site preparation and site remediation in connection with construction of the City Hall Parking Garage. The Agency shall pay the costs of design, site preparation/ remediation, and construction of the City Hall Garage in the manner set forth in the Section III. of the Method of Financing (Attachment No. 6).

IV. SOUTHERN WATERFRONT

Public and private redevelopment of the Southern Waterfront Area under this Agreement will be undertaken to remediate and redevelop a formerly blighted and obsolete industrial waterfront area for modern reuse, including significant public waterfront access. Redevelopment of the Southern Waterfront Area will also provide a relocation opportunity to move the Post Office facility from Parcel L, thereby freeing the land necessary for the Vallejo Station development in the Central Waterfront Area, as described in Section III above.

Section IV.A below sets forth the responsibilities and actions of the parties to prepare the Southern Waterfront Area for redevelopment under this Agreement. Section IV.B below outlines the scope of development for the Developer Parcels within the Southern Waterfront Area, while Section IV.C addresses the scope of development for the public parcels and improvements in the Southern Waterfront Area. Section IV.D below sets forth the Developer's independent obligation to perform the tasks and responsibilities assigned to the Developer under this Agreement with respect to the Southern Waterfront Area.

A. Preparatory Work

1. Purpose.

This Section IV.A outlines the proposed roles, responsibilities, and actions of the Agency and the Developer to prepare the Southern Waterfront Area to enable the contemplated private and public redevelopment of the Southern Waterfront Area consistent with the terms of this Agreement, including the scope of development set forth in Sections IV.B and IV.C below. As used in this Part IV, the Southern Waterfront Area consists of the parcels and public streets shown in Attachment No. 1C, including Parcel S, Parcel T, the S-Open Space Parcel, the T-Open Space parcel, the Boat Launch Parcel, Marin Street Extension, Solano Avenue Extension, and Kaiser Place.

Preparatory actions to enable development of the Southern Waterfront Area consist generally of the following (collectively, the "Southern Waterfront Preparatory Work"):

a. Remediation of identified currently existing hazardous materials contamination in, on, under or emanating from the Southern Waterfront Area (the "Southern Waterfront Remediation Work," as more fully described below); and

b. Actions to enable development of the Southern Waterfront Area consistent with applicable requirements of the SLC and BCDC (the "Southern Waterfront Regulatory Approvals Work," as more fully described below).

Additional pre-development steps to enable commencement of construction of the U.S. Postal Service Relocation Facility on Parcel T2 are described in Section 201.2, which addresses the relocation of the current U.S. Postal Service facility from its premises in Parcel L, so that development of the Vallejo Station project may commence on Parcel L in a timely manner.

2. Background.

The parties' agreement with respect to the performance and funding of the Southern Waterfront Preparatory Work is based, in part, on the following facts, purposes and intentions:

a. An area consisting of approximately the northern two-thirds of the Southern Waterfront Area (the "Contaminated Area") is characterized by soil gas, soil, and groundwater contamination conditions resulting from former uses of the Contaminated Area involving manufactured gas plant wastes, sand blast wastes, and fuel underground storage tanks. Although these contamination conditions do not pose immediate threat to public health or the environment, they require specified remediation to address regulatory concerns, and to enable private and public redevelopment as envisioned in this Agreement. These contamination conditions have been extensively identified and characterized, and are summarized in the RDEIR (see pages 3.9-10 through 3.9-13).

b. The area within the balance of the Southern Waterfront Area (approximately the southern one-third of the Southern Waterfront Area, or about 14 acres, and including all of Parcel T2) is not considered by the parties to be impacted by contaminants, and, subject to regulatory agency concurrence, can be made immediately available for redevelopment consistent with this Agreement, including construction of the Post Office Relocation Facility (the "Non-Contaminated Area").

c. The Regional Water Quality Control Water Board (the "Water Board") is the lead regulatory agency providing oversight for remediation of the Southern Waterfront Area, and has been actively involved with the City and the Agency for nearly a decade in the characterization of contamination conditions and the development of remediation work plans.

d. The City and the Agency are in advanced stages of settlement discussions with a former owner of the Southern Waterfront Area, the Pacific Gas & Electric Company ("PG&E"), intended to lead to a settlement of claims regarding the contamination conditions within the Southern Waterfront Area that would, among other matters, include

settlement payments by PG&E to the City/Agency (the "Southern Waterfront Contamination Settlement Payments"). To further advance such settlement discussions, it is necessary that certain additional testing, remediation work plan scope refinements, and remediation budget estimating work be completed as soon as possible.

e. The City, the Agency and the SLC need to determine and agree upon the extent of public trust lands within the Southern Waterfront Area, and to memorialize such determination and agreement in a settlement and exchange agreement as contemplated by 2003 Senate Bill 296 (the "Southern Waterfront Area Exchange Agreement"), so that Parcels S and T may be developed free of any public trust restrictions.

f. The City and the Agency need to work with BCDC to cause BCDC to process and approve an amendment to the BCDC Bay Plan (a "BCDC Bay Plan Amendment"), and any permit amendments (the "BCDC Permit Amendments") necessary to enable the contemplated private and public development of the shoreline portions of the Southern Waterfront Area.

3. Overview of Roles and Actions.

The Southern Waterfront Preparatory Work shall be performed generally as follows:

a. The Agency, on behalf of itself and the City, shall be contractually responsible for completion of the Southern Waterfront Remediation Work in order to cause remediation of existing contaminants within the Southern Waterfront Area in a manner that is consistent with all regulatory requirements and that will enable the contemplated private and public redevelopment of the Southern Waterfront Area in accordance with this Agreement. The Southern Waterfront Remediation Work includes the following major components:

(1) Regulatory confirmation that the Non-Contaminated Area can be redeveloped without further investigation or remediation, as further described in Section IV.A.4 below;

(2) Completion of all pre-remediation tasks for the Contaminated Area, as further described in Section IV.A.5 below;

(3) Completion of actual physical remediation of the Contaminated Area and procurement of the appropriate closure document from the Water Board, as further described in Section IV.A.6 below (the "Physical Remediation Tasks"); and

(4) Conduct of any post-remediation monitoring required by the Water Board, as further described in Section IV.A.7 below.

To perform the tasks described in paragraphs (1) and (2) above in a timely and cost effective manner (and to assist in overseeing the Physical Remediation Tasks described in paragraph (3) above), the Agency shall engage the services of qualified professionals (collectively, the "Southern Waterfront Remediation Consultants"), including an environmental

consultant, an environmental attorney, and a project coordinator/manager (who may be the environmental consultant or attorney serving an additional project coordination/management function). The Agency shall reasonably confer with the Developer regarding the selection and engagement of the Southern Waterfront Remediation Consultants.

b. The Agency shall also be contractually responsible for completion of the Southern Waterfront Regulatory Approvals Work so that Parcels S and T can be developed for private uses in the manner contemplated by this Agreement, as further described in Section IV.A.8 below. To perform these tasks, the Agency shall engage the services of qualified professionals to provide legal, engineering, appraisal, and other technical services (the "Southern Waterfront Regulatory Consultants"). The Agency shall reasonably confer with the Developer regarding the selection and engagement of any Southern Waterfront Regulatory Consultants.

c. The Developer shall cooperate with the Agency in the Agency's performance of the Southern Waterfront Preparatory Work. The Agency shall regularly consult with the Developer regarding the performance of the Southern Waterfront Preparatory Work, and shall consider in good faith the Developer's input regarding all such work.

d. By mutually acceptable Operating Memorandum entered into in accordance with Section 709, the parties may designate the Developer to serve as the Agency's project manager for various components of the Southern Waterfront Preparatory Work, including without limitation, as project manager to oversee performance of the Physical Remediation Tasks described in Section IV.A.6 below; provided, however, that in no event shall the Developer be deemed the "waste generator" in connection with the Southern Waterfront Remediation Work. Among other matters, any such mutually acceptable Operating Memorandum shall set forth the scope and timing of the Developer's project management duties and responsibilities, and the amount, method and timing of compensation to be paid to the Developer for the designated project management services.

e. The Agency, in cooperation with the Developer, shall use diligent good faith efforts to cause completion of the Southern Waterfront Preparatory Work within the timeframe set forth in the Schedule of Performance (Attachment No. 3). In any event, the Agency must complete the Southern Waterfront Remediation Work and the Southern Waterfront Regulatory Approvals Work prior to and as a condition of the conveyance of various portions of Parcels S and T by the Agency to the Developer.

f. The various actions to complete the Southern Waterfront Preparatory Work shall be funded in the manner described in Section IV.A.9 below.

4. Regulatory Clearance For Non-Contaminated Area.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall complete the tasks necessary to obtain regulatory clearance for the Non-Contaminated Area, including the following primary tasks:

a. Preparation of all final testing and documentation to be submitted to the Water Board to confirm that the Non-Contaminated Area can be cleared for development without further investigation or remediation.

b. Procurement of the necessary Water Board clearance of the Non-Contaminated Area for intended redevelopment.

5. Pre-Remediation Actions For Contaminated Area.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall complete the tasks necessary to prepare for commencement of the Physical Remediation Tasks for the Contaminated Area, including the following primary pre-remediation tasks:

a. Preparation of tests, work plans, cost estimates, and other documentation necessary to achieve the various pre-remediation tasks for the Contaminated Area set forth below in this Section IV.A.5.

b. Completion of a satisfactory settlement agreement with PG&E, including:

(1) Performance of required additional testing related to possible contamination in a designated near-shore area adjacent to the Southern Waterfront Area to further inform the settlement discussions;

(2) preparation of a refined work scope for remediation of the Contaminated Area to be used to obtain remediation cost estimates necessary to enable the parties to complete the settlement and determine the amount of the Southern Waterfront Contamination Settlement Payments (the "Settlement Budget Work Scope"), and procurement of informal Water Board approval of the Settlement Budget Work Scope for this use;

(3) Procurement at the Agency's cost of one bid, and procurement at PG&E's cost of a second bid, from remediation contractors acceptable to the Agency and PG&E, for performance of the Physical Remediation Tasks, based on the Settlement Budget Work Scope; and

(4) Using the cost information obtained from the above tasks, final negotiation, approval and execution of the settlement agreement with PG&E.

c. Completion of testing necessary to characterize and prepare work plans for remediation of peripheral portions of the Contaminated Area that are outside the scope of the PG&E settlement agreement and the Southern Waterfront Contamination Settlement Payments.

d. Preparation, submittal, and procurement of approval from the Water Board of a remedial action plan, remedial design and implementation plan, risk assessment, health and safety plan, and/or other plans necessary to document the work program

to complete remediation of the Contaminated Area (collectively, the "RAP"), including satisfaction of remediation standards for portions of the Southern Waterfront Area to be used for public parks and open space. In connection with the processing of the RAP, the Agency shall procure the written acknowledgement from the Water Board authorized by Health and Safety Code Section 333459.3(b), as the first step in obtaining the Polanco Act Immunity (as defined and described in Section 215.2). If the Developer reasonably determines that implementation of the approved RAP will not enable private and public development at commercially reasonable cost of the portions of the Southern Waterfront Area within the Contaminated Area as contemplated by this Agreement, or that the Polanco Act Immunity will not be available following remediation, then the Developer may terminate this Agreement with respect to the portions of the Southern Waterfront Area within the Contaminated Area (a "Developer Southern Waterfront Termination Event") in accordance with Section 510.

e. Solicitation, selection and engagement of a qualified remediation contractor (the "Southern Waterfront Remediation Contractor") to perform the Physical Remediation Tasks necessary to implement the RAP and obtain the appropriate closure document from the Water Board. Notice to proceed under the Southern Waterfront Remediation Contract may be conditioned on procurement of all necessary funding by the Agency. The Agency shall submit the proposed remediation contract with the Southern Waterfront Remediation Contractor (the "Southern Waterfront Remediation Contract") to the Developer for the Developer's input.

f. Procurement from an acceptable insurance provider of a 10-year pollution limited liability insurance policy for the Contaminated Area (the "Southern Waterfront Pollution Risk Insurance"), naming the Agency and the Developer as primary insureds and in a form reasonably acceptable to both the Agency and the Developer. Procurement of the Pollution Risk Insurance may be conditioned upon giving of the notice to proceed under the Southern Waterfront Remediation Contract. In addition, the parties may mutually agree to investigate procurement of a commitment for a cost cap insurance policy (with an economically feasible self-insured retention/deductible) in connection with the Southern Waterfront Remediation Contract. Any agreement between the Agency and the Developer with respect to the procurement and payment of the premium for such a cost cap insurance policy may be set forth in a mutually acceptable Operating Memorandum.

g. Based on the foregoing actions, preparation of a remediation cost budget for completing the Physical Remediation Tasks (as further described in Section IV.A.6 below) with respect to the Contaminated Area (the "Physical Remediation Tasks Budget"). The Physical Remediation Tasks Budget shall be memorialized, and may be amended from time to time, through execution of Operating Memoranda in accordance with Section 709. The Physical Remediation Tasks Budget in effect from time to time shall guide the expenditure of funds by the Agency in connection with procurement of the Southern Waterfront Pollution Risk Insurance, performance of the Southern Waterfront Remediation Contract, continuing services of the Southern Waterfront Remediation Consultants, payment of Water Board and other regulatory agency costs, and payment of other costs related to completion of the Physical Remediation Tasks.

6. Remediation of Contaminated Area; Performance of Physical Remediation Tasks.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall cause completion of the Physical Remediation Tasks for the Contaminated Area, including the following primary tasks:

a. Supervision and oversight of performance and satisfactory completion by the Southern Waterfront Remediation Contractor of the Southern Waterfront Remediation Contract, including making all payments required pursuant to such contract.

b. Procurement of the necessary closure document from the Water Board indicating that:

(1) The Physical Remediation Tasks have been completed in accordance with the RAP;

(2) No further remediation work for the Contaminated Area is required in connection with the contamination conditions covered by the RAP;

(3) The Contaminated Area may be used and developed in the manner contemplated by this Agreement (subject only to use restrictions and monitoring requirements acceptable to the Agency and the Developer); and

(4) The Polanco Act Immunity is granted, as authorized by Health and Safety Code Section 333459.3(c).

7. Post-Remediation Monitoring.

In procuring the necessary Water Board closure document as described in Section IV.A.6.b above, the Agency shall seek to arrange that any required post-remediation monitoring functions will be conducted on the portions of the Southern Waterfront Area to remain in public ownership and control and not within Parcels S and T. If any post-remediation monitoring is required to occur on Parcels S and/or T, the Agency shall work with the Water Board and the Developer to arrange for such monitoring to occur on portions of Parcels S and/or T that do not impair the intended private development and use of Parcels S and T. The Agency shall be responsible for the timely and satisfactory conduct of any post-remediation monitoring required by the Water Board; provided, however, that if it is necessary for any such monitoring to occur on Parcels S and/or T, the parties shall agree by Operating Memorandum for the Agency to have necessary access rights to come onto Parcels S and/or T, as applicable, to perform such monitoring, or for the Developer or its successors to perform such monitoring on the Agency's behalf and at the Agency's expense.

8. Performance of Regulatory Approvals Work.

With the assistance and guidance of the Southern Waterfront Regulatory Consultants, and in consultation with the Developer, the Agency shall cause procurement of all

agreements, approvals and permits or permit amendments from the SLC and BCDC necessary to enable private and public development of the Southern Waterfront Area in the manner contemplated by this Agreement, and to that end shall perform the following primary tasks:

a. Procurement of an executed and fully effective Southern Waterfront Area Exchange Agreement that, among other matters, establishes the legal boundaries of Parcels S and T that will be confirmed by the Southern Waterfront Area Exchange Agreement to be free of the tidelands public trust and the jurisdiction of the SLC, as well as the legal boundaries of the portions of the Southern Waterfront Area that will be subject to the tidelands public trust. Primary subtasks to obtain the Southern Waterfront Area Exchange Agreement, with a target completion date of June 2006, include the following:

(1) Preliminary actions to provide information and analysis from which to negotiate the terms of the proposed Southern Waterfront Area Exchange Agreement, including procurement of an appraisal of the "as is" value of the Southern Waterfront Area (based on appraisal instructions to be reviewed with SLC staff), consideration of remediation cost estimates established through the tasks described in Section IV.A.5 above to assist in determining the post-remediation value of lands within the Southern Waterfront Area proposed to be made part of the public trust, various title analyses pertaining to the extent of potential State interests in the Southern Waterfront Area (including a preliminary "work up" of potential State claims and an assessment of historical maps, court cases, and legal authority), and a meeting with SLC representatives to walk the site, and discuss development plans, proposed exchange parcels, and appraisal instructions.

(2) Negotiation of the proposed terms of the Southern Waterfront Area Exchange Agreement with SLC staff and general counsel, and preparation of the legal descriptions and plats of the final negotiated trust configuration (including the legal boundaries of Parcels S and T that will be free of the tidelands public trust); and

(3) Procurement of approval by the City Council and the SLC of the Southern Waterfront Area Exchange Agreement, and execution of the agreement.

b. Procurement of a BCDC Bay Plan Amendment to remove the "Water-Related Industry Priority Use Area" designation from the Southern Waterfront Area, and procurement of any necessary BCDC Permit Amendments to existing BCDC permits to reflect the proposed park and open space improvements to the portions of the Southern Waterfront Area that is within BCDC jurisdiction (together, the "BCDC Southern Waterfront Area Approvals"). Primary subtasks to obtain the BCDC Southern Waterfront Area Approvals, with a target completion date of ~~June 2006,~~ September 2007, include the following:

(1) Determination of whether the BCDC Bay Plan Amendment should cover land in addition to the Southern Waterfront Area (e.g., the adjacent Kiewit site);

(2) Determination of any additional BCDC information requirements and preparation of the application for the BCDC Bay Plan Amendment;

(3) Procurement of BCDC staff approval of adequacy of the application;

(4) Procurement of City Council authorization to submit the BCDC Bay Plan Amendment application, and submission of the application;

(5) Procurement of BCDC approval of the BCDC Bay Plan Amendment to remove the "Water-Related Industry Priority Use Area" designation from the Southern Waterfront Area.

(6) Determination of any necessary BCDC Permit Amendments based on review of proposed improvements within the portion of the Southern Waterfront Area that is within BCDC jurisdiction;

(7) Preparation and submission of any necessary BCDC Permit Amendments;

(8) Procurement of BCDC approval of any necessary BCDC Permit Amendments.

The parties acknowledge that, as of the Action Dismissal Date, the necessary BCDC Bay Plan Amendment has been obtained.

9. Funding of Southern Waterfront Preparatory Work.

As used below, the term "Southern Waterfront Soft Cost Work" means performance of the Southern Waterfront Preparatory Work described in Section IV.A.4 (Regulatory Clearance for Non-Contaminated Area), Section IV.A.5 (Pre-Remediation Actions For Contaminated Area), and Section IV.A.8 (Regulatory Approvals Work).

a. Overview of Funding. Funding of up to FIVE HUNDRED THOUSAND DOLLARS ($500,000) of the Southern Waterfront Soft Cost Work shall be provided through use of the Additional Deposit to be provided by the Developer pursuant to Section 108.2 of this Agreement. The budget for use of the Additional Deposit to fund specific Southern Waterfront Soft Cost Work shall be set forth in one or more Operating Memoranda to be prepared and executed by the parties in accordance with Section 709. The Operating Memorandum for the initial Two Hundred Thousand Dollar ($200,000) portion of the Additional Deposit shall be prepared and executed within thirty (30) days after the Action Dismissal Date. The Additional Deposit shall be spent solely in accordance with the budget and terms set forth in an executed Operating Memorandum. The balance of the funding for the Southern Waterfront Soft Cost Work shall be provided by the parties in accordance with the terms of the Southern Waterfront Soft Cost Work Operating Memorandum, as further described in subsection b. below. The Physical Remediation Tasks shall be funded in accordance with the terms set forth in subsection c. below.

b. Southern Waterfront Soft Cost Work Operating Memorandum. Within ninety (90) days after the ~~Required Approvals Effective~~Action Dismissal Date, the parties

shall negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Southern Waterfront Soft Cost Work Operating Memorandum") establishing a budget and a mutually acceptable allocation of costs for completion of the Southern Waterfront Soft Cost Work (in excess of the costs to be covered by the Additional Deposit Amount as provided in Section 108.2 of the main text of this Agreement and subsection a. above), based on the following funding principles:

(1) Funds from PG&E and any other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) available to pay costs of the Southern Waterfront Soft Cost Work shall be used to the maximum extent they are available and eligible for such use; and

(2) To the extent the Developer agrees to advance funds to pay for Southern Waterfront Soft Cost Work within the scope and amount of the budget set forth in the Southern Waterfront Soft Cost Work Operating Memorandum or any amendment thereto (the "Developer's Additional Soft Cost Advance"), the Developer shall be entitled to a credit against the Purchase Price payable by the Developer for Developer Parcels S and T, with such credit applied to each closing for portions of Developer Parcels S and T in chronological order until the credit is fully used.

By mutually agreed Operating Memoranda entered into from time to time, the parties may modify the Southern Waterfront Soft Cost budget and other terms of the Southern Waterfront Soft Cost Work Operating Memorandum. If the parties enter into a Southern Waterfront Soft Cost Work Operating Memorandum, the Agency shall thereafter pay the costs of the Southern Waterfront Soft Cost Work in accordance with the budget and other terms of the Southern Waterfront Soft Cost Work Operating Memorandum and any executed amendments thereto.

If the parties are unable to agree upon a Southern Waterfront Soft Cost Work Operating Memorandum within the negotiating period set forth above, then either party may submit the matter to arbitration in accordance with the provisions of Section 706 to determine the binding terms by which the Southern Waterfront Soft Cost Work will be funded in accordance with the funding principles set forth above. The determination of the arbitrator regarding the terms for funding the Southern Waterfront Soft Cost Work shall be set forth in an Operating Memorandum that the parties will execute and that will thereafter control the payment of costs for the Southern Waterfront Soft Cost Work.

c. Physical Remediation Tasks. Subject to the further provisions of this subsection, the Agency shall be solely responsible for the ultimate payment of all costs of the Physical Remediation Tasks. To meet this funding obligation, the Agency shall apply the Southern Waterfront Contamination Settlement Payments and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) available for such purpose.

Notwithstanding the funding obligation set forth above in this subsection, if the Agency reasonably determines that, at the time the Agency is otherwise required to commence performance and funding of the Physical Remediation Tasks, it will not

yet have available sufficient funds to pay the full costs of the Physical Remediation Tasks as set forth in the Physical Remediation Tasks Budget prepared pursuant to Section ~~H~~IV.A.5.g above, the Agency shall so notify the Developer. The parties shall then negotiate in good faith for a period of sixty (60) days (or longer as they may mutually agree) to seek to agree upon the terms of an Operating Memorandum whereby the Developer would agree to advance a specified portion of the costs of the Physical Remediation Tasks and the Agency would agree to repay the Developer for such advance at a specified time and on specified terms (a "Southern Waterfront Physical Remediation Payments Operating Memorandum").

If the parties execute a Southern Waterfront Physical Remediation Payments Operating Memorandum in accordance with Section 709, then the terms of such Southern Waterfront Physical Remediation Payments Operating Memorandum shall control the parties' obligations with respect to the portion of the costs of the Physical Remediation Tasks to be advanced by the Developer (subject to Agency repayment), and the Agency shall remain responsible for initial payment of all remaining portions of the cost of the Physical Remediation Tasks.

If the parties are unable to agree upon a Southern Waterfront Physical Remediation Payments Operating Memorandum within the negotiating period set forth above, then commencement of the Physical Remediation Tasks shall be postponed until the earliest date upon which the Agency reasonably has available sufficient Southern Waterfront Contamination Settlement Payments and other Agency MOF Funds in accordance with the requirements of the Method of Financing (Attachment No. 6) to pay the costs of the Physical Remediation Tasks.

d. Treatment of Developer Soft Cost Contribution. As used below, the term "Developer Soft Cost Contribution" means the sum of the Additional Deposit made pursuant to Section 108.2 and any interest earned thereon (but only to the extent used by the Agency to pay costs of the Southern Waterfront Soft Cost Work), plus the Developer's Additional Soft Cost Advance, if any, as described in subsection b. above.

In the event of a Developer Southern Waterfront Termination (as described in Section IV.A.5.d above), the Agency shall repay to the Developer the Developer Soft Cost Contribution as follows:

(1) First, by crediting the amount of the Developer Soft Cost Contribution against the Purchase Price(s) payable by the Developer for succeeding Developer Parcels under this Agreement;

(2) Second, if the Developer Soft Cost Contribution is not fully repaid through the method described in subsection a. above, by repaying the Developer with the next available Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)); and

(3) Third, if the Developer Soft Cost Contribution is not fully repaid through the methods described in paragraphs (1) and (2) above, by repaying the Developer

from the land sale proceeds received by the Agency from a subsequent sale of any portion of the Southern Waterfront Area to an entity other than the Developer.

B. Developer Parcels

The following Developer Parcels within the Southern Waterfront Area shall be conveyed by the Agency to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

1. Parcel S.

Parcel S is an approximately 2.6-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel S to the Developer for the Purchase Price set forth in Section 201.7.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel S, and shall design and construct a two-story commercial/office structure containing up to 46,000 square feet on Parcel S in accordance with the Project Approvals. As part of the improvement of Parcel S, the Developer shall reconfigure the existing parking lot to separate the newly reconfigured parking lot on Parcel S from the parking lot to remain on the adjacent Boat Launch Parcel.

Pursuant to a public trust easement or other occupancy arrangement to be agreed upon and set forth in an Operating Memorandum among the parties and the City in accordance with Section 709, easement/occupancy rights over applicable portions of Parcel S shall be granted to the users of the Boat Launch Parcel to provide access to the Boat Launch Parcel (at all times that the Boat Launch Parcel is open to the public) and to provide parking within the Parcel S parking lot (on weekends when the Boat Launch Parcel is open to the public).

2. Parcel T1.

Parcel T1 is an approximately 14.9-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T1 to the Developer for the Purchase Price set forth in Section 201.8. At the Developer's election, Parcel T1 may be divided into up to three subparcels (for each of the three separate residential buildings described below) and conveyed separately to the Developer at separate times.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T1, and shall design and construct three condominium buildings containing up to a total of 650 units on Parcel T1 in accordance with the Project Approvals. The buildings will contain three and four-story condominium flats over one and two-levels of parking (where the garage will be two-levels, the lower level will be below grade, and the upper level will be partially below grade).

Promptly following the Action Dismissal Date, the parties shall cooperate in good faith to consider alternative programs for a meaningful affordable housing component related to the development of Parcel T1, providing for up to 9% of the residential units related to the Parcel T1 development being made available at affordable housing cost to moderate income households. Such alternatives may include the strategic use of funds deposited in the Agency's Low and Moderate Income Housing Fund, tax-exempt multifamily residential rental municipal bond proceeds, state and federal low income housing tax credit syndication funds, and funds from other state and federal affordable housing programs. Notwithstanding the foregoing, the affordable housing component shall be designed in a manner that will allow the Developer to achieve a financial return on Developer investment for Parcel T1 equal to what would otherwise be yielded if Parcel T1 were not to include an affordable housing component.

Within six (6) months after the Action Dismissal Date, the parties shall prepare and present to the Agency and the City Council a preliminary analysis of affordable housing alternatives related to the development of Parcel T1. The preliminary analysis shall include consideration of issues related to funding opportunities, site locations, potential joint ventures with non-profit affordable housing developers, and site constraints.

Within six (6) months prior to the submittal of a Unit Plan application for Parcel T1, the parties shall prepare and present a specific program that meets the criteria of this Section IV.B.2 for consideration by the Agency and the City Council. Upon Agency and City Council approval of a mutually acceptable specific program, the parties shall prepare any amendments to this Agreement and the Project Approvals (together with any necessary supporting CEQA documentation) to implement the mutually acceptable affordable housing component related to the development of Parcel T1 (or a mutually acceptable off-Site location).

The City and Agency shall bear the costs of their in-house staff and their legal counsel in connection with the above-described evaluation and design of an affordable housing component related to the development of Parcel T1. The Developer shall bear the costs of its in-house staff and its legal counsel, and shall advance the costs of any mutually agreed affordable housing consultants and other consultants, in connection with the above-described evaluation and design of an affordable housing component related to the development of Parcel T1, and the costs described in this sentence shall constitute General and Administration Costs within the meaning of Section 201.2(a)(26) or Third Party Costs within the meaning of Section 201.2(a)(26), as applicable.

3. Parcel T2.

Parcel T2 is an approximately 5.1-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T2 to the Developer for the Purchase Price set forth in Section 201.8.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T2, and shall design and construct the Post Office Relocation Facility on Parcel T2 in

accordance with the Project Approvals. The Post Office Relocation Facility may contain up to 45,000 square feet of building space and associated parking and loading facilities.

4. Parcel T3.

Parcel T3 is an approximately 3.6-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T3 to the Developer for the Purchase Price set forth in Section 201.8.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T3, and shall design and construct up to 76,000 square feet of flex office/light industrial space in one and two-story buildings, together with associated parking and loading facilities, on Parcel T3 in accordance with the Project Approvals.

C. Public Facilities and Improvements

The following City/Agency Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Public Streets.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following public street improvements (the "Southern Waterfront Public Street Improvements"):

a. Extension of Marin Street within an approximately 2.3-acre right-of-way parcel;

b. Extension of Solano Avenue within an approximately 1.2-acre right-of-way parcel;

c. Construction of Kaiser Place within an approximately 1.1-acre right-of-way parcel; and

d. Improvements to existing Curtola Parkway and Sonoma Boulevard adjacent to Parcels S and T.

2. S-Open Space and T-Open Space Parcels.

The S-Open Space Parcel and the T-Open Space Parcel (together, the "Southern Waterfront Public Open Space Parcels") together comprise an approximately 8.2-acre area to be owned by the City to serve as a public park and open space area for the Southern Waterfront Area. The Developer, at its cost (subject to the limitation set forth below) and in accordance with the Schedule of Performance (Attachment No. 3), shall construct public park and open space improvements on the Southern Waterfront Public Open Space Parcels (the

"Southern Waterfront Public Park and Open Space Improvements") in accordance with the Project Approvals, and in accordance with a design for such park and related open spaces to be developed as follows:

a. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency and the City shall conduct a public participation process, and from such public participation process shall prepare a conceptual design (the "Conceptual Design") for the Southern Waterfront Public Park and Open Space Improvements. At the time it completes the Conceptual Design, the Agency and the City, in cooperation with the Developer, shall also prepare an estimated budget for performance of the design tasks described in this subsection a. and subsection b. below, and for actual construction of the Southern Waterfront Public Park and Open Space Improvements in accordance with such Conceptual Design (the "Preliminary Budget").

b. Based on the Conceptual Design, the Developer shall prepare, for approval by the Agency and the City, detailed plans and specifications (the "Detailed Plans") and a detailed cost estimate (the "Construction Cost Estimate"), including a reasonable construction contingency, for the construction of the Southern Waterfront Public Park and Open Space Improvements.

c. The Agency and the City shall approve the Detailed Plans if they are materially consistent with the Concept Design and if the construction cost set forth in the Construction Cost Estimate, together with the costs incurred for performance of the tasks described in subsections a. and b. above (collectively, the "Design/Construction Costs"), do not exceed the total amount set forth in the Preliminary Budget. If the Detailed Plans are materially consistent with the Concept Design, but the Design/Construction Costs exceed the total amount set forth in the Preliminary Budget, the Agency and the City, in consultation with the Developer, shall either approve the Detailed Plans notwithstanding such excess cost, or specify modifications to the Detailed Plans (the "Modified Detailed Plans") that will enable the Design/Construction Costs to be within the total amount of the Preliminary Budget, or such other total amount as is then acceptable to the Agency and the City, in consultation with the Developer.

If the parties are unable to agree upon the form of mutually acceptable Design Plans or Modified Design Plans within the time provided in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Design Plans or Modified Design Plans consistent with the terms of this Section IV.C.2.

The Developer shall construct the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels in accordance with the Design Plans or the Modified Design Plans approved by the Agency and the City, and shall pay, when due, the soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels, including the design tasks described in subsections a. and b. above; provided, however, that the maximum amount payable by the Developer for the design and construction of the Southern Waterfront Public Park and Open Space Improvements shall equal the Maximum Contribution Amount (as defined and determined below); and provided, further, however, that

the Developer shall not be obligated to pay any soft or hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements prior to City approval of the first Unit Plan for any portion of Parcel S or Parcel T (other than Parcel T2) (the "First S/T Unit Plan Approval"). If the Agency elects to pay for any of the design tasks described in subsection a. or b. above prior to the First S/T Unit Plan Approval, then the Agency shall submit to the Developer promptly following the First S/T Unit Plan Approval a certified statement from the Executive Director detailing the amount of funds paid by the Agency for such purpose, and the Developer shall pay the amount so certified by the Executive Director within thirty (30) days of receipt of such certified statement.

As used above, the "Maximum Contribution Amount" means the amount that is the product of THREE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($3,571,920) (reflecting the current dollar value of the Developer's maximum contribution toward soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements) multiplied by the Inflation Adjustment Factor (reflecting an adjustment to account for inflation to the time of commencement of Developer expenditures for the Southern Waterfront Public Park and Open Space Improvements). The "Inflation Adjustment Factor" means a ratio, the numerator of which is the CPI Index amount as of the date of the First S/T Unit Plan Approval, and the denominator of which is the CPI Index amount as of the ~~Required Approvals Effective~~Action Dismissal Date. "CPI" has the meaning given in Section 201.4.b.(7).

The amount actually expended by the Developer for the soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements, as reviewed and approved by the City, is referred to as the "Developer's Southern Waterfront Public Park and Open Space Contribution." The Agency shall pay, when due, any costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements in excess of the Developer's Southern Waterfront Public Park and Open Space Contribution.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels.

3. Boat Launch Parcel.

The Boat Launch Parcel is an approximately 2.5-acre parcel to be owned and operated by the City as a continuing public boat launch facility. The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following public improvements on the Boat Launch Parcel (the "Boat Launch Improvements"):

a. Improvements required following hazardous materials remediation of the Boat Launch Parcel necessary to return the public boat launch facilities on the parcel to functional conditions;

b. Reconfiguration of the parking lot and access ways; and

c. Construction of an approximately 3,500 square foot building, including public restrooms, a bait shop, and maritime supporting facilities.

The Boat Launch Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation in connection with provision of the Boat Launch Improvements. The Agency shall pay the costs of design, site preparation, and construction of the Boat Launch Improvements using Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)).

The parties shall cooperate with each other and with the California Department of Boating and Waterways to consider relocation of the Boat Launch and Boat Launch Improvements to the southern portion of the T-Open Space Parcel. The terms for any such mutually agreed relocation shall be set forth in an Operating Memorandum prepared and executed in accordance with Section 709.

D. Independent Obligation

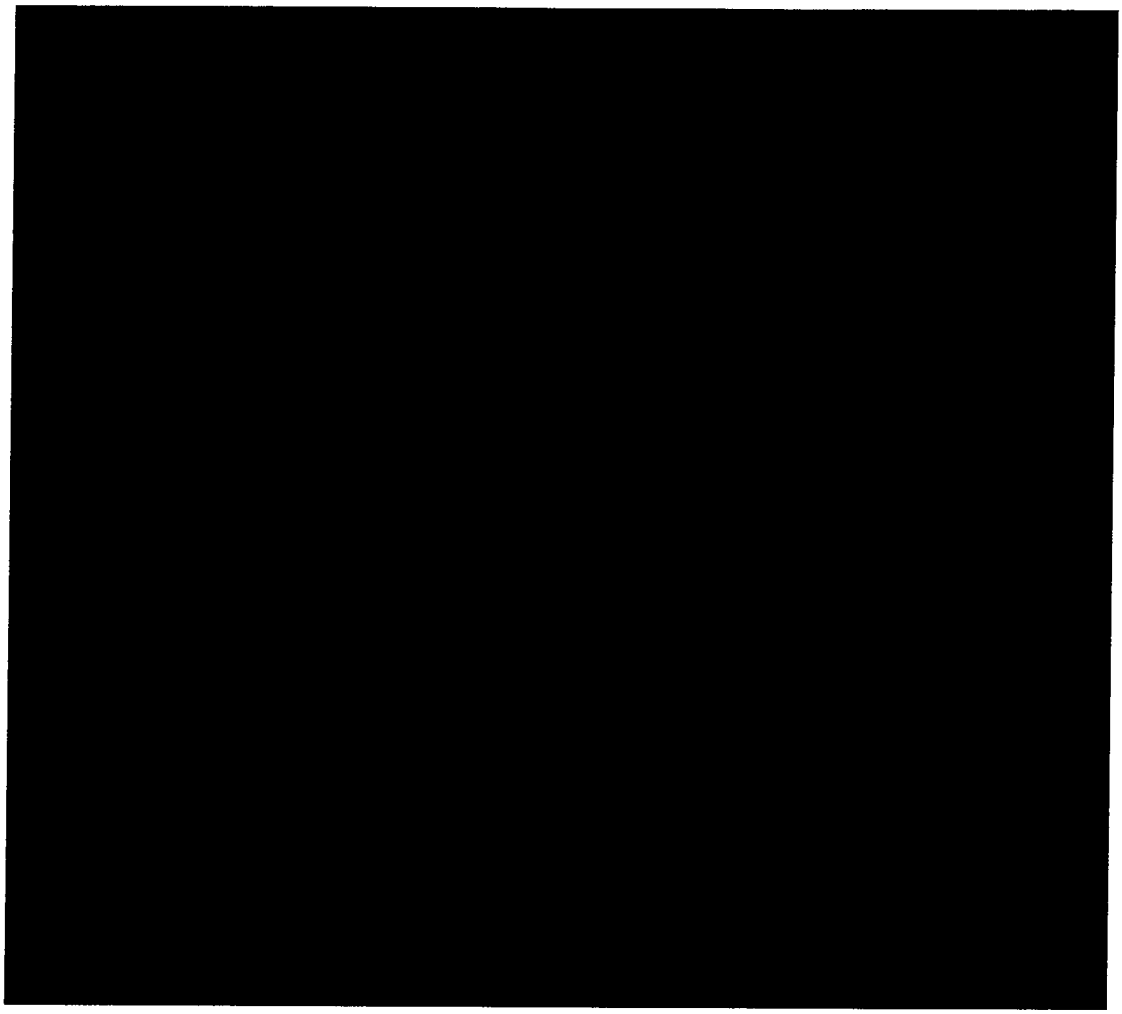
As more fully set forth in Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area shall be separate and independent of the performance by the Agency of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area; and neither a failure by the Agency to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Southern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area.

V. CONSTRUCTION MANAGEMENT

The Agency agrees that, upon a request by the Developer, the Agency will consider, on a case by case basis, approving Developer to act as construction manager for other portions of the public improvements elements of the Project; provided any such further authorizations shall be conditioned upon the Agency determining, in its reasonable judgment, that such authorization would be mutually beneficial to both parties, and the Agency's ability to make all appropriate findings with respect to such public improvements. To the extent the Developer acts as construction manager for any public improvements elements, such management activities shall be

undertaken pursuant to an Operating Memorandum in accordance with Section 709 to be entered into between the Agency and Developer, in form and content satisfactory to the Agency, which shall provide for, among other things, that all work undertaken with respect to the public improvements shall be subject to a competitive bidding process approved by the Agency and shall comply with all applicable state labor provisions, and for monitoring of the work in progress and the costs of such work.

List of Attachments To Attachment No. 4



ATTACHMENT NO. 5

FORM OF GRANT DEED

Recording Requested by:
Redevelopment Agency
of the City of Vallejo

After Recordation, Mail to:

_____
_____
_____
_____

_____

_____

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO, a public body, corporate and politic, of the State of California (herein called "Grantor"), acting to carry out the Redevelopment Plan for the Waterfront Redevelopment Project and the Redevelopment Plan for the Marina Vista Redevelopment Project (collectively, the "Redevelopment Plans"), under the Community Redevelopment Law of the State of California, hereby grants to CALLAHAN/DESILVA VALLEJO, LLC, a California limited liability company (herein called "Grantee"), the real property (the "Developer Parcel") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Developer Parcel is conveyed subject to the Redevelopment Plans and pursuant to a Disposition and Development Agreement (the "DDA") initially executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended as of October 7, 2003, and August 24, 2004, ~~and~~ as ~~further fully~~ amended and restated **for a second time** as of October 27, 2005, **and as amended and restated for a third time as of February 27, 2007,** by and between the Grantor and the Grantee. Capitalized terms used but not defined in this Grant Deed shall have the meanings given in the DDA. The Developer Parcel is also conveyed subject to REA/CC&R's and other easements of record. ***[Note: The preceding sentence to appear only in grant deeds for Developer Parcels containing residential uses per Section 704 of the DDA.]***

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall not use the Developer Parcel for other than the uses specified in the Redevelopment Plans.

3. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel by the Grantor as provided in the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the whole or any part of the Developer Parcel without the prior written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of the Partial Certificate of Completion with respect to the improvements upon the Developer Parcel. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Developer Parcel or to prohibit or restrict the leasing or preleasing of any part or parts of a building or structure for occupancy when said improvements are completed.

4. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the additional right, at its option, to repurchase, reenter and take possession of the Developer Parcel hereby conveyed, or such portion thereof, with all improvements thereon, subject to and in accordance with the provisions of Section 513 of the DDA.

5. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the right, at its option, to reenter and take possession of the Site hereby conveyed, or such portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, subject to and in accordance with the provisions of Section 514 of the DDA.

6. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Parcel, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Developer Parcel.

All deeds, leases or contracts made relative to the Developer Parcel, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land."

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Developer Parcel shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Except as otherwise provided, the covenants contained in paragraph 2 of this Grant Deed shall remain in effect until the deadline for effectiveness of the Redevelopment Plans; the covenants against discrimination contained in paragraph 6 of this Grant Deed shall remain in perpetuity; and the covenants contained in paragraphs 3, 4 and 5 shall remain in effect until issuance of a Partial Certificate of Completion for the Developer Parcel pursuant to Section 323 of the DDA.

9. The covenants contained in paragraphs 2, 3, 4, 5, and 6 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, the City of Vallejo and any successor in interest to the Developer Parcel or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed or the DDA, the provisions of the DDA shall control.

11. Any amendments to the Redevelopment Plans which change the uses or development permitted on the Site or change the restrictions or controls that apply to the Site or otherwise affect the Site shall require the written consent of the Grantee. Amendments to the Redevelopment Plans applying to other property in the Project Area shall not require the consent of the Grantee.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this _ day of _____, 20__.

GRANTOR:

REDEVELOPMENT AGENCY OF THE
CITY OF VALLEJO, "GRANTOR"

By: _____
Chairman

By: _____
Secretary

APPROVED:

By: _____
Counsel for Grantor

The provisions of this Grant Deed are hereby approved and accepted.

DEVELOPER:

CALLAHAN DESILVA VALLEJO, LLC,
a California limited liability company

By: The DeSilva Group, Inc.,
a California corporation, Member

By: _____
~~James B. Summers~~
Ernest D. Lampkin
Vice President

By: Joseph W. Callahan, Jr.,
an individual, Member

By: _____

Joseph W. Callahan, Jr.

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPER PARCEL

[TO BE INSERTED]

ACKNOWLEDGMENTS

ATTACHMENT NO. 6

METHOD OF FINANCING

I. GENERAL

A. Overview

The implementation of this Agreement and the Project Approvals will require significant private and public investment. This "Method of Financing", in conjunction with other provisions of this Agreement, sets forth generally the Agency and Developer financing obligations for acquisition and development of the Site, including the Developer Parcels and the City/Agency Parcels. The specific level of investment by the Developer and the Agency will be a function of a variety of factors including, but not limited to, market conditions, tax increment generated by the Project, ability to obtain grant funds, and commitment by the City of Vallejo to finance capital projects. The parties also acknowledge and agree that future Project Approvals will likely result in a refinement and greater specification of the types of improvements that will be required as part of the Project and therefore will modify this Method of Financing. When and as deemed appropriate by the parties, modifications of this Method of Financing will be reflected in an Operating Memorandum, in accordance with the provisions of Section 709 hereof

The balance of this Part I addresses general issues affecting the overall financing of development of the Project. Parts II, III, and IV address the specific financing responsibilities of the Developer and the Agency for Northern Waterfront Area, the Central Waterfront Area, and the Southern Waterfront Area, respectively.

B. Initial Acquisition

The Agency shall be responsible for financing the initial acquisition of the Site, to the extent not already owned by the Agency.

C. Public Financing Districts

Subject to applicable legal requirements, upon the request of the Developer, the Agency shall consider and shall cause the City to consider, in good faith, the formation of one or more assessment districts, community facilities districts, or other similar public financing districts (collectively, "Public Financing Districts") for the purpose of issuing bonded indebtedness or otherwise obtain assessments or special taxes to pay the costs of design and development of on-site public improvements (such as streets and infrastructure within a subdivided Developer Parcel to be constructed by the Developer and dedicated to the City or other public entity) and off-site public improvements normally required by the City to be provided by the property owner in connection with private development (collectively, the "Developer Parcel Public Improvements"), to the maximum extent permitted by law. Such good faith consideration shall include scheduling and conduct of all hearings, elections and other proceedings necessary for the formation of such requested Public Financing District(s) and the issuance of bonded indebtedness or other indebtedness of any such formed Public Financing

District(s). The costs of formation and issuance of indebtedness of such Public Financing District(s) shall be borne by the Developer (or financed through such indebtedness), and the obligations of such Public Financing District(s) shall be payable solely from assessments or special taxes imposed upon one or more of the Developer Parcels following conveyance to the Developer, and not from any funds, revenues or properties of the Agency, the City, or any other public entity without the express prior consent of the Agency, the City or other public entity, as applicable, in their sole discretion.

D. Landscaping and Lighting Maintenance District

Subject to applicable legal requirements, the Developer and the Agency shall cooperate to form, or to cause the City to form, a landscaping and lighting maintenance district (an "LLMD") in accordance with the provisions of the Landscaping and Lighting Act of 1972 (California Streets and Highways Code Section 22500 et seq.) and in accordance with the criteria, standards and procedures set forth below in this Section I.D (as this Section may be modified pursuant to the terms of an Operating Memorandum entered into pursuant to the provisions of Section 709 hereof).

The LLMD shall be formed consistent with the following criteria and standards:

1. The LLMD shall be formed to fund the normal operating and maintenance costs incurred by the City or the LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities located within the publicly-owned right-of-way and parcels within the Site. Subject to applicable legal requirements, the LLMD may be expanded or merged with other landscaping, lighting and maintenance districts (as so expanded or merged, an "Expanded LLMD") to include additional parcels that are specially benefited by public improvements and facilities within the Site and/or to additionally fund the normal operating and maintenance costs incurred by the City or the Expanded LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities within publicly-owned right-of-way and parcels outside the Site but within the boundaries of the Expanded LLMD. The Developer's cooperation and support for the LLMD is predicated upon the City's stated intention to cause eventual formation of an Expanded LLMD that covers the maximum specially benefited area so as to equalize and apportion the LLMD burden over time across the largest legally benefited area, thereby reducing over time the burden initially imposed on the Developer Parcels; **provided, however, that if the attempt to form an Expanded LLMD results in a legal challenge to timely formation or in a failure to obtain the required voter approval, then the LLMD shall be scaled-back and formed or maintained just to comprise the Site and the landscaping, lighting, park, recreation and open space facilities within the publicly-owned right-of-way and parcels within the Site**.

2. The LLMD shall include, for purposes of assessment of specially benefited parcels, all of the Developer Parcels and the other parcels within the Site, whether publicly or privately-owned (but only to the extent such other parcels are specially benefited and required by applicable law to be included in the LLMD). If the LLMD is made part of an Expanded LLMD, the Expanded LLMD shall additionally include, for purpose of assessment of specially benefited parcels, all other parcels (whether privately or publicly-owned) that are specially benefited by the

landscaping, lighting, park, recreation and open space parcels within publicly-owned right-of-way and parcels within the boundaries of the Expanded LLMD.

3. Assessments of the LLMD or the Expanded LLMD, as applicable, shall be spread among the Developer Parcels and the other parcels subject to assessment in accordance with the special benefit received by each assessed parcel as determined in accordance with applicable legal requirements and procedures; provided, that, in no event shall the annual assessments applicable to the Developer Parcels pursuant to the LLMD or the Expanded LLMD, as applicable, exceed the following amounts:

a. $300 for a single-family residential unit (attached or detached);

b. $200 for a residential condominium unit or a multifamily residential unit; and

c. Twenty cents per square foot of gross building area for improved commercial and industrial land.

Notwithstanding the foregoing, the rate and method of apportionment shall allow for annual adjustments to the above maximum assessments beginning on July 1, 2008, and each July 1 thereafter during the life of the LLMD or the Expanded LLMD, whichever is applicable, by a percentage equal to the Consumer Price Index – All Urban Consumers ("CPI-U") for the San Francisco-Oakland-San Jose area (1982-84=100). In addition, the parties understand and agree that, over the life of the LLMD or Expanded LLMD, as applicable, the methodology for calculating the assessments throughout the district shall be periodically evaluated as additional units within the LLMD or Expanded LLMD are constructed so that per unit assessments may be reduced to ensure that such assessments are fairly allocated within the district.

4. The LLMD and any Expanded LLMD shall be formed in accordance with all applicable legal requirements and procedures for such formation.

The Developer shall cooperate, and shall be deemed to have cooperated, in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D by casting any ballot and/or executing any petition required by law with respect to the Developer Parcels (or any portion thereof with respect to which the Developer is entitled to cast a ballot and/or execute a petition) necessary to support formation of the LLMD or an Expanded LLMD meeting the criteria and standards set forth above in this Section I.D. Any protest lodged by the Developer with respect to the allocation of assessments among parcels within the LLMD or an Expanded LLMD, as opposed to the formation of the LLMD or an Expanded LLMD itself, shall not constitute a failure of cooperation by the Developer in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D.

The Agency shall, or shall cause the City, to take all procedurals actions necessary in accordance with all applicable legal requirements to cause formation and effectiveness of the LLMD or an Expanded LLMD by not later than the deadline set forth in the Schedule of Performance (Attachment No. 3). If the LLMD is not formed despite the Agency's diligent good

faith efforts to form or cause the City to form the LLMD, then the Agency shall fund or cause the City to fund, to the maximum extent permitted by applicable law and subject to the City's annual budgetary process, the operation and maintenance of those public improvements that are described in the Scope of Development (Attachment No. 4) to be funded by the LLMD.

E. Agency Funding

1. Possible Funding Sources; Agency MOF Funds.

In addition to the application by the Agency of the Required Agency Funds (as defined and described in Section I.E.2. below), the funds to finance the Agency's obligations under this Agreement may include, but shall not be limited to, the following: available Agency funds; future tax increment revenues and bond financing (as further described in Section I.E.4 below); City capital improvement funds, transient occupancy tax and other City tax revenues or fees; state and federal transportation funds, including, without limitation, state and federal funding for the Vallejo Station transit facilities (the "Vallejo Station Funds"); state and federal park and recreation funds; and other public and private grant funds, if available. The Agency may, from time to time, and as it deems appropriate in its sole discretion, seek contributions from the City.

The funds available to the Agency from time to time to pay costs of the Project, including the Required Agency Funds, are collectively referred to in this Agreement as the "Agency Method of Financing Funds" or simply, the "Agency MOF Funds."

2. Required Agency Funds.

Subject to the last sentence of this Section I.E.2, the Agency shall, at a minimum, apply the following funds (the "Required Agency Funds") to finance the Agency's obligations under this Agreement:

a. All amounts actually paid to the Agency from the Developer constituting the Purchase Prices and the Annual Rent Payments for the Developer Parcels within the Site; and

b. The Net Developer Parcels Tax Increment Revenue.

As used herein, "Net Developer Parcels Tax Increment Revenue" means the tax increment revenue received by the Agency attributable to the increase in assessed valuation of each Developer Parcel within the Site following conveyance to the Developer less: (1) the portion of such tax increment revenue required to be set aside by the Agency pursuant to the provisions of Section 33334.2 of the Health and Safety Code; (2) a reasonable and proportionate share of the Agency's administrative expenses related to the Site; and (3) the portion of such tax increment revenue generated from Parcels A, B1, B2, and C1 which may be pledged to repay existing debt arising out of one or more loans between the City and the State of California, Department of Boating and Waterways.

In addition and only if the parties mutually agree, the Required Agency Funds may be re-allocated for different purposes if such re-allocation would result in a greater benefit to the overall development or quality of the Project. The parties agree that the Required Agency Funds may be used to pay debt service on any indebtedness incurred by Agency to finance the cost of improvements under this Agreement.

3. Agency Budgets.

The Agency shall reasonably confer with the Developer, and shall consider in good faith the Developer's input, in connection with preparation of the portions of the Agency's annual budgets, the Agency's periodic five-year implementation plans, and any periodic amendments to such budgets and implementation plans that affect the Project, with the objective of allocating Agency MOF Funds in a manner consistent with the Agency's funding obligations for the Project pursuant to this Agreement and the Agency's other funding commitments.

4. Bond Financing.

In order to implement the Project to redevelop the Site, to satisfy its obligations under this Agreement, and to achieve the goals and objectives of the Redevelopment Plans, the Agency intends, from time to time, to issue bonded indebtedness secured by a pledge of all or a portion of the Net Developer Parcels Tax Increment Revenue and other tax increment revenue (as determined by the Agency) for the purpose of completing the redevelopment of the Project on the Site as expeditiously as possible.

F. Developer Funding

The financing mechanisms of the Developer to meet its obligations pursuant to this Agreement may include, but are not limited to, equity financing, debt financing, assessment district financing (as further set forth in Section I.C above) and other methods of financing as may be necessary to finance the Developer's obligations.

G. Other Financial Incentives

The Agency shall consider in good faith a Developer request that the Agency provide or seek provision from the City of financial or other incentives to enable the highest quality and most timely private development of the Developer Parcels within the Site; provided however, that the Developer shall provide evidence to the City and/or Agency that any such incentive is necessary and further provided that the provision of any such financial or other incentives shall be determined in the sole discretion of the Agency or the City, as applicable.

H. Park Fee Credits

As provided in Section 3.8 of the Development Agreement, the City will grant a credit against City park fees otherwise due with respect to development of the Developer Parcels within the Site pursuant to Chapter 3.18 of the Vallejo Municipal Code in an amount equal to the lesser of (1) the total amount of such City park fees otherwise due with respect to development of

the Developer Parcels within the Site, or (2) the Total Developer Public Parks and Open Space Contribution.

As used herein, the "Total Developer Public Parks and Open Space Contribution" means the sum of ~~the~~:

1. The Developer's Northern Waterfront Public Parks and Open Space Contribution (up to $1,629,150, as provided in Section II.~~B~~C.3 of the Scope of Development (Attachment No. 4)); plus ~~the~~

2. The Developer's Southern Waterfront Public Parks and Open Space Contribution (up to $3,571,920 in current dollars and subject to an inflation adjustment, as provided in Section IV.C.2 of the Scope of Development); plus

3. The Developer's Wetland Park Contribution (as described in Section II.A.3 of the Scope of Development).

The parties acknowledge that, through the above cited provisions of the Scope of Development (Attachment No. 4), the Developer has committed to a Total Developer Public Parks and Open Space Contribution well in excess of ~~up to~~ $5,201,070 (in current dollars), which in turn is an amount significantly in excess of the cumulative total of City park fees anticipated to be due in connection with development of all of the Developer Parcels on the Site.

II. NORTHERN WATERFRONT FINANCING

A. Developer Responsibility

Except as provided in Section II.B below, the Developer, or its assignee, shall be responsible for financing all costs associated with the private and public development of the Northern Waterfront Area, including all Developer Parcel Public Improvements in the Northern Waterfront Area, as further described in Part II of the Scope of Development (Attachment No. 4). In addition to the payment of the Purchase Price and Annual Rent Payments for the applicable Developer Parcels and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements for all of the Northern Waterfront Area (except as otherwise provided in Section II.B below).

B. Agency Responsibility

The Agency shall have no financial responsibility under this Agreement with respect to the Northern Waterfront Area other than:

1. The costs to deliver the applicable Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices and Annual Rent Payments for the applicable Developer Parcels are determined in connection with Section 201; and

2. Any costs for the Northern Waterfront Public Park and Open Space Improvements required to be made after the maximum amount of the Developer's Northern Waterfront Public Park and Open Space Contribution has been expended, as further provided in Section II.~~B~~C.3 of the Scope of Development (Attachment No. 4).

In addition, the Agency ~~and the City~~shall or shall cause the City to assure that Lennar ~~to pay~~pays for performance of the Mare Island Causeway and Mare Island Way Widening Improvements as provided in Section II.~~C~~D.43 of the Scope of Development (Attachment No. 4).

III. CENTRAL WATERFRONT FINANCING

A. Developer Responsibility—In General

The Developer, or its assignee, shall be responsible for financing all costs associated with the development of the Developer Parcels within the Central Waterfront Area, including all Developer Parcel Public Improvements related to the Central Waterfront Area. In addition to the payment of the Purchase Price for Parcel J (including any J Developer Subparcels), and the L Developer Parcels, and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements related to the Developer Parcels and Developer Parcel Public Improvements within the Central Waterfront Area.

B. Agency Responsibility—In General

Except as otherwise provided in Section III.C below, the Agency shall pay all costs to deliver the Central Waterfront Area Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices for the applicable Developer Parcels are determined in connection with Section 201.

Except as otherwise provided in Section III.D below, the Agency shall be responsible for funding the enhancement of the City/Agency Parcels and related public improvements in the Central Waterfront Area including, without limitation:

1. The L3 Public Garage on Parcel L3, as provided in Section III.A.3 of the Scope of Development (Attachment No. 4);

2. The public paseo and associated improvements on Parcel L5, as provided in Section III.A.5 of the Scope of Development (Attachment No. 4);

3. The Bus Transfer Center on Parcel O, as provided in Section III.C.1 of the Scope of Development (Attachment No. 4);

4. The Other Transit-Related Improvements, as provided in Section III.C.2 of the Scope of Development (Attachment No. 4);

5. The Central Waterfront Public Street Improvements, as provided in Section III.C.3 of the Scope of Development (Attachment No. 4); and

6. The Central Waterfront Public Parks and Open Space Improvements, as provided in Section III.C.4 of the Scope of Development (Attachment No. 4).

C. Vallejo Station Post Office Relocation

The parties shall participate in funding the costs of relocating the current Post Office facility from the Post Office Site within Parcel L in the manner provided in Section 201.6.a.(2).

D. City Hall Garage and Related Improvements

Subject to the further provisions of this Section III.D, the Agency shall be solely responsible for the ultimate payment of all costs of design and construction of the City Hall Garage and of the Capitol Street Second Segment necessary to provide access to the City Hall Garage. To meet this funding obligation, the Agency shall apply Agency MOF Funds (as defined and described in Section I.E.1 above) available for such purpose.

Notwithstanding the funding obligation set forth above, if the Agency reasonably determines that, at the time the Agency is otherwise required to commence performance and funding of the design and construction of the Phase 1 Element of the City Hall Garage and the Capitol Street Second Segment (together, the "City Hall Garage Required Elements") in accordance with Item 144 of the Schedule of Performance (Attachment No. 3), it will not yet have available sufficient funds to pay the full costs of design and construction of the City Hall Garage Required Elements, the Agency shall so notify the Developer. The parties shall then negotiate in good faith for a period of sixty (60) days (or longer as they may mutually agree) to seek to agree upon the terms of an Operating Memorandum whereby the Developer would agree to advance a specified portion of the costs of the design and/or construction of the City Hall Garage Required Elements and the Agency would agree to repay the Developer for such advance at a specified time and on specified terms (a "City Hall Garage Required Elements Operating Memorandum").

If the parties execute a City Hall Garage Required Elements Operating Memorandum in accordance with Section 709, then the terms of such City Hall Garage Required Elements Operating Memorandum shall control the parties' obligations with respect to the portion of the costs of design and/or construction of the City Hall Garage Required Elements to be advanced by the Developer (subject to Agency repayment), and the Agency shall remain responsible for initial payment of all remaining portions of the cost of design and construction of the City Hall Garage Required Elements.

If the parties are unable to agree upon a City Hall Garage Required Elements Operating Memorandum within the negotiating period set forth above, then commencement of the design and/or construction of the City Hall Garage Required Elements shall be postponed until the earliest date upon which the Agency reasonably has available sufficient Agency MOF

Funds in accordance with the requirements of this Method of Financing to pay the costs of design and construction of the City Hall Garage Required Elements.

E. Downtown Property Based Improvement District ("PBID")

The Agency and the City shall use best efforts to include Parcels J and L in the proposed PBID. In conjunction with the formation of the LLMD or the Expanded LLMD, the Agency shall and shall cause the City to work cooperatively with the Developer and the developer of the Downtown project and to use best efforts to provide that both the PBID and the LLMD (or Expanded LLMD) function effectively, do not overlap in responsibilities, and are not overly burdensome to present and future property owners.

IV. SOUTHERN WATERFRONT FINANCING

A. Developer Responsibility—In General

Except as provided in Sections IV.B and C below, the Developer, or its assignee, shall be responsible for financing all costs associated with the private and public development of the Southern Waterfront Area, including all Developer Parcel Public Improvements in the Southern Waterfront Area, as further described in Part IV of the Scope of Development (Attachment No. 4). In addition to the payment of the Purchase Price for the applicable Developer Parcels and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements for all of the Southern Waterfront Area (except as otherwise provided in Sections IV.B and C below).

B. Agency Responsibility—In General

The Agency shall have no financial responsibility under this Agreement with respect to the Southern Waterfront Area other than:

1. The costs to deliver the applicable Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices for the applicable Developer Parcels are determined in connection with Section 201;

2. Any costs for the Southern Waterfront Public Park and Open Space Improvements required to be made after the maximum amount of the Developer's Southern Waterfront Public Park and Open Space Contribution has been expended, as further provided in Section IV.C.2 of the Scope of Development (Attachment No. 4);

3. The cost of the Boat Launch Improvements, as provided in Section IV.C.3 of the Scope of Development (Attachment No. 4); and

4. The Agency's share of the costs of the Southern Waterfront Preparatory Work, as further described in Section IV.C below.

C. Southern Waterfront Preparatory Work

The parties shall participate in funding the costs of the Southern Waterfront Preparatory Work (as described in Section IV.A of the Scope of Development) in the manner provided in Section IV.A.9 of the Scope of Development (Attachment No. 4).

ATTACHMENT NO. 7

FORM OF MEMORANDUM OF DDA THIRD RESTATEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Redevelopment Agency of
The City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: Executive Director

No fee for recording pursuant to
Government Code Section 27383

(Space Above This Line For Recorder's Use)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT
THIRD RESTATEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT THIRD RESTATEMENT (the "Memorandum") is made as of ~~October 27, 2005,~~ _____, 2006, by and between the Redevelopment Agency of the City of Vallejo, a public body, corporate and politic (the "Agency"), and Callahan/DeSilva Vallejo, LLC, a California limited liability company (the "Developer").

This Memorandum confirms that the Agency and the Developer have entered into a Disposition and Development Agreement, executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended by an Amendment entered into as of October 24, 2003, as further amended by a Second Amendment entered into as of July 20, 2004, ~~and~~ as further amended and restated for a second time as of October 27, ~~2005~~2005, and as further amended and restated for a third time as of February 27, 2007 (collectively, the "DDA"), providing for the acquisition, disposition and development of certain real property (the "Site") included within the boundaries of the Redevelopment Plans for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project, and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses (collectively, the "Project," as further defined in Section 101 of the DDA). Capitalized terms used but not defined in this Memorandum shall have the meanings given in the DDA. Included within the Site is the Developer Parcel(s) described in the attached Exhibit A.

Among other matters, the DDA states as follows:

"The parties hereby acknowledge that the Developer has voluntarily entered into a Master Labor Agreement (the "MLA") with the Napa Solano Building and Construction Trades Council (the "Trades Council") and its affiliated local trade unions, and that the MLA applies to the private improvements to be constructed on the Developer Parcels. The Agency further understands that any assignee or transferee of the Developer shall assume the MLA, in whole or in part, as provided in the MLA, in connection with a permitted assignment or transfer of a Developer Parcel or this Agreement."

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA. This Memorandum amends and supersedes in its entirety that certain Memorandum of Disposition and Development Agreement dated as of October 27, 2005 and recorded in the Official Records of the County of Solano as Document No. 200700002114.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as of the date first above written.

AGENCY:

REDEVELOPMENT AGENCY
THE CITY OF VALLEJO

By: _____
~~Robert Nichelini~~
Joseph M. Tanner
~~Acting~~ Executive Director

APPROVED AS TO FORM:

_____
Frederick G. Soley
Agency Counsel

ATTEST:

_____
Allison Villarante
Agency Secretary

DEVELOPER:

CALLAHAN/DeSILVA VALLEJO, LLC
a California limited liability company

By: The DeSilva Group, Inc.

By: _____
~~James B. Summers~~
Ernest D. Lampkin
Vice President

By: Joseph W. Callahan, Jr.,
an individual, Member

By: _____
Joseph W. Callahan, Jr.

STATE OF CALIFORNIA)
)
)ss
COUNTY OF)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
)ss
COUNTY OF)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

_____ Signature _____
(Seal)

EXHIBIT A TO MEMORANDUM OF DDA

Legal Description of the Applicable Developer Parcel(s)

ATTACHMENT NO. 8

DIAGRAM OF PARCEL A BOUNDARY LINE FOR PURPOSES OF DESIGNING MARE ISLAND CAUSEWAY/MARE ISLAND WAY WIDENING IMPROVEMENTS

ATTACHMENT D

THIRD SUPPLEMENTAL REPORT OF THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO ON THE PROPOSED AMENDED AND RESTATED (THIRD) DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND CALLAHAN/DeSILVA VALLEJO, LLC

(Waterfront DDA)

The REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO (the "Agency") and CALLAHAN/DeSILVA VALLEJO, LLC (the "Developer") entered into that certain Disposition and Development, executed as of October 17, 2000 (the "Original DDA"), which Original DDA was amended and restated in its entirety as of October 1, 2002 (the "First Restatement"), and further amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, executed as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement") (all of the foregoing are collectively referred to herein as the "Existing DDA"). The Existing DDA provides for the acquisition, disposition and development of certain real property (the "Site"), a portion of which is included within the Vallejo Waterfront Redevelopment Project Area, and a portion of which is included within the Marina Vista Redevelopment Project Area, both of which Redevelopment Project Areas have, since the Second Restatement, been merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area.

Following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Project. The Agency, City, Developer and Coalition entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action. The Settlement Agreement provides for the action to be dismissed by the parties within 31 days after the second reading and approval of the ordinances enacting the Settlement-Related Amendments (as defined below) (the "Action Dismissal Date").

The Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third Restatement"), which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made since the approval of the Second Restatement, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement. Specifically, the Third Restatement is intended to: (1) implement the terms of the Settlement Agreement by conforming the terms of the DDA to the relevant provisions of the Settlement Agreement; (2) set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the Settlement Agreement and related actions; (3) update both the Schedule of Performance (Attachment No. 3 to the DDA) and performance dates contained throughout the DDA to reflect the tolling of obligations under the DDA during the pending action, as well as current Project circumstances; and (4) make other conforming and

minor updating changes to reflect changed circumstances for performance of the Project since the Second Restatement. As used in this Third Supplemental Report, the term "DDA" refers to the Third Restatement.

This Third Supplemental Report has been prepared pursuant to Sections 33433 and 33679 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) to provide certain information with respect to the proposed Third Restatement. This Third Supplemental Report supplements the Report prepared by the Agency at the time of approval by the Agency of the Original DDA (the "Original Report"), the Supplemental Report prepared by the Agency at the time of approval by the Agency of the First Restatement (the "First Supplemental Report"), and the Second Supplemental Report prepared by the Agency at the time of approval by the Agency of the Second Restatement (the "Second Supplemental Report"), and addresses the changes made through the Third Restatement. All other terms and conditions not addressed in this Report remain unchanged and are as outlined in the DDA and as set out in the Original Report, the First Supplemental Report and the Second Supplemental Report.

I. EIR; AMENDED REQUIRED APPROVALS

A. Amended Required Approvals. Prior to and in conjunction with the preparation and approval of the Second Restatement, the Agency, Developer and City cooperated in preparing and approving a series of land use approvals and entitlements for the Project (the "Required Approvals"), which included:

1. Certification of an Environmental Impact Report (the "EIR") for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073), including the EIR Mitigation Monitoring and Reporting Program;

2. An Amendment to the City's General Plan to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;

3. An Amendment to the City's Zoning Ordinance to provide for zoning consistent with the General Plan Amendment;

4. A Planned Development Master Plan for the Site and Waterfront Design Guidelines prepared jointly by the Agency and Developer; and

5. A development agreement (pursuant to Government Code Section 65864 et seq.) pertaining to all of the Developer Parcels identified in the DDA.

In conjunction with the Third Restatement, the Agency, Developer and City have cooperated in preparing an addendum to the EIR ("EIR Addendum") that evaluated the impacts of the Project as modified by the Settlement-Related Amendments (as defined below), and certain amendments to the Planned Development Master Plan and the accompanying Waterfront Design Guidelines, and certain amendments to the Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments"). The Required Approvals, as proposed to be amended by the Settlement-Related Amendments, are referred to in the Third Restatement as the "Amended Required Approvals",

and also include all conditions of approval in connection with the Amended Required Approvals and the EIR Mitigation Monitoring and Reporting Program.

The Settlement-Related Amendments have been prepared by the Agency and are expected to be presented for consideration of approval and certification concurrently with the presentation and consideration of approval of the Third Restatement. Except for the reimbursement to Developer of the Total Reimbursable Developer Advance, as referenced below, the Agency shall pay all costs in connection with the preparation, approval and adoption of the Settlement-Related Amendments.

B. EIR

As noted above, in conjunction with the Second Restatement, the City and Agency certified the EIR for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073), including the EIR Mitigation Monitoring and Reporting Program. The City and Agency have also prepared an Addendum to the EIR, which will be considered by the City Council and Agency in conjunction with the Third Restatement and the Settlement-Related Amendments. To date, the Developer has advanced, on the Agency's behalf, various costs of preparation of the EIR and other planning studies and reports necessary for preparation of the Required Approvals. A portion of such advances in the amount of $628,077 ("Total Reimbursable Developer Advance"), shall be subject to reimbursement to the Developer by the Agency (as discussed below). The remaining amounts of such advances by the Developer are not subject to reimbursement by the Agency.

The Agency shall reimburse the Developer for costs advanced by the Developer to be reimbursed by the Agency, as referenced above, upon receipt of available tax increment revenue generated from the Vallejo Waterfront and/or the Marina Vista Redevelopment Project Areas, or receipt of other available governmental grants or public funds from which such costs may be reimbursed. Any portion of such amounts which have not been reimbursed by the Agency at the time of the close of escrow for Parcel A (or the next Developer Parcel to be purchased by the Developer, if applicable) shall be credited toward the Purchase Price otherwise payable by the Developer for Parcel A (or the next Developer Parcel to be purchased by the Developer, if applicable).

II. COSTS FOR DEFENSE AND SETTLEMENT OF COALITION ACTION

The costs incurred in connection with the defense of the Coalition action referenced above, including all activities undertaken by the parties and the City related to defense and settlement of the action, will be paid as follows:

1. The City and/or Agency shall pay the costs of the City Attorney's Office, the Agency's special counsel, and City/Agency staff in formulating and implementing the defense and settlement activities, which costs are estimated to be approximately $49,000 for the Agency. In addition, the Agency will pay the costs associated with the Settlement-Related Amendments, which costs are estimated to be approximately $5,000.

2. The Developer will pay the costs of the Developer's in-house staff and any outside consultants, advisors, and attorneys employed by the Developer in formulating and

implementing the defense and settlement activities. In addition, the Developer will advance payment of the attorneys fees and costs of the Coalition as specified in the Settlement Agreement. Fifty percent (50%) of such costs shall be subtracted from the Preliminary Purchase Price as a credit toward determination of the Purchase Price for Parcel A, and the remaining fifty percent (50%) will be considered and treated as Third Party Costs under the DDA, which may affect the determination of the Purchase Price for the Developer Parcels only if Method B is utilized for determining a Purchase Price.

III. PROJECT PHASES; DEVELOPMENT

Certain amendments have been made in the proposed uses and improvements to be developed on the Site, and the different parcels and phasing of the development of the Waterfront Project. Under the Third Restatement, the Waterfront Project will still be developed in three (3) separate and distinct geographic elements or areas (each an "Area"), as set out in the Second Supplemental Report, with the following exceptions:

A. Basic Development Standards. In connection with the initial construction of the Project, all minimum City Building Code and Water Division requirements for indoor water conservation in effect at the time of the effective date of the Settlement Agreement shall be exceeded by no less than twenty percent (20%). In addition, the Developer will actively pursue the integration of green building materials, green construction methods and green site preparation in all Unit Plan applications, where application of such methods and materials integrate with or seamlessly replace more traditional methods.

B. Northern Waterfront Area

1. Developer Parcel A; City/Agency Parcel D2 (Wetland Park). Parcel A has been reconfigured to include approximately 10.9 acres. The Developer, at its sole cost and expense, will develop Parcel A for residential uses, including a townhouse project with no more than 175 dwelling units distributed among two clustered neighborhoods. The dwelling units on Parcel A will be distributed among multiple buildings, comprised of traditional townhouses with stacked flats to be located at one or both ends of each building, and each unit shall be provided with a two car garage. Development of Parcel A will also include the required public streets, public access and pedestrian pathways, and associated private amenities. The Developer shall dedicate the improved public streets within Parcel A in accordance with the requirements of the Project Approvals. Public access will be provided through the new residential neighborhoods to the Wetland Park to be developed on Parcel D2. The parties anticipate that the development of Parcel A will be accomplished in sub-phases. The Developer will be required to complete the applicable public improvements for each sub-phase prior to or concurrently with construction of each such sub-phase.

Parcel D2 is now an approximately 4.0 acre parcel bounded by Parcel A to the north and south. Parcel D2 is to be owned by the City and developed by the Developer, at its cost, subject to the cost cap previously established under the Second Restatement. A 4.0 acre public wetland park (the "Wetland Park") will be created on Parcel D2, a central location between the two townhouse neighborhoods on Parcel A. Key components of the Wetland Park will be (a) a corridor of swales and a tidal pond; (b) open meadows for passive and informal use;

(c) interpretive elements; (d) paths, bridges, and seating; (e) screening of surrounding development; (f) an at-grade pedestrian and visual link to the Promenade Park; and (g) tidal function highlighting the connection to the Bay system. Following completion by the Developer, the Wetland Park will be dedicated in fee to the City for park purposes and maintained by the City using assessments generated by the LLMD, or other similar funding mechanism.

2. Parcel E, Parcel F, and Related Parking Areas. Parcel F (an approximately 1.0 acre parcel, previously referred to as Jazz Festival Green) will be utilized, along with Parcel E (an approximately 1.4 acre parcel), for parking purposes as part of the reconfiguration of parking within the North Waterfront Area. To facilitate this reconfiguration of parking, the City and Agency, at their sole cost, will use diligent good efforts to obtain any necessary lease amendments with tenants on the parcels north of Parcel F ("Related Parking Areas"), and the Developer, at its cost, will obtain necessary approval for and resurface and re-stripe the parking lots and access driveways consistent with the parking reconfiguration.

3. BCDC Approvals. The parties may be required to seek an amendment of Bay Conservation and Development Commission (BCDC) permit No. 1-86, in order to accommodate the reconfiguration of the parking in the Northern Waterfront Area. The parties, at the Developer's cost, will cooperate to apply for and obtain any amendments required from BCDC with respect to the applicable current BCDC development permits for the Northern Waterfront Area.

B. Central Waterfront

1. General Standards and Procedures. General standards and procedures have been established for the design and development of various parcels and improvements in the Central Waterfront Area, including standards for the architectural treatment, articulation and terracing of building massing, building heights and setbacks, etc. For Parcels J1, J2, L1, L2, L4 and L5, not less than 20 percent of each such parcel's surface area shall be public or private open space, and include sidewalks, public plazas, public and private landscaped areas, private courtyards, pedestrian alleys, or such other equivalent spaces.

2. Parcel J. Parcels J1 and J2 are approximately 2.7 acres and 4.1 acres, respectively. The Developer will design and construct on Parcels J1 and J2 a total of up to 286 residential units in two to four level buildings constructed on top of one story podium garage structures, half below and half above grade. The development of Parcel J will occur in two phases on the two sub-parcels. The units will be stacked flat residential condominiums containing one, two and three bedrooms. The garage structures will provide off-street secure, resident parking for approximately 516 vehicles, as well as residential unit storage space, a utility room, stairwells, and elevator areas. The development will include extensive at-grade perimeter landscaping and private recreation and landscaping on the podium decks. Development of Parcel J also includes approximately 25,000 square feet ground floor retail uses fronting on Mare Island Way and Festival Green edges of the parcel, and the design and construction of Civic Center Drive through to Georgia Street. Prior to the submittal of any Unit Plan application for Parcel J, the Developer and City will study, at the Developer's cost, the possibility of removing the intersection of Civic Center Drive and Georgia Street, and determine whether the intersection

level of service can be maintained without the extension of Civic Center Drive through Georgia Street.

C. Southern Waterfront

1. Parcel T1. Parcel T1 is an approximately 14.9 acre parcel. At the Developer's election, Parcel T1 may be divided into up to three sub-parcels (for each of the three separate residential buildings described below) and conveyed separately to the Developer at separate times). The Developer, at its cost, will design and construct three condominium buildings containing up to a total of 650 units on Parcel T1. The buildings will contain three and four-story condominium flats over one and two levels of parking (where the garage will be two levels, the lower level will be below grade, and the upper level will be partially below grade).

The Agency and Developer will cooperate in good faith to design a program for including a meaningful affordable housing component in the development of Parcel T1 (or a mutually acceptable off-site location). The strategic and cost effective use of the funds deposited in the Agency's Low and Moderate Income Housing fund will be used to leverage other potential public and private sector funding sources to achieve this affordable housing component. The parties will also seek in good faith to present for consideration of adoption by the Agency and the City Council amendments to the DDA and the Project Approvals to implement the affordable housing component on Parcel T1 (or acceptable off-site location). The Developer will bear the costs of its in-house staff and its legal counsel, and shall advance the costs of any mutually agreed affordable housing consultants and other consultants in connection with this effort.

IV. COST OF THE DDA TO THE AGENCY

The costs of the DDA to the Agency were addressed in Section II.H of the Original Report and the Second Supplemental Report. This Third Supplemental Report addresses updated information with respect to those costs expected to be incurred by the Agency, and is intended to supplement the information contained in the Original Report and the Second Supplemental Report.

V. VALUE OF THE DEVELOPER PARCELS; CONSIDERATION TO BE PAID BY DEVELOPER

As noted in the Introduction to this Third Supplemental Report and in Section III of the Original Report and Section VI of the Second Supplemental Report, the consideration to be paid by the Developer to the Agency for each Developer Parcel will be equal to the most recently updated fair market value of the applicable Developer Parcel as determined by a qualified, professional and neutral appraiser mutually selected by the Agency and the Developer. The bases for determining the updated fair market value for each Developer Parcel have not changed in any material respect from the discussion contained in Section VI. of the Second Supplemental Report, and will still be determined using two methods (Method A and Method B, as more fully detailed in the DDA). The Purchase Price will be equal to the higher of the two values.

VI. SECTION 33679 REQUIREMENTS

Health and Safety Code Section 33679 requires that before an agency commits to use tax increment revenues allocated to it for the purpose of paying all or part of the value of the land for, and the cost of the installation and construction of, any publicly owned building, other than parking facilities, a summary must be prepared and made available for public inspection, which includes (a) estimates of the amount of tax increments proposed to be used to pay for such land and construction of the publicly owned building, including interest payments; (b) sets forth the facts supporting the determinations required to be made under Health and Safety Code Section 33445; and (c) sets forth the redevelopment purpose for which such taxes are being used to pay for the land and construction of such publicly owned building.

A. Amount Of Tax Increments To Be Used To Pay For Agency's Costs.

As part of the Waterfront Project, and pursuant to the DDA, the Agency will be providing financing for the design and construction of various publicly-owned improvements, including parking facilities and parks and open space improvements and amenities throughout the Master Plan Area. In addition, the Agency will be providing financing for the design and construction of certain publicly owned buildings. Except for those specific costs addressed in this Third Supplemental Report, the information contained in Section VII.A. of the Second Supplemental Report remains unchanged.

B. Facts Supporting Determinations Required Under Section 33445

1. The development of the public improvements are of benefit to the project area or the immediate neighborhood in which the project is located. As noted in the Original Report, the Second Supplemental Report and this Third Supplemental Report, a portion of the Site is included within the Vallejo Waterfront Redevelopment Project Area, and a portion of the Site is included within the Marina Vista Redevelopment Project Area, both of which Redevelopment Project Areas have, since the Second Restatement, been merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Areas. A discussion of the Agency's primary goals and objectives, and the blighting conditions that exist within each of these Project Areas is contained in Part IV of the Original Report. The DDA, as amended by the Third Restatement, is a major step toward eliminating or alleviating conditions of blight still remaining within both the Vallejo Waterfront and the Marina Vista Redevelopment Projects. The DDA, as amended by the Third Restatement, will enable the Agency to continue its efforts to revitalize the Vallejo Waterfront and the Marina Vista Redevelopment Project Areas.

In addition to eliminating blighting conditions within the Project Areas (as more fully described in the Original Report), development of the Waterfront Project, including without limitation the public improvements which are a major component of the Project, pursuant to the DDA will provide the following benefits to the Project Areas:

(a) development of the project will create employment opportunities, including short term construction-related jobs, as well as long-term employment opportunities associated with the retail, commercial and office uses to be developed as part of the Waterfront Project;

(b) in furtherance of the project, the Agency and Developer have entered into a Project Labor Agreement with the Napa-Solano Building and Construction Trades Council, and various union affiliates of the Council, to develop a cooperative effort to assure that the development of the private portions of the Waterfront Project will be built in an expeditious, high quality and cost effective manner without interruption or delays, utilizing a skilled workforce;

(c) the DDA will further the Agency's goals and objectives to remediate the hazardous materials conditions existing on portions of the Site, to enable redevelopment and use of those contaminated areas;

(d) relocation of the Post Office to a new facility will not only allow for the redevelopment, replanning and reuse of the outdated facility currently housing the Post Office, but also help to improve the service provided by the U.S. Postal Service by providing for a new expanded and modern facility, which will benefit the residents of the Project Area and the surrounding community;

(e) the Waterfront Project consists of a comprehensive and coordinated public and private development effort to revitalize Vallejo's Waterfront Area and to link the Waterfront area to the Downtown area;

(f) the Waterfront Project includes, as a central component, development of a major new transit center for ferry patrons and bus transfer center, to be known as "Vallejo Station," which will be a multimodal transportation facility serving regional and local transit needs; and

(g) development of the Project will intensify land uses in certain areas, and expand designated public open space areas, and enhance public access to the Waterfront and the Waterfront Promenade areas.

2. No other reasonable means of financing the public improvements are available to the community. As more described in Section VII.A of the Second Supplemental Report, and in the DDA, the Agency intends to utilize funding from various sources to finance its obligations under the DDA. These other funding sources are expected to fund a substantial portion of the costs of the public improvements required under the DDA. In addition, as noted in the DDA, an LLMD is expected to be formed to cover the ongoing operation and maintenance costs of certain public improvements that will initially be funded by the Developer as part of its requirements under the DDA. Neither the City of Vallejo, other public entities, nor private sector developers will be or historically have been able to fully assume the combination of costs associated with development and the costs of infrastructure improvements anticipated and needed in connection with the development of the Waterfront Project. The Agency will continue to examine other methods available to the community to fund public improvements before tax increment is utilized. However, tax increment funds to pay a portion of the costs for the public improvements required under the DDA is necessary to cover the currently estimated shortfall between costs and the other funding sources and to be available in the event that other funding sources are not fully realized. Even though a number of financing methods and sources have

been and are available and have been and will be utilized to fund a substantial portion of the costs for the public improvements, such sources are insufficient to finance all program costs.

3. The payment of funds for the public improvements will assist in the elimination of one or more blighting conditions inside the project area, and is consistent with the Agency's Five-Year Implementation Plan adopted pursuant to Health and Safety Code Section 33490. As required by Health and Safety Code Section 33490, at the time of the merger of the Vallejo Waterfront, the Marina Vista and the Vallejo Central Redevelopment Projects, the Agency adopted a new updated Five Year Implementation Plan, covering Fiscal Year 2004/05 through Fiscal Year 2008/09, for the Merged Downtown/Waterfront Redevelopment Project Areas. In addition to addressing the general goals and objectives for the entire Merged Downtown / Waterfront Redevelopment Project Area, including the Marina Vista and the Waterfront Redevelopment Project Areas, the Implementation Plan specifically identifies as one of the programs anticipated to be undertaken during the Implementation Plan period: "Initiate private development and public improvements as outlined in the DDA with Callahan/DeSilva Vallejo, LLC including private development on Parcel A, public and private development on Parcels B, C, L and J, including the Vallejo Station Project." The Implementation Plan also specifically addresses the Agency's work toward "removing the hazardous materials and regional regulatory encumbrances that currently prevent the Agency from the making the Agency-owned former Kaiser property available for development." The estimated revenues and expenditures during the Implementation Plan period also specifically identify projected revenues and expenditures of Agency funds for the Waterfront Project (including without limitation public improvements, Vallejo Station project and the sale of parcels which are included within the DDA). Additional evidence to support these determinations are contained in Part IV of the Original Report.

C. Redevelopment Purpose For Which Tax Increments Are Being Used.

As defined in Sections 33020 and 33021 of the Health and Safety Code, redevelopment includes the planning and development of all or part of the project area, the provision of open spaces, including public grounds and space around buildings, the provision of public or private buildings, and improvement of recreations areas and other public grounds as are appropriate or necessary in the interest of the general welfare. Section 33445 of the Health and Safety Code provides that an agency may, with the consent of the legislative body, pay all or part of the value of the land for and the cost of the installation and construction of publicly-owned facilities either within or outside the project area, if certain findings are made. The use of tax increment funds which may be necessary to pay for the cost of land for and the cost of the installation and construction of the public improvements and facilities provided for under the DDA, including without limitation those facilities identified in Section VII.A of the Second Supplemental Report, is justified because it will further the Agency's efforts to revitalize the Waterfront and Downtown areas, expand designated public open space areas, create the Vallejo Station multimodal transportation facility, enhance public access to the Waterfront and Waterfront Promenade area, and assist in the elimination of blight, as more fully discussed in Section VII.B of the Second Supplemental Report, and in Part IV of the Original Report.