

**VALLEJO HOUSING AUTHORITY**  
**SPECIAL MEETING**  
**6:45 P.M. – CITY COUNCIL CHAMBERS**  
**JUNE 24, 2008**

In accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54956, you and each of you are hereby notified that I, Osby Davis, the undersigned, have called a special meeting of the Housing Authority of the City of Vallejo in City Council Chambers, 555 Santa Clara Street, Vallejo, California, on Tuesday, June 24, 2008 at 6:45 p.m., to consider only the following matters:

*NOTICE: Members of the public shall have the opportunity to address the Housing Authority concerning any item listed on this 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 VALLEJO HOUSING AUTHORITY MINUTES FOR THE SPECIAL MEETING OF MARCH 11, 2008

PROPOSED ACTION: Approve the minutes.

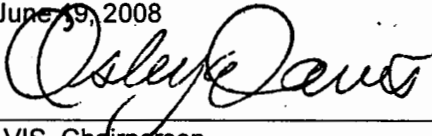
3. **PUBLIC HEARING**

A. ADOPTION OF HOUSING AUTHORITY FISCAL YEAR 2008-2009 BUDGET

PROPOSED ACTION: Adopt the resolution approving the Housing Authority budget for Fiscal Year 2008-2009.

4. **ADJOURNMENT**

Dated: June 19, 2008

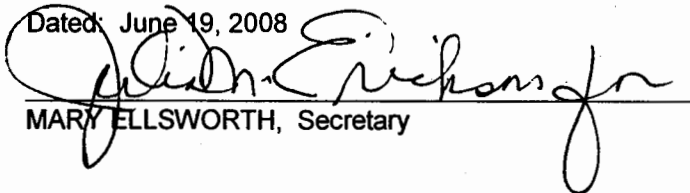


OSBY DAVIS, Chairperson

**CERTIFICATION**

I, Mary Ellsworth, Secretary, undersigned, do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Housing Authority of the City of Vallejo, California, at the time and in the manner prescribed by law, or said members have waived notice thereof by their consent attached hereto.

Dated: June 19, 2008



MARY ELLSWORTH, Secretary

**CITY OF VALLEJO**  
**REDEVELOPMENT AGENCY SPECIAL MEETING**  
**JUNE 24, 2008**  
**7:00 p.m.**

In accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54956, you and each of you are hereby notified that I, Osby Davis, the undersigned, have called a special meeting of the Vallejo Redevelopment Agency in City Council Chambers, 555 Santa Clara Street, Vallejo, California, on Tuesday, June 24, 2008 at 7:00 p.m., to consider only the following matters:

***NOTICE: Members of the public shall have the opportunity to address the Redevelopment Agency concerning any item listed on this 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 REDEVELOPMENT AGENCY MINUTES FOR THE SPECIAL JOINT MEETING OF AUGUST 14, 2007; AND THE SPECIAL JOINT MEETING OF FEBRUARY 26

PROPOSED ACTION: Approve the minutes

3. **PUBLIC HEARING**

A. ADOPTION OF FISCAL YEAR 2008-2009 ANNUAL BUDGET FOR THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO

PROPOSED ACTION: Adopt the resolution approving the Fiscal Year 2008-2009 Annual Budget for the Redevelopment Agency of the City of Vallejo.

4. **ADMINISTRATIVE ITEMS**

A. CONSIDERATION OF FLOSDEN PROJECT AREA PAYMENT OF AGENCY-WIDE 20% HOUSING SET-ASIDE OBLIGATION AND REPAYMENT OF \$400,000 DEBT FROM THE REDEVELOPMENT AGENCY TO THE CITY OF VALLEJO

PROPOSED ACTION: Adopt the resolution authorizing the payment of Merged Project Area's 20% housing set-aside obligation with funds from Flosden Project Area in order to facilitate the Merged Project Area's \$400,000 repayment of debt service to the City's General fund in both Fiscal Year 2007-2008 and in Fiscal Year 2008-2009.

5. **ADJOURN TO CITY COUNCIL MEETING**

Dated: June 19, 2008

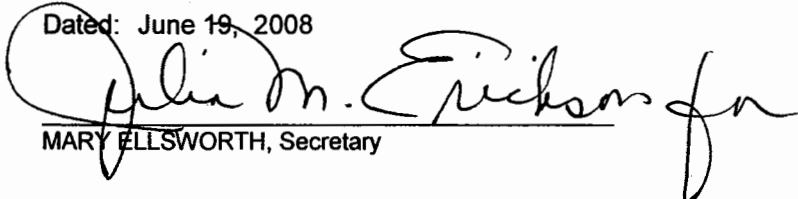


OSBY DAVIS, Chairperson

**CERTIFICATION**

I, Mary Ellsworth, Secretary, undersigned, do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Redevelopment Agency of the City of Vallejo, California, at the time and in the manner prescribed by law, or said members have waived notice thereof by their consent attached hereto.

Dated: June 19, 2008



MARY ELLSWORTH, Secretary

**1 AMENDED  
AGENDA**

**VALLEJO CITY COUNCIL  
SPECIAL MEETING VALLEJO  
HOUSING AUTHORITY  
SPECIAL MEETING VALLEJO  
REDEVELOPMENT AGENCY**

**JUNE 24, 2008**

MAYOR  
Osby Davis

CITY COUNCIL  
Tom Bartee, Vice Mayor  
Hermie Sunga  
Stephanie Gomes  
Michael Wilson  
Joanne Schivley  
Erin Hannigan

7  
City Hall  
555 Santa Clara Street  
Vallejo, CA 94590

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

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.

**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**

- 1. ROLL CALL**
- 2. CLOSED SESSION**

CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: IN RE: CITY OF VALLEJO, CALIFORNIA, DEBTOR; UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF CALIFORNIA, CASE NO. 08-26813-A-9, PURSUANT TO SUBDIVISION (C) OF GOVERNMENT CODE SECTION 54956.9

- 3. ADJOURNMENT**

<sup>1</sup> Page 4: Item 7-E, correct typographical error in agenda title: Fiscal Year 2008-2009 to Fiscal Year 2007-2008

**VALLEJO HOUSING AUTHORITY**  
**SPECIAL MEETING – JUNE 24, 2008**  
**6:45 P.M. – CITY COUNCIL CHAMBERS**

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

**1. ROLL CALL**

**2. CONSENT CALENDAR**

- A. APPROVAL OF VALLEJO HOUSING AUTHORITY MINUTES FOR THE SPECIAL MEETING OF MARCH 11, 2008

PROPOSED ACTION: Approve the minutes.

**3. PUBLIC HEARING**

- A. ADOPTION OF HOUSING AUTHORITY FISCAL YEAR 2008-2009 BUDGET

PROPOSED ACTION: Adopt the resolution approving the Housing Authority budget for Fiscal Year 2008-2009.

**4. ADJOURNMENT**

**VALLEJO CITY COUNCIL**  
**REGULAR MEETING**  
**7:00 P.M. -- CITY COUNCIL CHAMBERS**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PRESENTATIONS AND COMMENDATIONS**
  - A. **PRESENTATION OF CERTIFICATE OF APPRECIATION TO BEVERLY MCGAIN FOR SERVICE ON THE VALLEJO COMMUNITY ACCESS TELEVISION (VCAT)**
  - B. **PRESENTATION OF FEDERAL GRANTS UPDATE FOR FIGHTING BACK YOUTH PROGRAMS BY TONY PEARSALL, EXECUTIVE DIRECTOR**

5. **FIRST 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. The conduct of the community forum shall be limited to a maximum of fifteen (15) minutes, with each speaker limited to three minutes pursuant to Vallejo Municipal Code Section 2.20.300. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the second Community Forum listed later on the agenda.*

6. **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.*

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

- A. **APPROVAL OF A RESOLUTION INITIATING PROCEEDINGS FOR THE LEVY AND COLLECTION OF ASSESSMENTS, PRELIMINARY APPROVAL OF ENGINEER'S REPORT, DECLARATION OF INTENTION FOR THE LEVY AND COLLECTION OF ASSESSMENT FOR THE HIDDENBROOKE MAINTENANCE DISTRICT AND SETTING THE FISCAL YEAR 2008-2009 PUBLIC HEARING FOR JULY 22, 2008**

**PROPOSED ACTION:** Adopt the resolution initiating proceedings for the levy and collection of assessments, preliminarily approving the Engineer's Report, declaration of intention for the levy and collection of assessments for the HMD and setting the Fiscal Year 2008-2009 Public Hearing for July 22, 2008.

- B. APPROVAL OF A RESOLUTION ESTABLISHING THE FISCAL YEAR 2008-2009 GANN APPROPRIATIONS LIMIT AT \$98,049,789, AND CERTIFYING THAT FISCAL YEAR 2008-2009 APPROPRIATIONS THAT ARE SUBJECT TO THE LIMIT DO NOT EXCEED THE APPROPRIATIONS LIMIT

PROPOSED ACTION: Adopt the resolution establishing the Fiscal Year 2008-2009 Gann Appropriations Limit at \$98,049,789, and certifying that Fiscal Year 2008-2009 appropriations that are subject to the Appropriations Limit do not exceed the Appropriations Limit.

- C. APPROVAL OF A RESOLUTION AWARDED THE PARATRANSIT MANAGEMENT AND OPERATING CONTRACT TO MV TRANSPORTATION, INC. AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MV TRANSPORTATION, INC., FAIRFIELD, CALIFORNIA

PROPOSED ACTION: Adopt the resolution awarding the Paratransit Management and Operating Contract to MV Transportation, Inc. and authorizing the City Manager to sign a contract with MV Transportation Inc.

- D. APPROVAL OF A RESOLUTION TO AMEND THE FISCAL YEAR 2007-2008 BUDGET FOR FUND 102 (FEDERAL HOME INVESTMENT PARTNERSHIPS PROGRAM) AND ALLOCATION OF FUNDS TO VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.

PROPOSED ACTION: Adopt the resolution to amend the Fiscal Year 2007-2008 budget for Fund 102 (Federal HOME Investment Partnerships Program), which will commit unallocated HOME Program funds in the amount of \$525,008 to Vallejo Neighborhood Housing Services, Inc. to provide downpayment assistance and housing rehabilitation loans.

- E. APPROVAL OF A RESOLUTION APPROVING AN AMENDMENT TO THE FISCAL YEAR 2007-2008 AGREEMENT BY AND BETWEEN THE CITY OF VALLEJO AND VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC. (VNHS)

PROPOSED ACTION: Adopt the resolution authorizing the City Manager or his designee to execute an amendment to the Fiscal Year 2007-2008 Agreement between the City of Vallejo and VNHS, Inc., which will: 1) award previously unallocated Federal HOME Investment Partnerships Program funds available to the City in the amount of \$525,008 to provide downpayment assistance and housing rehabilitation loans, and 2) extend the term of the Agreement to September 30, 2008.

- F. APPROVAL OF A RESOLUTION AWARDED NINE CONTRACTS AND EXTENDING ONE EXISTING CONTRACT FOR SUPPLY OF CHEMICALS FOR APPLICATION TO AND TREATMENT OF WATER FOR FISCAL YEAR 2008-2009

**PROPOSED ACTION:** Adopt the resolution awarding contracts to: General Chemical, Parsippany, NJ (Liquid Aluminum Sulfate), Olin Chlor Alkali Products, Walnut Creek, CA (Liquid Caustic (50% solution)); Olin Chlor Alkali Products, Walnut Creek, CA (Liquid Caustic (25% solution)); Brenntag Pacific, Richmond, CA (Hydrofluorosilicic Acid (24% solution)); Sierra Chemical Company, Sparks, NV (Liquid Chlorine (4 ton or more load)); CalChem, Inc., Modesto, CA (Aluminum ChloroHydroxide (Full Load ≈45,000 lb)); CalChem, Inc., Modesto, CA (Cat-Ionic Polymer); SNF Polydyne, Riceboro, GA (Anionic Polymer); and Praxair Inc., San Ramon, CA (Liquid Oxygen for Fleming Hill Treatment Plant); and extending one existing contract with BOC Gases, Hayward, CA (Liquid Oxygen for Travis Treatment Plant) for the supply of chemicals for application to and treatment of water for Fiscal Year 2008-2009 and authorizing the City Manager or his designee to sign the contracts.

- G. APPROVAL OF A RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR ABATEMENT AND DEMOLITION ACTIVITIES AT 1001 INDIANA STREET AND 318 STARR AVENUE, VALLEJO AND AWARING A CONTRACT TO YELTON COMPANY, INC. OF VACAVILLE, CALIFORNIA IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS

**PROPOSED ACTION:** Adopt the resolution approving plans and specifications for abatement and demolition activities at 1001 Indiana Street and 318 Starr Avenue, Vallejo and awarding a contract to Yelton Co., Inc. of Vacaville in accordance with the approved plans and specifications.

- H. APPROVAL OF TWO RESOLUTIONS: 1) AUTHORIZING THE CITY MANAGER OF HIS/HER DESIGNEE TO SUBMIT THE CITY OF VALLEJO'S FISCAL YEAR 2008-2009 APPLICATION FOR TRANSPORTATION DEVELOPMENT ACT AND STATE TRANSIT ASSISTANCE FUNDING AND 2) APPROVAL OF A RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS/HER DESIGNEE TO SUBMIT THE REGIONAL MEASURE 2 APPLICATION FOR FISCAL YEAR 2008-2009

**PROPOSED ACTION:** Adopt the two resolutions: 1) Authorizing the City Manager or his designee to submit the City of Vallejo's Fiscal Year 2008-2009 application for Transportation Development Act (TDA) and State Transit Assistance in the amount of \$7,211,929; and 2) Authorizing the City Manager or his designee to submit the Regional Measure 2 (RM2) Application in the amount of \$3,917,465.

**8. PUBLIC HEARINGS**

- A. CONSIDERATION OF A RESOLUTION CONFIRMING AND LEVYING ASSESSMENTS AGAINST PROPERTIES FOR UNPAID GARBAGE BILLS

**PROPOSED ACTION:** Adopt the resolution confirming and levying assessments against properties for unpaid garbage bills. Upon confirmation, unless said assessment are paid by July 15, 2008, the City Manager will be authorized and directed to have said assessments placed on the 2008-2009 Solano County property tax rolls for the properties described and/or file appropriate liens for said properties.

- B. PUBLIC HEARING REGARDING FISCAL YEAR 2008-2009 ASSESSMENTS AND ADOPTION OF A RESOLUTION ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS WITH FOURTEEN (14) IMPROVEMENT ACT OF 1911 LANDSCAPE MAINTENANCE DISTRICTS: CIMARRON HILLS/MADIGAN; COLLEGE HILLS; COSTA DEL RIO (SEAVIEW); SOMERSET HIGHLANDS I/II; GREENMONT/SEAPORT HILLS; MONICA PLACE; RIDGECREST; SOMERSET HIGHLANDS III; SPRINGTREE/FLEMING HILL; SUMMIT II; TOWN AND COUNTRY I; WOODRIDGE; GLEN COVE I/II AND HUNTER RANCH I/II FOR FISCAL YEAR 2008-2009

**PROPOSED ACTION:** Adopt the resolution ordering the levy and collection assessments within the fourteen (14) Landscape Maintenance Districts for Fiscal Year 2008-2009.

- C. PUBLIC HEARING AND CONSIDERATION OF A DEVELOPMENT AGREEMENT, AN ACQUISITION AGREEMENT, A RIGHT OF ENTRY AND DEMOLITION AGREEMENT, AND A PUBLIC IMPROVEMENT AGREEMENT WITH TOURO MARE ISLAND, LLC FOR A CANCER TREATMENT AND RESEARCH CENTER PROJECT ON MARE ISLAND

**PROPOSED ACTION:** Adopt two resolutions: 1) approving the Acquisition Agreement, the Public Improvements Construction Agreement and the Right of Entry and Demolition Agreement; and 2) holding on first reading the ordinance approving the Development Agreement between the City of Vallejo and Touro Mare Island LLC for the Touro Cancer Treatment and Research Center Project.

9. RECESS TO JOINT SPECIAL MEETING WITH THE REDEVELOPMENT AGENCY

- D. ADOPTION OF THE CITY OF VALLEJO BUDGET FOR FISCAL YEAR 2008-2009

**PROPOSED ACTION:** Adopt two resolutions 1) approving that portion of the City of Vallejo Fiscal Year 2008-2009 Budget appropriating funds for the Benicia Vallejo Humane Society; and 2) approving the City of Vallejo Fiscal Year 2008-2009 Budget excluding the appropriation to the Benicia Vallejo Humane Society.

10. RECONVENE CITY COUNCIL MEETING

11. POLICY ITEMS – NONE



**12. ADMINISTRATIVE ITEMS**

- A. APPROVAL OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A SCOPE OF WORK AND FINANCIAL PLAN FOR THE PREDATOR MANAGEMENT PROGRAM ON MARE ISLAND

PROPOSED ACTION: Adopt the resolution authorizing the City Manager to sign a Scope of Work and Financial Plan for the Predator Management Program on Mare Island for the period of July 1, 2008, through June 30, 2009.

**13. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES - NONE**

**14. 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.*

**15. CITY MANAGER'S REPORT**

**16. CITY ATTORNEY'S REPORT**

**17. 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.*

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

**19. CLOSED SESSION - NONE**

**20. ADJOURNMENT**

**VALLEJO REDEVELOPMENT AGENCY**  
**SPECIAL MEETING - 7:00 P.M.**  
**CITY COUNCIL CHAMBERS**

*NOTICE: Members of the public shall have the opportunity to address the Redevelopment Agency concerning any item listed on this 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 REDEVELOPMENT AGENCY MINUTES FOR THE SPECIAL JOINT MEETING OF AUGUST 14, 2007; AND THE SPECIAL JOINT MEETING OF FEBRUARY 26

PROPOSED ACTION: Approve the minutes

**3. PUBLIC HEARING**

A. ADOPTION OF FISCAL YEAR 2008-2009 ANNUAL BUDGET FOR THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO

PROPOSED ACTION: Adopt the resolution approving the Fiscal Year 2008-2009 Annual Budget for the Redevelopment Agency of the City of Vallejo

**4. ADMINISTRATIVE ITEMS**

A. CONSIDERATION OF FLOSDEN PROJECT AREA PAYMENT OF AGENCY-WIDE 20% HOUSING SET-ASIDE OBLIGATION AND REPAYMENT OF \$400,000 DEBT FROM THE REDEVELOPMENT AGENCY TO THE CITY OF VALLEJO

PROPOSED ACTION: Adopt the resolution authorizing the payment of Merged Project Area's 20% housing set-aside obligation with funds from Flosden Project Area in order to facilitate the Merged Project Area's \$400,000 repayment of debt service to the City's General Fund in both Fiscal Year 2007-2008 and in Fiscal Year 2008-2009.

**ADJOURN TO CITY COUNCIL MEETING**

**VALLEJO HOUSING AUTHORITY**  
**MARCH 11, 2008**

**MINUTES**

A special meeting of the Vallejo Housing Authority was held on the above date in the Council Chambers of the Vallejo City Hall. The meeting was called to order at 6:50 p.m. by Chairman Osby Davis..

1. CALL TO ORDER

A. ROLL CALL

Present: Chairman Davis, Vice Chair Bartee, Member Gomes, Hannigan, Pitchford, Schivley, Sunga and Wilson

Absent: Member Everheart (excused)

Staff: Executive Director Joseph Tanner  
City Attorney Fred Soley  
Secretary Mary Ellsworth

2. CONSENT CALENDAR

Chairman Davis referred to Consent Item A and asked why the voucher is not denied if there is information that is misleading or untrue; why isn't verification provided at the time the application is submitted.

Laura Simpson, Program Manager, explained how applicants are qualified stating that people are asked to apply, but because of the amount of paperwork involved, staff verifies the application as it moves up on the waiting list. She noted that eligibility for preferences changes over time. Therefore, it could change between the time the application is submitted to the time the application is pulled from the waiting list. Ms. Simpson further explained the qualification criteria and placement on the waiting list.

Commissioner Sunga asked if the Authority will be adding a category for seniors under preferences. Ms. Simpson replied that seniors are included under the single person's category (Category 5, elderly, disabled, homeless or displaced). HUD only allows seniors under Category 5; they do not allow an exclusive category for seniors.

Chairman Davis noted a correction to the minutes of November 27, in the opening paragraph, the Chairman should be Anthony J. Intintoli, Jr., rather than Osby Davis.

Speakers: Mustafa Abdul Ghanee expressed concern about staff's characterization of preferences as time consuming and unproductive. He

explained that preferences allows staff to bring people such as veterans, disabled persons and families that are homeless to the top of the list which he believes is extremely productive. He stated that he wants to make sure when the matter comes before the Housing Authority to make a determination about preferences that the importance of the work is recognized, that it should not be considered unproductive.

Ms. Simpson responded to Mr. Ghanee's comments.

Hearing no additions, corrections or deletions, the agenda was approved as received and the following resolution and minutes were offered by Vice Chairman Bartee:

**RESOLUTION NO. 08-01 APPROVING THE REVISIONS TO CHAPTER FOUR OF THE ADMINISTRATIVE PLAN ADDING CLARIFICATION OF LANGUAGE PERTAINING TO APPLICANT PREFERENCE PLACEMENT**

**APPROVAL OF VALLEJO HOUSING AUTHORITY MINUTES FOR THE SPECIAL MEETING OF NOVEMBER 27, 2007, AND THE REGULAR MEETING OF DECEMBER 18, 2007**

The resolution was adopted and the minutes were approved as corrected by the following vote:

AYES:	Chairman Davis, Vice Chairman Bartee, Authority Members Gomes, Hannigan, Pitchford, Schivley, Sunga and Wilson
NOES:	None
ABSENT:	Member Everheart (excused)
ABSTENTIONS:	None

**4. ADJOURNMENT**

The meeting adjourned at 7:00 p.m.

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OSBY DAVIS, CHAIRMAN

ATTEST: 

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MARY ELLSWORTH, SECRETARY



**VALLEJO HOUSING AUTHORITY**

Date: June 24, 2008

TO: Chair and Members

FROM: Craig Whitton, Assistant City Manager/Community Development *W*  
Robert V. Stout, Finance Director *Am JRS*  
Melinda Nestlerode, Acting Housing and Community Development Manager *M. Nestlerode*

SUBJECT: CONSIDERATION OF FISCAL YEAR 2008-2009 BUDGET

BACKGROUND AND DISCUSSION

The Vallejo Housing Authority, (VHA) created pursuant to California Housing Authorities Law, is authorized to offer a variety of housing services. In Fiscal Year (FY) 2008/2009, the VHA will deliver the Housing Choice Voucher program (HCV), as well as a Homeownership and Family Self-Sufficiency program. Twenty-one vouchers may also be project-based, pending HUD approval. All the programs administered by the VHA are fully funded by the U.S. Department of Housing and Urban Development (HUD). The budget for FY 2008/2009 consists of revenue and expenditures related to the HCV and related programs, and two housing reserve funds.

The HCV program provides rental subsidies to low-income families who may choose to reside anywhere in Vallejo. Landlords receive market rate rents and are required to provide good quality housing. The HCV program is identified in the City's Consolidated Plan and the Housing Element as a high priority in meeting the City's housing goals. The proposed FY 2008/2009 budget was reviewed by the Housing and Redevelopment Commission (HRC) on June 11, 2008. The HRC adopted a resolution recommending that the Housing Authority Board approve the FY 2008/2009 VHA budget.

The proposed budget for FY 2008/2009 is \$21,768,713. The majority of these funds, \$19,350,576, represent HUD funding for rent payments to landlords who provide safe and decent housing to low-income Vallejo families. Up to 2,268 families may be served in Vallejo.

The methodology and level of funding for the HCV program fluctuates annually, and is determined by the annual Transportation, Housing and Urban Development and Assorted Agencies Appropriations Act. Housing Authorities are funded separately for Housing Assistance Payment (HAP) and Administrative Fees. HAP funding is prohibited from any use other than rent or mortgage payments in the HCV program, escrow payments for Family Self-Sufficiency program participants, and utility reimbursements. Administrative funding pays for all operating expenses. HUD provides funding to the HCV program on a calendar year cycle. This, plus the fact that the funding methodology changes with each federal fiscal year, presents a challenge to Housing Authorities who have adopted a fiscal year budget cycle.

### Administrative Funding

The 2008 Appropriations Act reversed the method of Administrative Fee funding to a formula used prior to 2004. The amount of funding is once again linked to the number of HCV units leased. This change increased the amount of Administrative Fee funding the VHA projects to receive in FY 2008/2009 by over 20 percent. However, the amount that the Housing Authority pays to the General Fund through a Cost Allocation Plan for City services and other expenses has offset the benefit of this increase in federal funding. Therefore, the VHA will draw \$237,543 from its operating reserve to fund administrative costs in excess of projected FY 2008/2009 Administrative revenues.

The VHA also anticipates receiving \$131,000 in Family Self-Sufficiency grant funding. The VHA applies for the Family Self-Sufficiency grant every year as a part of HUD's SuperNOFA grant application process, and to-date has been granted the full amount annually. The Family Self-Sufficiency grant contributes toward the cost of the Family Self-Sufficiency and Homeownership Coordinators and related program expenses.

The administrative budget is funded by HUD furnished Administrative Fees (\$2,000,631), the Family Self-Sufficiency grant, investment and rental income and other miscellaneous fees. The total administrative budget for FY 2008/2009 is \$2,384,674.

### HAP Funding

The 2008 Appropriations Act also changed the HAP funding formula. Instead of fully funding the annual rent and mortgage subsidy needs in Calendar Year (CY) 2008, HUD calculated the amount of HAP reserves maintained by the VHA, and provided the difference as HAP funding. HAP reserves are categorized as Net Restricted Assets (NRA). HUD determined that the total annual funding need in 2008 was \$17,670,637. This amount was offset by \$8,645,896 in NRA, leaving the 2008 funding amount of \$9,024,741.

HUD's \$17,670,637 needs assessment was based on the VHA lease up rate in CY 2007. The VHA has successfully increased their lease up rate, raising it from 89 percent at the beginning of FY 2007/2008 to 94 percent in April 2008.

The HAP budget consists of HUD funding (\$9,024,741), as well as investment income and other fees. The total HAP program expenditure budget is \$19,350,576. HUD will require the VHA to draw approximately \$10,000,000 in accumulated reserves (Net Restricted Assets) during FY 2008/2009 to support the current level of HAP operations.

**Comparison of HAP and Administrative Fee  
Funding by Calendar Year**

	HAP	Administrative Fees
CY 2005 Final Funding	\$ 26,094,870	\$ 1,599,087
CY 2006 Final Funding	\$ 25,736,237	\$ 1,618,070
CY 2007 Final Funding	\$ 21,376,489	\$ 1,632,599
CY 2008 Proposed Funding	\$ 9,024,741	\$ 2,000,631

### Program Reserves

In addition to HAP and Administrative Fee funds the VHA budget consists of two reserve funds. The reserve funds contain \$2,000,000 which was designated for future affordable housing development in FY 2006/2007. The \$2,000,000 is a part of a collection of funding from the Housing Authority, Redevelopment Agency, Community Development Block Grant and HOME programs dedicated to affordable housing development.

In FY 2008/2009 staff will propose that \$25,000 of the available Project Balance for Housing Development in the Housing Development Fund (124) be utilized to fund a Land Trust Feasibility Study. Staff has had a preliminary meeting with a group of Vallejo citizens promoting the Land Trust concept in Vallejo. A feasibility study will provide the Housing Authority Board with information from experts in the area of Land Trusts. The consultant chosen to conduct the study would work closely with Vallejo citizens and stakeholders, (e.g. Vallejo Neighborhood Housing Services), to ensure that local needs are addressed. The results of the study will be provided to the Housing Authority Board/City Council as an option in a menu of various affordable housing programs that will enable Vallejo to meet the requirements of the Housing Element and the Buchango settlement.

An additional \$25,000 expenditure from the available Project Balance for Housing Development in the Housing Development Fund (124) will fund the VHA portion of the Housing Element expense. As mandated by state law, the Housing Element of the City of Vallejo's General Plan contains an extensive housing needs assessment that evaluates local conditions and needs regarding housing demand, supply and affordability. The Housing Element is scheduled to be updated in FY 2008/09.

### Mobile Home Park Program

The Mobile Home Park program has been transferred from the General Fund into the Housing Development Fund. Mobile Home Park program revenue consists of an annual administrative fee paid by the mobile home park owners, pursuant to Section 5.64.160 of the Vallejo Municipal Code. Expenses are typically incurred by retaining legal counsel or other professional services. The FY 2008/2009 budget for the Mobile Home Park program fund is \$12,000.

FISCAL IMPACT

The 2008/2009 VHA budget totals \$21,768,713.

RECOMMENDATION

Staff recommends that the Housing Authority Board approve and adopt the proposed FY 2008/2009 budget.

ALTERNATIVES CONSIDERED

No alternatives were considered.

ENVIRONMENTAL REVIEW

An environmental review is not required.

PROPOSED ACTION

Adopt the attached resolution approving the Housing Authority budget for FY 2008/2009.

DOCUMENTS AVAILABLE FOR REVIEW

Attachment A - Resolution

Attachment B - City of Vallejo Proposed Budget Worksheets for Funds 121 Through 124

CONTACT:

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

or

Melinda Nestlerode, Acting Housing and Community Development Manager, (707) 648-4408, [mnestlerode@ci.vallejo.ca.us](mailto:mnestlerode@ci.vallejo.ca.us)



# ATTACHMENT "A"

**RESOLUTION NO. 08-**

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF VALLEJO:

THAT WHEREAS, the Housing Authority of the City of Vallejo must prepare an annual budget, and

WHEREAS, the Housing Authority of the City of Vallejo FY 2008-2009 budget was included in the proposed City of Vallejo budget document and the contents reviewed at a budget workshop on June 17, 2008, and

WHEREAS, the Housing Authority FY 2008-2009 budget is attached to this resolution as Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the Housing Authority approves the Housing Authority of the City of Vallejo budget for Fiscal Year (FY) 2008-2009 as reflected in Exhibit "A" to this resolution; and

The Executive Director is authorized to transfer cash among funds on a daily basis to support funds that have a negative cash position, and

The Executive Director is authorized to receive and accept donations for specific purposes, to deposit such donations in trust funds, and to expend such donations for the purpose for which the donation was made, and

The Executive Director is authorized to submit grant applications for activities within the jurisdiction of the Agency. The Executive Director is authorized to accept such grants, to amend the budget to receive and appropriate the grant funds, and to implement the actions required by any grant for projects and programs within the Agency's jurisdiction, and

The Executive Director is authorized to amend the Budget to reflect all required debt service requirements and payments, bond covenants or other applicable requirements, laws and regulations; and

BE IT FURTHER RESOLVED that the Executive Director, or his designee, the Assistant City Manager/Community Development, is hereby authorized to amend and revise the FY 2008-2009 budget in accordance with the Housing Authority Bylaws.

# ATTACHMENT "B"

City of Vallejo  
Community Development  
Housing Authority  
Combining Schedule  
FY 08-09

	Section 8			Housing Development Fund #124	Total
	Voucher Program Fund #123	Admin Program Fund #121	Operating Reserve Fund #122		
<b>Beginning Available Fund Balance</b>	\$ 14,673,181		\$ 1,119,925	\$ 29,471	\$ 15,822,577
<b>Revenues</b>					
Operating					
Operating Grants and Contributions	9,024,741	2,133,631			11,158,372
Investment Income	224,236		53,399	10,589	288,224
Mobile Home Park Program				12,000	12,000
Miscellaneous	23,799	13,500		28,600	65,899
<b>Total Revenues</b>	<u>9,272,776</u>	<u>2,147,131</u>	<u>53,399</u>	<u>51,189</u>	<u>11,524,495</u>
<b>Expenditures</b>					
Grant programs	19,350,576				19,350,576
Administration		2,634,143			2,634,143
Interfund Reimbursement - personnel		(249,469)		21,463	(228,006)
Mobile Home Park Program				12,000	12,000
<b>Total Expenditures</b>	<u>19,350,576</u>	<u>2,384,674</u>	<u>0</u>	<u>33,463</u>	<u>21,768,713</u>
Interfund Allocation:					
Interfund Transfers - program support		237,543	(237,543)		-
	-	<u>237,543</u>	<u>(237,543)</u>	-	-
<b>Net Change</b>	<u>(10,077,800)</u>	<u>0</u>	<u>(184,144)</u>	<u>17,726</u>	<u>(10,244,218)</u>
<b>Ending Available Fund Balance</b>	<u>\$ 4,595,381</u>	<u>\$ -</u>	<u>\$ 935,781</u>	<u>\$ 47,197</u>	<u>\$ 5,578,359</u>
<b>Project Balances, including FY 08-09 Appropriations:</b>					
Housing Development			<u>\$ 1,500,000</u>	<u>\$ 500,000</u>	<u>\$ 2,000,000</u>




**Agenda Item No.** CONSENT A

**COUNCIL COMMUNICATION**

**Date:** June 24, 2008

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Gary A. Leach, Public Works Director 

**SUBJECT:** APPROVAL OF A RESOLUTION INITIATING PROCEEDINGS FOR THE LEVY AND COLLECTION OF ASSESSMENTS, PRELIMINARILY APPROVING THE ENGINEER'S REPORT, DECLARATION OF INTENTION FOR THE LEVY AND COLLECTION OF ASSESSMENT FOR THE HIDDENBROOKE MAINTENANCE DISTRICT AND SETTING THE FY 2008/2009 PUBLIC HEARING FOR JULY 22, 2008 AT 7:00 P.M.

**BACKGROUND AND DISCUSSION**

The City of Vallejo has a total of twenty-six (26) Landscape and Lighting Districts (LMD), twelve (12) of which were created under the Landscape and Lighting Act of 1972, and fourteen (14) created under the 1911 Act. Public Hearings for twenty-five (25) of the LMD's covered under the 1911 and 1972 Acts will be conducted under separate agenda items. This resolution formally starts the process for establishing the Fiscal Year (FY) 2008/2009 assessment for the Hiddenbrooke Maintenance District (HMD).

The HMD has come under separate Council action to allow the Hiddenbrooke Homeowners Association time to review public financial information regarding their District.

Annually, Engineer's Reports are prepared for each 1972 Act District. These reports analyze the districts based on "equivalent benefit units" (EBU). An equivalent benefit unit represents one single family residence. The report proposes assessments for each parcel based on the special benefits that it receives. The FY 2008/2009 Preliminary Engineer's Report includes the estimated budget for the HMD.

The benefit formula used for the HMD and proposed parcels reflects the composition of the parcels, and the improvements and services provided to each of them. The funds collected through annual assessments will be dispersed and used only for the improvements and services provided within the HMD.



The City Council appointed MuniFinancial as the Engineer of Work and directed them to prepare the Engineer's Report for the HMD. In accordance with the 1972 Landscape and Lighting Act, the City Council must reaffirm the assessment as estimated in the Preliminary Engineer's Report. The Preliminary Engineer's Report for the HMD is available for review in the City Clerk's Office and in the Department of Public Works, 555 Santa Clara Street, Vallejo, CA. Electronic copies are also available by contacting Joe Bates at 649-3414 or JoeB@ci.vallejo.ca.us.

### Fiscal Impact

The proposed annual assessment for FY 2008/2009 is \$593.18 per equivalent benefit unit (EBU). This represents an annual increase of 2.8% over last year's annual assessment of \$577.04 per EBU. This increase is based on the Consumer Price Index for All Urban Consumers (CPI-U), calculated by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) for the Consolidated Metropolitan Statistical Area (CMSA) covering San Francisco-Oakland-San Jose, which is outlined in the Engineer's Report. It is a property owner approved inflation factor that does not require balloting in accordance with the requirements of the California Constitution, Articles XIIC and XIID (Proposition 218).

The General Fund will contribute to the Hiddenbrooke Maintenance District as stated below. This is because there is a general benefit to the city by properties outside the HMD that cannot be assessed to properties within the HMD boundary. The City's general benefit contribution for FY 2008/2009 will be made by the General Fund and is estimated to be:

Hiddenbrooke Parkway @ 25% percent =	\$1,562.00 per year
Welcome Center @ 0.5% =	<u>\$ 825.00 per year</u>
Total	\$2,387.00 per year

### RECOMMENDATION

Begin the process and adopt a resolution initiating proceedings for the levy and collection of assessments, preliminarily approving the Engineer's Report and Declaration of Intention for the Levy and Collection of Assessment for the Hiddenbrooke Maintenance District (HMD) and setting a Public Hearing on these matters to be held by the City Council on **Tuesday, July 22, 2008 at 7:00 P.M.**, or as soon thereafter as feasible in the City Council Chambers, located at 555 Santa Clara Street, Vallejo, California for FY 2008/2009.

### ENVIRONMENTAL REVIEW

The levy and collection of these assessments is exempt from the California Environmental Quality Act under section 15273 of Title 14 of the California Code of



Regulations, as none of the proceeds will be used for capital expenses, but will be used instead for operation and maintenance.

### PROPOSED ACTION

Adopt a resolution initiating proceedings for the levy and collection of assessments, preliminarily approving the Engineer's Report and Declaration of Intention for the Levy and Collection of Assessment for the Hiddenbrooke Maintenance District (HMD) and setting a Public Hearing on July 22, 2008 for FY 2008/2009.

### DOCUMENTS ATTACHED

- a. Resolution initiating proceedings for FY 2008/2009 levy and collection of assessments, preliminarily approving the Engineer's Report and declaration of intention for the levy and collection of assessments for the Hiddenbrooke Maintenance District and setting the Public Hearing for July 22, 2008, for FY 2008/2009.

### DOCUMENTS AVAILABLE FOR REVIEW

- a. Engineer's Report available in Public Works Department and the City Clerk's Office for review. Electronic copies are available from [JoeB@ci.vallejo.ca.us](mailto:JoeB@ci.vallejo.ca.us)

### CONTACT PERSONS

Gary A. Leach, Public Works Director  
(707)648-4315  
[gleach@ci.vallejo.ca.us](mailto:gleach@ci.vallejo.ca.us)

John Cerini, Maintenance Superintendent  
(707)648-4557  
[JCerini@ci.vallejo.ca.us](mailto:JCerini@ci.vallejo.ca.us)

Joe Bates, Assistant Maintenance Superintendent/Landscape  
(707) 649-3414  
[JoeB@ci.vallejo.ca.us](mailto:JoeB@ci.vallejo.ca.us)

JUNE 24, 2008  
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**RESOLUTION NO. 08 N.C.**

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

WHEREAS, the City Council by previous Resolutions formed and levied annual assessments for the Hiddenbrooke Maintenance District (hereafter referred to as the "District"), pursuant to the provisions of the *Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with section 22500)* (hereafter referred to as the "Act"); and

WHEREAS, the Act provides the City Council the authority to annually levy and collect assessments for the District on the Solano County tax roll on behalf of the City of Vallejo to pay for the maintenance and services of all improvements and facilities related thereto; and

WHEREAS, the City Council has retained MuniFinancial for the purpose of assisting with the Annual Levy of the District, to prepare and file an Engineer's Annual Levy Report (hereafter referred to as the "Engineer's Report") with the City Clerk in accordance with the Act; and

WHEREAS, there has now been presented to this City Council the Engineer's Report as required by *Chapter 1, Article 4, Section 22566* of said Act; and

WHEREAS, this City Council has carefully examined and reviewed the Preliminary Engineer's Report as presented, and is preliminarily satisfied with the budget items and documents as set forth therein, and is satisfied that the levy amounts, on a preliminary basis, have been spread in accordance with the special benefit received from the improvements, operation, maintenance and services to be performed within the District, as set forth in said Report; and

WHEREAS, the assessments for the Districts were previously approved in accordance with the requirements of the California Constitution, Articles XIII C and XIII D.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF VALLEJO AS FOLLOWS:

**Section 1** Engineer's Report: The City Council hereby orders MuniFinancial to prepare and file with the City Clerk the Preliminary Hiddenbrooke Maintenance District Engineer's Report concerning the levy of assessments for the Districts for the fiscal year commencing July 1, 2008 and ending June 30, 2009, in accordance with *Chapter 3, Section 22623* of the Act.

**Section 2** Proposed improvements and any substantial changes in existing improvements: The improvements within the District include: storm water management, street system maintenance, open space maintenance, landscape maintenance, geotechnical monitoring and maintenance, street tree maintenance, Welcome Center operation and maintenance, waterfall maintenance, monument maintenance and passive park maintenance and all appurtenant facilities and operations related thereto. The Engineer's Reports describes all the improvements and any substantial changes in existing improvements.



**Section 3** That the "Engineer's Report" as presented, consists of the following:

- a) A Description of Improvements.
- b) The Annual Budget (Estimated Costs and Expenses of Services, Operations and Maintenance).
- c) The Method of Apportionment.

**Section 4** The "Engineer's Report" as presented is hereby approved on a preliminary basis, and ordered to be filed in the Office of the City Clerk as a permanent record and to remain open to public inspection.

**Section 5** That the City Clerk shall certify to the passage and adoption of this Resolution and the minutes of this meeting shall so reflect the presentation of the Report.

**Section 6** Intention: The City Council hereby declares its intention to seek the annual levy and collection of assessments within the District pursuant to the Act, over and including the land within each District boundary, and to levy and collect assessments on all such land to pay the annual costs and expenses of the improvements and services described in Section 4 of this Resolution, for Fiscal Year 2008/2009.

**Section 7** District Boundaries: The boundaries of the District have been changed by Annexation 1, and are as described in the Engineer's Report, on file with the City Clerk, and incorporated herein by reference. The District is within the boundaries of the City of Vallejo, within the County of Solano, State of California.

**Section 8** Proposed Assessment Amounts: The proposed annual assessment for FY 2008/2009 is \$593.18 per equivalent benefit unit (EBU). This represents an annual increase of 2.8% over last year's annual assessment of \$577.04 per EBU. This increase is based on the Consumer Price Index for All Urban Consumers (CPI-U), calculated by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) for the Consolidated Metropolitan Statistical Area (CMSA) covering San Francisco-Oakland-San Jose, which is outlined in the Engineer's Report. It is a property owner approved inflation factor that does not require balloting in accordance with the requirements of the California Constitution, Articles XIII C and XIII D (Proposition 218).

**Section 9** Public Hearing: The City Council hereby declares its intention to conduct a Public Hearing concerning the levy of assessments for the District in accordance with *Chapter 3, Section 22626* of the Act.

**Section 10** **Notice:** The City shall give notice of the time and place of the Public Hearing to all property owners within the District by causing the publishing of this Resolution once in a newspaper of general circulation not less than ten (10) days before the date of the public hearing, and by posting a copy of this resolution on the official bulletin board customarily used by the City Council for the posting of notices.

**Section 11** **Notice of Public Hearing:** Notice is hereby given that a Public Hearing on these matters will be held by the City Council on **Tuesday, July 22, 2008 at 7:00 P.M.**, or as soon thereafter as feasible in the City Council Chambers, located at 555 Santa Clara Street, Vallejo, California.

**Section 12** The City Clerk is hereby authorized and directed to give notice of such hearing.

**Section 13** The City Council finds that the levy and collection of these assessments is exempt from the California Environmental Quality Act under section 15273 of Title 14 of the California Code of Regulations, as none of the proceeds will be used for capital expenses, but will be used instead for operation and maintenance.

JUNE 24, 2008

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Agenda Item No.

CONSENT B

**COUNCIL COMMUNICATION**

Date: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Robert V. Stout, Finance Director

*Am for RS*

**SUBJECT: APPROVAL OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO ESTABLISHING THE FISCAL YEAR 2008-2009 GANN APPROPRIATIONS LIMIT AT \$98,049,789, AND CERTIFYING THAT FISCAL YEAR 2008-2009 APPROPRIATIONS THAT ARE SUBJECT TO THE LIMIT DO NOT EXCEED THE APPROPRIATIONS LIMIT**

**BACKGROUND AND DISCUSSION:**

Article XIII B of the California State Constitution, adopted as Proposition 4 (the Gann Initiative) by the voters of California on November 6, 1979 (as amended by Proposition 111) prohibits annual appropriations from exceeding an "Appropriations Limit." The Appropriations Limit is calculated by adjusting the 1986-87 base year appropriations by annual changes in population and a cost-of-living index. For Fiscal Year 2008-2009, appropriations that are subject to the Appropriations Limit will not exceed the Appropriations Limit.

The Appropriations Limit for Fiscal Year 2008-2009 is \$98,049,789, determined by applying the percentage increase in California per capita income of 4.29% and the change in County population increase of 0.62% to the Fiscal Year 2007-2008 Appropriations Limit of \$93,437,171.

Article XIII B requires that appropriations that are subject to the Appropriations Limit must not exceed \$98,049,789. Based upon definitions contained in Article XIII B, appropriations that are subject to the Limit for Fiscal Year 2008-2009 will equal \$59,431,642. Therefore, the appropriations that are subject to the Appropriations Limit will not exceed the Appropriations Limit.

As in the past, SB 1352 (Revenue and Taxation Code Section 7910) requires each local government to establish its appropriations limit by resolution each year at a regularly scheduled or noticed special meeting.

The annual adjustment made to the Limit is based on a formula which includes the following factors:



1. The greater of 1) the Change in City population or 2) the Change in population for the entire County

AND

2. Change in State per capita income or Change in non-residential assessed valuation

Typically, an agency selects the factors which provide for the largest growth in the Limit. For the calculation of the FY 2008-2009 Limit, the Change in County Population is used as it provides a greater Limit.

Not all revenues are restricted by the Limit, only those which are referred to as "proceeds of taxes."

The following is a list of factors used in the calculation:

Vallejo Population in January 2007	120,889
Vallejo Population in January 2008	121,097
Percentage Increase in Population - City of Vallejo	0.17%
Percentage Increase in Solano County Population	0.62%
California Per Capita Personal Income Increase	4.29%
Factor to be applied to Prior Year (Population Factor x Per Capita Factor)	1.0493660%

### **ENVIRONMENTAL REVIEW**

This action is not a project as defined by the California Environmental Quality Act and is not subject to CEQA review.

### **PROPOSED ACTION**

Adopt a resolution establishing the Fiscal Year 2008-2009 Gann Appropriations Limit at \$98,049,789, and certifying that Fiscal Year 2008-2009 appropriations that are subject to the Appropriations Limit do not exceed the Appropriations Limit.



**DOCUMENTS ATTACHED:**

1. Resolution establishing the Fiscal Year 2008-2009 Gann Appropriations Limit at \$98,049,789, and certifying that Fiscal Year 2008-2009 appropriations that are subject to the Appropriations Limit do not exceed the Appropriations Limit.
2. Appropriations Limit Calculation for Fiscal Year 2008-2009
3. Proceeds of Taxes Calculation

**PREPARED BY:**

Jon R. Oiler, Auditor Controller

(707) 648-4593

**CONTACT:**

Robert V. Stout, Finance Director

(707) 648-4592

**ATTACHMENT 1**

**RESOLUTION NO. \_\_\_\_\_ N.C.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO ESTABLISHING THE FISCAL YEAR 2008-2009 GANN APPROPRIATIONS LIMIT AT \$98,049,789, AND CERTIFYING THAT FISCAL YEAR 2008-2009 APPROPRIATIONS THAT ARE SUBJECT TO THE APPROPRIATIONS LIMIT DO NOT EXCEED THE APPROPRIATIONS LIMIT.**

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

**WHEREAS**, Article XIII B of the California State Constitution, adopted as Proposition 4 (the "Gann Initiative") by the voters of California on November 6, 1979, as expanded by Proposition 111, prohibits, with certain exceptions, the annual appropriations subject to limitation of any governmental entity from exceeding the base year appropriations except by a formula which adjusts the limit for changes in population and cost-of-living; and

**WHEREAS**, the Appropriations Limit for Fiscal Year 2008-2009 is calculated to be \$98,049,789, as determined by applying a percentage increase of 4.93660% to the Fiscal Year 2007-2008 Appropriations Limit of \$93,437,171; with such percentage increase comprised of the change in California per capita personal income of 4.29% and the annual population change for the County of Solano as of January 1, 2008 showing an increase of 0.62%, (as provided by the State Department of Finance); and

**WHEREAS**, the Fiscal Year 2008-2009 appropriations subject to the Appropriations Limit have been determined to be \$59,431,642, such amount being \$38,618,147, below the Appropriations Limit; and

**WHEREAS**, the documentation for the Appropriations Limit and appropriations subject to the Appropriations Limit for Fiscal Year 2008-2009 is on file in the Finance Department.

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

Section 1: The City Council hereby adopts an Appropriations Limit of \$98,049,789, for Fiscal Year 2008-2009, and certifies that the budgeted appropriations subject to the Appropriations Limit for Fiscal Year 2008-2009 do not exceed such Appropriations Limit.

City of Vallejo  
Appropriations Limit Calculation  
Fiscal Year 2008-2009

Attachment 2

**I. Calculation of Appropriations Limit:**

Fiscal Year 2007-2008 Appropriations Limit		\$93,437,171
a. CPI Factor (change in California per capita income)	1.0429	
b. Population Factor (Change in County population)	1.0062	
Change Factor (a. x b.)	<u>1.0493660</u>	
<b>Fiscal Year 2008-2009 Appropriations Limit</b>		<u><u>\$98,049,789</u></u>

**II. Calculation of appropriations subject to the Appropriations Limit:**

Fiscal Year 2008-2009 Budgeted General Fund Revenue	\$79,649,957
Less: Non-proceeds of taxes	<u>-\$20,218,315</u>
<b>Total FY 2008-2009 appropriations subject to the Appropriations Limit:</b>	<u><u>\$59,431,642</u></u>

City of Vallejo  
 Proceeds of Taxes Calculation  
 Fiscal Year 2008-2009


**Attachment 3**

	Proceeds of taxes	Non-proceeds of taxes	Total revenue
<b>Operating Revenue:</b>			
Property Taxes	19,082,615		19,082,615
Sales Tax	12,315,000		12,315,000
Utility User Taxes	13,152,946		13,152,946
Franchise Fees		4,427,850	4,427,850
Transient Occupancy Tax	1,500,000		1,500,000
Business License Tax	1,390,000		1,390,000
Property Transfer Tax	1,665,000		1,665,000
Real Property Excise Tax		200,000	200,000
Motor Vehicle License Fees	10,512,621		10,512,621
Police Grants		229,500	229,500
Development Fees and Permits		2,506,612	2,506,612
Fines & Forfeitures		960,000	960,000
Lease & Rental Revenue		826,211	826,211
Mare Island Service Reimbursement		3,705,655	3,705,655
Engineering Fees		1,731,100	1,731,100
Other Miscellaneous Revenue		4,929,847	4,929,847
Six Flags/Marine World Fee		765,000	765,000
<b>Total, before interest allocation</b>	<b>59,618,182</b>	<b>20,281,775</b>	<b>79,899,957</b>
Percentage of total revenue	74.6%	25.4%	100.00%
Interest allocation	(186,540)	(63,460)	(250,000)
<b>Total</b>	<b>59,431,642</b>	<b>20,218,315</b>	<b>79,649,957</b>



**Agenda Item No.****COUNCIL COMMUNICATION****Date:** June 24, 2008

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Gary A. Leach, Public Works Director 

**SUBJECT:** APPROVAL OF A RESOLUTION AWARDING THE PARATRANSIT MANAGEMENT AND OPERATING CONTRACT TO MV TRANSPORTATION, INC., AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MV TRANSPORTATION, FAIRFIELD, CA.

**BACKGROUND AND DISCUSSION**

The City of Vallejo has operated a contract transit operation for over forty years. The current operator is MV Transportation Inc. The current contract began in 2005.

The contract with MV Transportation, Inc. is currently a full Management and Operations Contract. The form of contract has not changed. The contractor will be paid for services on the basis of a rate that includes two components: 1) a fixed monthly fee covering certain specified administrative and system management costs and, 2) a fixed hourly rate covering labor expenses. The total cost for the hourly rate service is affected by the volume of service actually provided.

A Request for Proposals (RFP) to perform the management and operation of Vallejo's paratransit service was officially released on February 6, 2008. Notice of the RFP was sent directly to eleven firms and advertised in the Vallejo Times Herald as well as on the California Transportation Association website. A pre-proposal conference to go over the procurement and allow proposers and the City to ask and answer questions was held on February 25, 2008. The City was able to articulate our expectations for the successful contractor. The pre-proposal conference included a tour of the transit system and facilities and was attended by six potential proposers.

The incumbent contractor, MV Transportation Inc, was the single respondent to the request. Staff contacted First Transit and Veolia Transportation regarding their decision not to propose. Both gave answers that alluded to the fact that MV seemed to be an entrenched contractor with an overhead at the current location that was split across two contracts (MV also operates Benicia's contract out of the same location). With other opportunities available, they thought that they could be more competitive on other contracts. Staff asked if there was anything about the RFP that they felt limited competition. They both responded that there was nothing in the RFP that limited competition.



MV responded with two proposals, one base proposal to strictly meet the requests of the RFP, and a second alternative proposal that would co-locate the Paratransit and Fixed Route operation in the same location (1850 Broadway) and combine some management staff functions. The contracts would remain separate, but operations would be consolidated.

The initial offer included a base proposal price was \$1,181,051 with an alternative proposal price of \$955,885 (all first year annual cost) for a first year savings of \$225,166. This year's projected annual cost for the contract is \$1,166,597.

An interview with the single bidder and their proposed management team was held on April 29, 2008. Much of the time was spent reviewing and getting clarification regarding their plan for consolidation. Staff reviewed the alternative plan for any possible negative impacts to the quality of service provided, and found the alternative proposal acceptable in terms of the proposed alternative staffing and location requirements.

On May 29, 2008 a negotiations meeting was held to discuss and clarify the alternative proposal. Based on those negotiations, a request for best and final offer was sent to MV – this request also included reducing the proposed service hours. MV responded on June 9, 2008, with a proposal that included the requested timeframes for implementation and proposed interim costs that would be based upon the base proposal offer rate.

The BAFO included the rate proposal for both the interim service (\$1,049,470 annualized cost) which would be used for approximately three months while operations were being consolidated, and the proposed contract price for the remainder of the contract (first year annualized cost of \$866,108).

Given the proposed cost savings offered by consolidation, all of which are not captured solely by the savings in this contract, staff is proposing acceptance of the alternative proposal that would consolidate operations.

If awarded tonight it is anticipated that bus operations under this contract will start on July 1, 2008.

#### Fiscal Impact

This contract has a three year base term with the following cost for each year:

- Year 1 – \$911,948 (includes interim pricing to allow for consolidation)
- Year 2 - \$882,028
- Year 3 - \$912,982



Funds have not been appropriated for the entire contract term. However, there is a termination clause in the agreement allowing for termination with a 30 day notice if the service is terminated due to lack of funds.

Three two year option terms are available under the contract, and will be negotiated based on a Consumer Price Index cap. Exercise of options would be brought back to the Council for consideration.

This contract is within budget and will not require any supplement to grant funds from the City General Fund.

### RECOMMENDATION

Staff recommends approval of a resolution awarding the Paratransit Management and Operating Contract to MV Transportation Inc., and authorizing the City Manager to enter into a contract with MV Transportation, Inc., for \$2,706,958 over the three year base term.

### ALTERNATIVES CONSIDERED

Several alternatives were considered in regard to this contract, including utilizing different types of contracts, and the alternative of resoliciting the contract. The alternative of resoliciting the contract was rejected because the biggest factors influencing the decision not to propose would not have changed. The alternative of selecting a different type of contract was not used because the current type has had no service issues, and mirrors the Fixed Route type of contract, allowing for easier contract administration.

### ENVIRONMENTAL REVIEW

This project is exempt from CEQA per Title 14, Chapter 3, Article 18, Section 15261 - Ongoing Project.

### PROPOSED ACTION

Approve the resolution awarding the Paratransit Management and Operating Contract to MV Transportation, Inc., and authorizing the City Manager to enter into a contract with MV Transportation, Inc., for \$2,706,958 over the three year base term.



DOCUMENTS ATTACHED

- a. A resolution awarding the Paratransit Operations Contract to MV Transportation, Inc.

DOCUMENTS AVAILABLE FOR REVIEW

- a. Contract for Paratransit Operations and Management

CONTACT PERSON

Gary A. Leach, Public Works Director  
648-4315, [garyl@ci.vallejo.ca.us](mailto:garyl@ci.vallejo.ca.us)

Crystal Odum Ford, Transportation Superintendent  
648-5241, [codumford@ci.vallejo.ca.us](mailto:codumford@ci.vallejo.ca.us)

JUNE 24, 2008  
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**RESOLUTION NO. 08 \_\_\_\_\_ N.C.**

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

WHEREAS, it has been determined that the proposed Paratransit Operations and Management Contract is essential for the operation of Vallejo's Transportation System, and legally required by the Americans with Disabilities Act; and

WHEREAS, the Transportation Division conducted a formal Request for Proposals solicitation process; and

WHEREAS, the Transportation Division received one response to the Request for Proposals; and

WHEREAS, MV Transportation, Inc, has submitted the single responsive, responsible, and acceptable proposal in response to the Request for Proposals and the fact that no other offeror would be able to effectively consolidate operations with fixed route operations, the Transportation Division has made a recommendation to award the contract to MV Transportation, Inc, Fairfield, California, for a contract for paratransit bus management and operations for \$2,706,958 over three years; and

WHEREAS, the Transportation Fund has sufficient funds budgeted to engage the contractor;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Vallejo

1. Awards the Paratransit Transit Service Operations Contract to MV Transportation, Inc.; and
2. Authorizes the City Manager to enter into a contract with MV Transportation, Inc., of Fairfield, California, for management and operation of the Vallejo Paratransit service for \$2,706,958, and subject to amendments, review and approval by the City Attorney and City Manager, consistent with this resolution, and

JUNE 24, 2008

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COUNCIL COMMUNICATION

Date: June 24, 2008

TO: Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager/Community Development *W*  
Robert V. Stout, Finance Director *RV*  
Melinda Nestlerode, Acting Housing and Community Development Manager *MN*

SUBJECT: APPROVAL OF A RESOLUTION TO AMEND THE FISCAL YEAR (FY)  
2007/2008 FEDERAL HOME INVESTMENT PARTNERSHIPS PROGRAM  
BUDGET

BACKGROUND AND DISCUSSION

The City of Vallejo has a balance of \$1,214,872 in unallocated Federal HOME Investment Partnerships Program funds available from the U. S. Department of Housing and Urban Development (HUD) to provide affordable housing. This activity may be completed by the City, a subrecipient agency, or a Community Housing Development Organization, or "CHDO". Vallejo Neighborhood Housing Services, Inc. (VNHS) currently receives HOME Program funds from the City as a subrecipient agency, and is the sole qualified CHDO in Vallejo. Pursuant to HOME Program requirements, at least \$525,008 of these funds must be committed, in the form of a legally binding agreement, by June 30, 2008, or they will be recaptured by HUD. Of this total unallocated amount (\$1.2 million), \$81,511 must be allocated to a CHDO activity.

The need for downpayment assistance and housing rehabilitation loans by low- and moderate-income residents in the community remains high. Therefore, staff recommends the City Council allocate \$525,008 to VNHS to provide these loans.

On June 17, 2008 the City Council adopted a resolution of intention to amend the FY 2007/2008 HOME Program budget.

Subject to the City Council's approval of a budget amendment at this meeting, staff will also provide in a June 24, 2008 staff report, a recommendation that the City Council authorize the City Manager or his designee to execute an amendment to the FY 2007/2008 Agreement between the City and VNHS for the use of these funds. This action will enable the City to comply with HOME Program requirements.

*Buchongo Settlement Agreement Requirements*

Staff is not recommending an allocation of HOME funds exceeding \$525,008 (the minimum required) at this time, because the City and Redevelopment Agency have an obligation to complete the terms of the Buchongo Settlement Agreement. This concerns the provision of eight more units of affordable housing before August 12, 2009. While needed, the allocation of funds to provide downpayment assistance and housing rehabilitation loans will not assist with compliance with the Buchongo Agreement. This allocation will also reduce the overall

remaining funding (from all available sources) to achieve Buchongo compliance, from approximately \$4.85 million to approximately \$4.325 million.

Since September 2007, Eden Housing, Inc. has been pursuing opportunities to acquire an existing multi-family rental property which would be rehabilitated and then made affordable to low-income residents on a long-term basis. Staff anticipated that Eden Housing would submit a request for some or all of the City's pooled funds of \$4.85 million that have been allocated for such a project before June 30, 2008. This project would have met the remaining obligations of the Buchongo Agreement. However, Eden has been unable to come to terms with a property owner on the purchase of such a property.

Staff is reevaluating the use of the \$4.325 million in funding that has been set aside for affordable housing development. Staff anticipates returning to the City Council, Redevelopment Agency, and Housing Authority by September 30, 2008, with a recommendation regarding how best to comply with the Buchongo Agreement, and continue to address the affordable housing needs in the community.

#### Fiscal Impact

If at least \$525,008 in unallocated HOME Program funds are approved for downpayment assistance and housing rehabilitation loans by June 30, 2008, (1) these funds will not be deobligated (recaptured) by HUD, and (2) low- and moderate-income residents in Vallejo will benefit from loans.

#### RECOMMENDATION

Adopt the enclosed resolution.

#### ALTERNATIVES CONSIDERED

An amount of \$525,008 in unallocated Federal HOME Program funds must be committed, in the form of a legally binding agreement, by June 30, 2008, or these funds will be recaptured by HUD. Therefore, no other alternatives were considered.

#### ENVIRONMENTAL REVIEW

There is no environmental impact associated with this action.

#### PROPOSED ACTION

Adopt a resolution to amend the FY 2007/2008 HOME Investment Partnerships Program budget, which will commit unallocated HOME funds in the amount of \$525,008 to Vallejo Neighborhood Housing Services, Inc. to provide downpayment assistance and housing rehabilitation loans.

DOCUMENTS ATTACHED

Attachment "A" – Resolution

CONTACT:

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

Melinda Nestlerode, Acting Housing and Community Development Manager, (707) 648-4408, or [mnestlerode@ci.vallejo.ca.us](mailto:mnestlerode@ci.vallejo.ca.us).

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



**RESOLUTION NO. \_\_\_\_\_ N.C.**

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

THAT WHEREAS, the City of Vallejo has unallocated Federal HOME Investment Partnerships Program funds available from the U. S. Department of Housing and Urban Development (HUD) to provide affordable housing.

WHEREAS, these funds may be spent by the City, a subrecipient agency, or a Community Housing Development Organization, or "CHDO."

WHEREAS, Vallejo Neighborhood Housing Services, Inc. (VNHS) currently receives HOME Program funds from the City to provide downpayment assistance and housing rehabilitation loans, and is the sole qualified CHDO in Vallejo.

WHEREAS, pursuant to HOME Program requirements, at least \$525,008 of these funds must be committed, in the form of a legally binding agreement, by June 30, 2008, or they will be deobligated (recaptured) by HUD.

WHEREAS, the need for downpayment assistance and housing rehabilitations loans by low- and moderate-income residents in Vallejo remains high.

WHEREAS, the completion of the remaining requirements of the Buchongo Settlement Agreement are a high priority of the City Council.

WHEREAS, while needed, the provision of downpayment assistance and housing rehabilitation loans will not assist the City with compliance with the Buchongo Agreement.

WHEREAS, on June 17, 2008 the City Council adopted a resolution of intention to amend the FY 2007/2008 HOME Program budget.

NOW THEREFORE BE IT RESOLVED that the City Council hereby declares its intention to amend the FY 2007/2008 HOME Program Budget to allocate \$525,008 to Fund 102 (the HOME Program) for downpayment assistance and housing rehabilitation loans.



## CITY OF VALLEJO

Agenda Item No.

CONSENT  
E

### COUNCIL COMMUNICATION

Date: June 24, 2008

TO: Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager/Community Development *CW*  
Melinda Nestlerode, Acting Housing and Community Development Manager *M. Nestlerode*

SUBJECT: APPROVAL OF A RESOLUTION APPROVING AN AMENDMENT TO THE FISCAL YEAR (FY) 2007/2008 AGREEMENT BY AND BETWEEN THE CITY OF VALLEJO AND VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC. (VNHS)

#### BACKGROUND AND DISCUSSION

The City of Vallejo has a balance of unallocated Federal HOME Investment Partnerships Program funds available from the U. S. Department of Housing and Urban Development (HUD) to provide affordable housing. This activity may be completed by the City, a subrecipient agency, or a Community Housing Development Organization, or "CHDO". Pursuant to an Agreement with the City that expires June 30, 2008, Vallejo Neighborhood Housing Services, Inc. (VNHS) currently receives HOME Program funds as a subrecipient agency, and is the sole qualified CHDO in Vallejo. According to HOME Program requirements, at least \$525,008 of these funds must be committed, in the form of a legally binding agreement, by June 30, 2008, or they will be recaptured by HUD. Of the total unallocated amount (\$1.2 million), \$81,511 must be allocated to a CHDO activity.

On June 24, 2008 the City Council is scheduled to adopt a resolution amending the FY 2007/2008 HOME budget to allocate \$525,008 for downpayment assistance and housing rehabilitation loans. The need for downpayment assistance and housing rehabilitation loans by low- and moderate-income residents in the community remains high. Therefore, subject to the City Council's approval of the budget amendment, staff recommends the City Council also authorize the City Manager to execute an amendment to the City's current Agreement with VNHS to: (1) allocate \$525,008 to VNHS to provide these loans, as follows: \$400,000 for downpayment assistance, and \$125,008 for rehabilitation loans; and (2) extend the term of the Agreement to September 30, 2008. The current Agreement is attached as Attachment "B". A draft Amendment is provided as Attachment "C". This action will enable the City to comply with HOME Program requirements.

Thus far in FY 2007/2008, VNHS has closed nine downpayment assistance loans and two housing rehabilitation loans with City funds. With these additional funds, approximately five downpayment assistance and two housing rehabilitation loans can be provided.

#### Fiscal Impact

If, prior to June 30, 2008, the FY 2007/2008 Agreement with VNHS is amended to include an additional \$525,008 in unallocated HOME Program funds for the provision of downpayment

assistance and housing rehabilitation loans, these funds will not be deobligated (recaptured) by HUD, and low- and moderate-income residents in Vallejo will benefit from loans.

RECOMMENDATION

Adopt the enclosed resolution.

ALTERNATIVES CONSIDERED

An amount of \$525,008 in unallocated Federal HOME Program funds must be committed, in the form of a legally binding agreement, by June 30, 2008, or these funds will be recaptured by HUD. Therefore, no other alternatives were considered.

ENVIRONMENTAL REVIEW

There is no environmental impact associated with this action.

PROPOSED ACTION

Adopt a resolution authorizing the City Manager or his designee to execute an amendment to the FY 2007/2008 Agreement between the City of Vallejo and VNHS, Inc., which will: (1) award previously unallocated Federal HOME Investment Partnerships Program funds available to the City in the amount of \$525,008 to provide downpayment assistance and housing rehabilitation loans, and (2) extend the term of the Agreement to September 30, 2008.

DOCUMENTS ATTACHED

Attachment "A" – Resolution

Attachment "B" – FY 2007/2008 Agreement with VNHS, Inc.

Attachment "C" – Draft Amendment to FY 2007/2008 Agreement By and Between City of Vallejo and Vallejo Neighborhood Housing Services, Inc.

CONTACT:

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

Melinda Nestlerode, Acting Housing and Community Development Manager, (707) 648-4408, or [mnestlerode@ci.vallejo.ca.us](mailto:mnestlerode@ci.vallejo.ca.us).

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

**RESOLUTION NO. \_\_\_\_\_ N.C.**

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

THAT WHEREAS, the City of Vallejo has unallocated Federal HOME Investment Partnerships Program funds available from the U. S. Department of Housing and Urban Development (HUD) to provide affordable housing.

WHEREAS, these funds may be spent by the City, a subrecipient agency, or a Community Housing Development Organization, or "CHDO."

WHEREAS, pursuant to an Agreement with the City that expires June 30, 2008, Vallejo Neighborhood Housing Services, Inc. (VNHS) currently receives HOME Program funds as a subrecipient agency.

WHEREAS, pursuant to HOME Program requirements, at least \$525,008 of these funds must be committed, in the form of a legally binding agreement, by June 30, 2008, or they will be deobligated (recaptured) by HUD.

WHEREAS, on June 24, 2008 the City Council is scheduled to adopt a resolution amending the FY 2007/2008 HOME budget to allocate \$525,008 for downpayment assistance and housing rehabilitation loans.

WHEREAS, the need for downpayment assistance and housing rehabilitations loans by low- and moderate-income residents in the community remains high.

NOW THEREFORE BE IT RESOLVED that, subject to the City Council's approval of the above-mentioned budget amendment, the City Council hereby authorizes the City Manager or his designee, the Assistant City Manager/Community Development, to execute an Amendment No. 1 (shown as Attachment "C") to the City's current Agreement with VNHS; and

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute any other document or instrument, and take any additional action, that may be necessary to carry out the purpose of this Agreement.

**CITY OF VALLEJO  
AGREEMENT WITH  
VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.  
FISCAL YEAR 2007/2008**

THIS AGREEMENT, dated for reference July 1, 2007, by and between the City of Vallejo, a municipal corporation (hereinafter CITY), and Vallejo Neighborhood Housing Services, Inc., a California non-profit public benefit corporation, (hereinafter VNHS),

**WITNESSETH**

WHEREAS, CITY has received Federal Community Development Block Grant Program (hereinafter CDBG) and Federal HOME Investment Partnerships Program (hereinafter HOME) funds from the U. S. Department of Housing and Urban Development (hereinafter HUD), and

WHEREAS, CITY has allocated CDBG and HOME funds to VNHS, and

WHEREAS, CITY desires to engage VNHS in the delivery of CDBG and HOME activities,

NOW, THEREFORE, THE PARTIES AGREE, as follows:

**I. CITY agrees to pay VNHS for services and programs.**

1. CITY shall reimburse VNHS for all allowable costs and expenses, (refer to the "Budget"), as specified in Exhibit B of this Agreement, incurred in providing programs and services, (refer to the "Scope of Services"), as specified in Exhibit A of this Agreement. The amount budgeted to VNHS may be amended from time to time upon the agreement of both parties, and pursuant to a Resolution of the Council of the City of Vallejo approving said amendment(s).
2. If VNHS is in compliance with all terms of this Agreement, CITY agrees to provide payment to VNHS within fifteen (15) working days of CITY's receipt of the request from VNHS.

**II. VNHS agrees to provide services and programs.**

1. VNHS agrees to provide programs and services for the amounts shown in the Budget contained in Exhibit B of this Agreement and pursuant to the terms of this Agreement.
2. The services and programs to be provided may be amended

from time to time upon the agreement of both parties, and pursuant to a Resolution of the City Council approving said amendment.

3. VNHS agrees to comply with CDBG and HOME regulations at 24 CFR § 570 and 24 CFR § 92; 24 CFR § 8; OMB Circulars A-110, A-122, and A-133; and the "Common Rule", which are incorporated herein by this reference.

**III. Funds to remain assets of CITY.**

All CDBG and HOME funds provided to VNHS shall remain assets of CITY, with the exceptions of administrative expenses, paint grants, and closing cost grants, and shall be secured with a Promissory Note and a Deed of Trust showing CITY as Beneficiary. VNHS shall record a Request for Notice of Default and Sale on behalf of CITY.

**IV. Coordination of program.**

1. CITY: City Manager, or his designee, shall be the Program Manager (hereinafter MANAGER) for CITY and shall render overall supervision of the progress and performance of this Agreement by CITY.
2. VNHS: Executive Director, or his/her designee, shall be the Program Director for VNHS and shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Program Director, VNHS shall notify CITY Immediately of such occurrence.
3. NOTICES: All notices or other correspondence required or contemplated by this Agreement shall be sent to the parties at the following addresses:

CITY:                   MANAGER  
                          City of Vallejo  
                          P.O. Box 1432  
                          Vallejo, CA 94590

VNHS:                   Executive Director  
                          Vallejo Neighborhood Housing Services, Inc.  
                          610 Lemon Street  
                          Vallejo, CA 94590

**V. Obligations of VNHS.**

VNHS agrees to provide the following to CITY:

**A. Organization of VNHS**

VNHS shall have available and provide to CITY upon request:

1. A copy of its Articles of Incorporation under the laws of the State of California.
2. A copy of current VNHS Bylaws.
3. Verification and documentation of Internal Revenue Service non-profit status under 26 U.S.C. § 501(c)(3).
4. Names and home addresses of current Board of Directors of VNHS.
5. An organizational chart and staffing profile and roster, including names and home addresses of current employees of VNHS. This information will be maintained in confidence by CITY and not released as a public record without prior written approval of VNHS and VNHS's employees.
6. A copy of the adopted Personnel Policies and Procedures.
7. A copy of the adopted Accounting Policies and Procedures.
8. A copy of its Section 504 Self-Evaluation and Transition Plans, prepared in accordance with the requirements of 24 CFR § 8.
9. A copy of written Rehabilitation Loan Program Policies and Procedures for Owner-Occupied Housing and Rental Housing Properties.
10. A copy of written Homebuyer Loan Program Policies and Procedures, including policies and procedures for Closing Cost Grants.
11. VNHS shall report any changes in the VNHS Articles of Incorporation, Bylaws, tax-exempt status, and/or Board membership to CITY's MANAGER.

FY 2007/2008  
VNHS Agreement

12. VNHS shall open to the public all meetings of the Board of Directors, except meetings, or portions thereof, exempted pursuant to the Ralph Brown Act or other appropriate legislation.
13. VNHS shall keep and maintain minutes, approved by the Board of Directors, of all regular and special meetings.
14. Adhere to the provisions of Sections 2.72.030 and 2.72.040 of CITY Municipal Code, which is incorporated herein by this reference.

B. Program performance of VNHS

VNHS shall:

1. Achieve the Scope of Services incorporated in this Agreement in this Agreement as Exhibit A in a timely manner.
2. Complete and submit a Certification of Eligibility (Exhibit C of this Agreement) for each CDBG or HOME activity prior to receiving funding provided through this Agreement.
3. Prepare and submit draft copies of required loan documents as applicable prior to receiving funding provided through this Agreement.
4. Maintain documentation of the scope of services (Exhibit A) on file for inspection, with an audit trail from source documents to worksheets to reports. Failure to document adequately the scope of services and the required statistics on client beneficiaries and/or units of service may result in disallowance of costs.
5. Provide programs that benefit low- and moderate-income persons. When utilizing CDBG and HOME funds, all clients served by VNHS's programs must be low- and moderate-income. Low- and moderate-income is defined as 80 percent or less of the median income for CITY as established by HUD. The most recent income guidelines published by HUD will be used.
6. Adopt and adhere to the line item operating budget incorporated in this Agreement as Exhibit B, Budget.



FY 2007/2008  
VNHS Agreement

7. Submit requests for cost reimbursements in the manner prescribed in this Agreement.
8. Be obligated to return all assets of CITY to CITY no later than sixty (60) days from the date of termination of this Agreement. VNHS shall at all times maintain an accurate listing and accounting of the funds used by VNHS on behalf of CITY. VNHS shall provide this list to CITY every quarter, and as requested.

C. Payment to VNHS related to expenditures and completion of scope of services

1. CDBG and HOME payments will only be authorized for services delivered to residents of CITY.
2. Regardless of any other provisions herein, CITY shall not provide payment to VNHS in excess of VNHS's actual expenses. Furthermore, CITY shall not reimburse VNHS for expenses that exceed the amount allocated to VNHS.
3. CITY will not pay for costs under this Agreement paid for with other grants.

D. Fiscal responsibilities of VNHS

VNHS shall:

1. Adhere to written Accounting Policies and Procedures adopted by VNHS's Board of Directors.

2. Disallowed costs

VNHS is liable for repayment of disallowed costs. Disallowed costs may be identified through audits, monitoring, or other means. VNHS shall be afforded the opportunity to respond to any adverse findings which may lead to disallowed costs.

3. Submit to CITY VNHS's requests for reimbursement together with all supporting documentation.
4. Provide worker's compensation insurance for all employees during their employment.
5. Comply with accounting rules SFA 116 and 117 as issued by the Financial Accounting Standards Board in June 1993.

6. Promptly pay any debts or obligations owed by VNHS to CITY.

E. VNHS compliance with HOME requirements regarding affordability periods, resale, and recapture requirements

1. Periods of affordability

VNHS shall ensure that all HOME-assisted homeownership housing meet the affordability requirements for not less than the applicable period specified below, beginning after project completion.

Homeownership Assistance

Home amount per unit	Minimum period of affordability in years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

2. Resale and recapture

To ensure affordability of HOME-assisted units, a regulatory agreement shall be recorded against each HOME-assisted unit that imposes resale and/or recapture provisions that, at a minimum, are consistent with this Agreement and the HOME regulations set forth at 24 CFR § 92.254(a)(5).

a. Resale

Resale requirements included in the regulatory agreement must ensure that, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as its principal residence. The resale requirements shall further ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers.

The regulatory agreement to be recorded against HOME-assisted units may terminate upon the occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD.

**b. Recapture**

Recapture provisions included in the regulatory agreement shall ensure that the City recoups the full amount of the HOME assistance to the homebuyer, if the housing does not continue to be the principal residence of the family for the full period of affordability, provided, however, that in the event that the recapture requirement is triggered by a sale (voluntary or involuntary) of the unit, and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the City can only recapture the net proceeds, if any. The net proceeds are equal to the sales price, minus superior loan payments (other than HOME funds) and any closing costs.

**F. Records, reports, and audits of VNHS**

**1. Establishment and maintenance of records**

VNHS shall maintain records, including but not limited to books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly all matters covered by this Agreement.

**2. Preservation of records**

VNHS shall preserve and make available its records:

- a. until the expiration of three years from the date of the submission of the final expenditure report or, for grants that are renewed annually, from the date of the submission of the annual financial status report;
- b. for periods required by applicable law; or
- c. if this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

**3. Examination of records and/or facilities**

At any time during normal business hours, and as often as may be deemed necessary, VNHS agrees that CITY, and/or any duly authorized representatives of CITY shall, until expiration of (a) three years after final payment under this Agreement, or (b) longer periods as may be prescribed, have access to and the right to examine its plants, offices, and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement, excepting those falling within the attorney-client privilege, and those falling within the attorney work-product privilege. CITY shall provide VNHS with reasonable notice of any intended examination.

**G. Purchase of real property**

VNHS may purchase real property using CDBG or HOME funds only if all of the following conditions are met:

1. The purchase has been identified in CITY's annual HUD application, or the purchase has been added to CITY's annual HUD application.
2. VNHS notifies CITY in writing that VNHS intends to purchase the property. VNHS shall submit in writing a request to CITY to conduct an environmental review. This request shall be made, and the environmental review completed, prior to the purchase of the real property.
3. VNHS shall document in writing how the purchase of real property is intended to benefit low- and moderate- income persons. This documentation shall include: (a) a projection of the anticipated sales price, or rents, of the property; and (b) an analysis of the likelihood that a low- and moderate-income family might afford the property. For rents to be "affordable", (1) for CDBG funds, no more than 30 percent of the family's income may be used for rent; (2) for HOME funds, rents must be within the high and low rent limits published by HUD. A copy of this documentation shall be submitted to and approved in writing by CITY before VNHS makes an offer to purchase any property using funds received through this Agreement.

FY 2007/2008  
VNHS Agreement

4. VNHS shall pay no more than the appraised price for real property using funds received through this Agreement.
5. VNHS shall obtain the written approval of CITY prior to submitting offers or counter-offers to purchase property.

H. Sale or refinancing of property

1. VNHS shall obtain the written consent of CITY whenever VNHS considers selling or refinancing real property assisted with CDBG or HOME funds.
2. Whenever any CITY-assisted property is sold, VNHS shall provide CITY with a copy of the Closing Escrow Settlement Statement.

I. Quarterly reports

Through the entire Agreement term, within fifteen calendar days of the end of each quarter, or sooner, provide written reports to CITY which detail program performance, as shown in Exhibit E.

The following are the due dates for the Fiscal Year 2007/2008 Quarterly Reports:

**First Quarter: Monday, October 15, 2007**  
**Second Quarter: Tuesday, January 15, 2008**  
**Third Quarter: Tuesday, April 15, 2008**  
**Fourth Quarter: Tuesday, July 15, 2008**

VNHS Quarterly Reports must be received by CITY not later than 4:00 p. m. Pacific Standard Time (PST) on the dates cited above.

J. Presentations to City Council

VNHS shall provide presentations to the City Council regarding the goals and performance of VNHS as and when requested by CITY.

VI. Compliance with Agreement.

A. Monitoring and evaluation of services

VNHS shall furnish all data, statements, records, information,

and reports necessary for the CITY to monitor, review, and evaluate the performance of VNHS with respect to its programs and their components, including fiscal matters. CITY shall have the right to request the services of an agent of the Federal or State Government to assist in any such evaluation. CITY shall pay for such services. VNHS will be notified in advance that a review will be conducted. VNHS will be afforded an opportunity to respond to any monitoring findings. CITY may withhold payment and/or terminate the Agreement if VNHS fails to respond to or correct finding(s).

**B. Agreement noncompliance**

With receipt by CITY of any information that evidences a failure or deficiency by VNHS to comply with any provision of this Agreement, CITY shall have the right to suspend payments, terminate this Agreement, demand repayment of any and all amounts provided to VNHS under this Agreement, and/or require corrective action to enforce compliance with such provision.

Examples of Agreement noncompliance include:

1. If VNHS (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to CITY in connection with its programs.
2. If there is pending litigation with respect to the performance by VNHS of any of its duties or obligations under this Agreement, which may materially jeopardize or adversely affect the undertaking of or the carrying out of its programs.
3. If VNHS shall have taken any material action pertaining to its programs, which require CITY approval, without having obtained such approval.
4. If VNHS is in default under any material provisions of this Agreement.
5. If VNHS makes improper use of grant funds or fails to repay any disallowed costs upon reasonable notice and opportunity to reply.
6. If VNHS fails to comply with any of the terms and conditions of this Agreement in such a manner as to constitute material breach thereof.

7. If VNHS submits to CITY any reports which are incorrect or incomplete in any material respect.
8. If VNHS fails to provide the services listed in Exhibit A in a timely manner.

**C. Corrective action**

CITY may forward recommendations to VNHS to correct unsatisfactory program performance and/or noncompliance, and a timetable for implementing the recommendations. Following implementation of the corrective actions, VNHS shall forward to CITY, within the time specified by CITY, any documentary evidence required by CITY to verify that the corrective actions have been taken. In the event VNHS does not implement the corrective action recommendations in accordance with the corrective action timetable, CITY may suspend payments hereunder until the corrective action is taken. If VNHS fails, where possible, to implement the corrective action within 90 days of notice from CITY, CITY may, at its discretion, terminate this Agreement, and/or demand repayment of any or all amounts provided to VNHS under this Agreement.

**D. Reprogramming of budgeted funds only**

CITY's MANAGER may, at the request of VNHS, approve a reasonable reprogramming of the administrative funds specified in this Agreement from any budgeted cost category or categories, provided that there is not an increase in the total amount specified in this Agreement. Approval by CITY's MANAGER of such reprogramming of funds must be in writing, and shall be at sole discretion of MANAGER.

**VII. Obligations of CITY.**

**Method of payment**

CITY shall reimburse VNHS for all allowable costs and expenses incurred in providing its programs, not to exceed the total sum of the amounts specified in Exhibit B of this Agreement. CITY may, at any time and in its absolute discretion, elect to suspend or terminate payment to VNHS, in whole or in part, under this Agreement or not to make any particular payment under this Agreement in the event of unsatisfactory performance or non-compliance by VNHS after notice has been reasonably given and VNHS has failed to correct such unsatisfactory performance or non-compliance.

**VIII. Program income.**

1. All CITY program income received by VNHS shall be explicitly identified and reported. VNHS shall continuously maintain records that identify the amount of CITY program income received, the source of CITY program income, the date received, and the activity from which it was received. VNHS shall also maintain a record of each CITY-funded activity, the potential CITY program income for each activity, and the amount of CITY program income received to date from each activity. VNHS shall submit this information with each Quarterly Report.

2. CDBG program income

By the fifteenth calendar day of each month commencing on the fifteenth day of August, 2007, VNHS shall provide CITY with any or all CDBG program income (including any interest earned) received by VNHS in the preceding month.

3. HOME program income

By the fifteenth calendar day of each month commencing on the fifteenth day of August, 2007, VNHS shall provide to CITY the full amount of any HOME program income (including any interest earned) received by VNHS in the preceding month.

4. Sale of CDBG or HOME loans

Only upon the prior approval of MANAGER or his/her designee, VNHS may sell loans funded by CDBG or HOME funds. VNHS shall maintain a file documenting CITY's approval of all CDBG and HOME loans sold by VNHS.

**IX. Administrative expenses.**

1. VNHS may use CITY funds for administrative purposes to the extent that these funds are included in the Budget, Exhibit B.
2. VNHS may expend CITY funds only for administrative expenses related to the delivery of a CITY activity. VNHS shall not receive reimbursement from CITY for administrative expenses related to non-CDBG or non-HOME activities, or for administrative expenses paid for from other sources. CITY shall not pay VNHS for administrative expenses in excess of VNHS's actual costs. Any fees collected by VNHS from a VNHS client shall be



used by VNHS to pay for administrative expenses incurred by VNHS. Any fees collected by VNHS from a VNHS client shall be used by VNHS to reduce, by the same amount, the amount requested from CITY, as applicable.

**X. Transfer of funds.**

VNHS shall retain CDBG and HOME accounts separately and distinctly from all other funds and accounts. VNHS may not transfer funds amongst and between accounts.

**XI. Disclosure of confidential client information.**

CITY and VNHS agree to maintain the confidentiality of any financial information regarding applicants for services offered by VNHS pursuant to this Agreement. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to such persons having responsibilities under this Agreement, including those furnishing services through subcontracts.

**XII. Assignability and independent contractor requirements.**

1. The relationship of VNHS to CITY is that of an independent contractor. VNHS has full rights to manage its employees subject to the requirements of the law. All persons employed by VNHS in connection with this Agreement shall be employees of VNHS and not employees of CITY in any respect. VNHS shall be responsible for all employee benefits including but not limited to statutory worker's compensation benefits.
2. No subcontractor of VNHS will be recognized by CITY as such. All subcontractors are deemed to be employees of VNHS, and VNHS agrees to be responsible for their performance and any liabilities associated with their acts or omissions as subcontractors.

**XIII. Compliance with law.**

VNHS shall become familiar and comply with and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable Federal, State, and local laws, ordinances, codes, regulations, and decrees including, but not limited to, the Federal rules and regulations referenced in Section II of this Agreement. Failure of VNHS to, in any manner, observe and

adhere to laws as described herein or as amended shall in no way relieve VNHS of its responsibility to adhere to same, and VNHS herein acknowledges this responsibility.

**XIV. Terms and amendments.**

Amendments to the terms and conditions of this Agreement shall be requested in writing by the party desiring such revision, and any agreed-upon amendments to this Agreement shall be effective only when the same has been produced in writing and signed by all parties hereto.

**XV. Integrated document.**

This Agreement embodies the Agreement between CITY and VNHS and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of CITY shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY or VNHS.

**XVI. Indemnification/insurance.**

VNHS, as a material part of the consideration to be rendered by CITY under this Agreement, hereby waives and releases any and all claims against CITY for injury (including death) or damage of any kind or nature to person or property in, upon, or about VNHS's premises, from any cause whatsoever, arising at any time after taking possession of this Agreement, and agrees to indemnify and hold CITY exempt and harmless from and on such account of any such injury (including death), damage, or claim therefor, to any person or property.

VNHS covenants and agrees to keep in full force and effect throughout the term of this Agreement policies of commercial general liability insurance, worker's compensation insurance, and "all risk" property insurance in standard form when applicable with an insurance company satisfactory to CITY and, upon request of CITY, to furnish the policies or duly executed certificates to CITY. VNHS's commercial general liability insurance shall have a combined single limit of (1) not less than Two Million Dollars (\$2,000,000.00) per occurrence; or (2) not less than One Million Dollars (\$1,000,000.00) per occurrence, and not less than One Million Dollars (\$1,000,000.00) per occurrence in excess/umbrella liability insurance. VNHS's commercial automobile insurance shall be in the amount of One Million Dollars (\$1,000,000.00) per

occurrence. VNHS's worker's compensation insurance shall be in the amount of One Million Dollars (\$1,000,000.00) or such greater amount as may be required by law. CITY shall be named as an additional insured for VNHS's work and completed operations on the commercial general liability (including any excess or umbrella coverage) and commercial automobile insurance policies. The additional insured endorsements naming CITY shall be attached to the certificates of insurance. All coverage provided hereunder by VNHS shall be primary insurance and shall not be contributing with any insurance, self-insurance, or joint self-insurance maintained by CITY, and the policy shall contain such an endorsement. To the maximum extent permitted by the policies maintained by VNHS, VNHS hereby releases CITY from liability and waives all right to recover against CITY for any loss for perils insured against under VNHS's insurance policies, including any extended coverage and endorsements to said policies. The "all risk" property insurance, when applicable, shall include fire and extended coverage, sprinkler leakage, vandalism, and malicious mischief coverage, providing for one hundred percent (100%) of the then current replacement value of all buildings, equipment, fixtures, and materials used or stored for use by VNHS. This insurance shall contain a loss payee provision providing that all proceeds allocated to the buildings, fixtures, and any other property that is not VNHS's personal property shall be paid to CITY. Upon request of CITY, renewal policies representing all of the above provisions of insurance shall be delivered by VNHS to CITY at least ten (10) days before the expiration of the insurance which said policies are to renew, and each policy of insurance delivered by VNHS to CITY shall bear an endorsement of, or be accompanied by, evidence of a receipt of payment of the premium thereon. Each policy, or certificate of insurance issued, shall provide that CITY receive at least thirty (30) days prior written notice of any cancellation or reduction as to the amount of coverage provided under said policy. Said insurance verification must be attached to this Agreement as Exhibit D.

**XVII. Rights and remedies not waived.**

In no event shall any payment by CITY or any acceptance of payment by VNHS hereunder constitute or be construed to be a waiver by CITY or VNHS of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of CITY or VNHS, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to CITY or VNHS with respect to such breach or default.

**XVIII. Termination.**

**A. Termination for cause**

Payments under this Agreement may be suspended or terminated at any time before the date of completion by CITY if:

1. VNHS fails to comply with a material condition of this Agreement.
2. VNHS refuses to accept any additional conditions that may be imposed by CITY as a result of changes required by law or by the Federal government.
3. The grants to CITY made pursuant to the Housing and Community Development Act of 1974 and the National Affordable Housing Act of 1990 as amended are suspended or terminated.
4. VNHS fails to take corrective actions as to a material condition as required by CITY and after reasonable notice and reasonable time to perform.

**B. Termination for convenience**

CITY or VNHS may terminate this Agreement in whole or in part when both parties agree that the continuation of VNHS programs would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.

**C. Upon suspension or termination VNHS shall:**

1. Not incur new obligations and shall cancel as many outstanding obligations as possible.
2. Be paid only for services actually rendered to CITY to the date of such suspension or termination; provided, however, if this Agreement is suspended or terminated for fault of VNHS, CITY shall be obligated to

compensate VNHS only for that portion of VNHS services which are of benefit to CITY.

3. Turn over to CITY immediately any and all copies of studies, reports, and other data, prepared by VNHS or its subcontractors, whether or not completed; if any, in connection with this Agreement; such materials shall become property of CITY. VNHS, however, shall not be liable for CITY's use of incomplete documents if used for other than the services contemplated by this Agreement.

**XIX. Closing out.**

1. VNHS shall be responsible for forwarding billings to CITY's MANAGER during the term of this Agreement so as to accomplish the scope of services, as described in Exhibit A, in a timely manner.
2. CITY is not liable for any VNHS expenses after the closing date of this Agreement. VNHS is responsible for CITY's receipt of final billings by Tuesday, July 15, 2008, after which no final billings will be accepted.

**XX. Miscellaneous provisions.**

**A. Captions**

The captions of the various sections, paragraphs, and subparagraphs of this Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

**B. No third party beneficiary**

This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

**C. Severability clause**

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

D. No pledging of credit

Under no circumstances shall either party have the authority to pledge the credit of the other or incur any obligation in the name of CITY. VNHS shall defend, save, and hold CITY, its City Council, its officers, employees, Boards, and Commissions harmless for expenses arising out of this Agreement.

E. Budgetary limitations

The use of such terms as "eligible expense", "authorized expense", or "approved expense" does not authorize VNHS to expend CITY funds in excess of the amount identified in Exhibit B, Budget.

F. Compliance with law

VNHS shall become familiar and comply with and cause its contractors and employees, if any, to comply with all applicable Federal, State, and local laws, ordinances, codes, and regulations, including but not limited to, the Federal rules and regulations referenced in Section II.3. Failure by VNHS to understand laws as described herein shall in no way relieve VNHS of its responsibility to adhere to same.

G. Low- and moderate-income requirements

When utilizing CDBG and HOME funds, VNHS shall provide services to low- and moderate-income persons. For CDBG, "low- and moderate-income" is defined as 80 percent or below the median income. For HOME, refer to the HOME regulations for income requirements.

H. Environmental review

VNHS shall submit in writing a request to CITY to prepare an environmental review of any proposed activity to be funded in whole or in part with Federal funds, (i. e., CDBG or HOME). The environmental review shall be completed prior to the implementation of any such Federally-assisted activity, (i. e., purchase or rehabilitation of real property, in-fill construction, etc.).

I. Property inspections

VNHS shall request any required property inspections from CITY before payments of funds through this Agreement are authorized by CITY or its designee.

XXI. Adherence to Davis-Bacon Act and Federal Labor Standards Provisions.

HUD requires that all HOME and CDBG-assisted activities, with minor exceptions, comply with the Davis-Bacon Act and Federal Labor Standards Provisions as applicable. VNHS shall be responsible for reviewing with CITY's MANAGER all proposed expenditures of CDBG and HOME funds by VNHS to ensure the above provisions are adhered to.

XXII. Fees from clients.

VNHS may collect fees from clients who receive CDBG or HOME loans or services, provided that the fees are reasonable and that the fees are fully disclosed to the client. Any fees collected by VNHS from a client shall be used by VNHS to pay for administrative expenses incurred by VNHS. Any fees collected by VNHS from a client shall be used by VNHS to reduce, by the same amount, the amount requested from CITY, as applicable. VNHS shall submit to the CITY a schedule of fees for the CITY's review and approval.

XXII. Term of Agreement.

The term of this Agreement shall commence on July 1, 2007 and end on June 30, 2008, unless either party terminates this Agreement pursuant to Section XVIII of this Agreement. CITY shall not be liable for any VNHS expenses incurred prior to July 1, 2007 or incurred after June 30, 2008.

XXIII. Attachments.

Attached hereto and made a part of this Agreement are the following attachments:

Exhibit A - Scope of Services, Fiscal Year 2007/2008

Exhibit B - Budget, Fiscal Year 2007/2008

**FY 2007/2008  
VNHS Agreement**

- Exhibit C - Certification of Eligibility for CDBG and HOME Activities, Fiscal Year 2007/2008**
- Exhibit D - Evidence of Insurance**
- Exhibit E - Quarterly Report Form**



FY 2007/2008  
VNHS Agreement

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized representatives, have executed this Agreement in triplicate on the day and year set below each of the parties.

**VALLEJO NEIGHBORHOOD  
HOUSING SERVICES, INC.,  
a California non-profit public  
benefit corporation**

By: *Hermi L. Smith*

Its: *Board President*

Date: *June 18, 2007*

By: *Lyndee C. Santiago*

Its: *TREASURER*

Date: *JUNE 18, 2007*

**CITY OF VALLEJO,  
a municipal corporation**

By: *[Signature]*  
Joseph M. Tanner, City Manager

Date: *8/5/07*

ATTEST:  
By: *[Signature]*  
Mary Ellsworth, Interim City Clerk

(City Seal)

APPROVED AS TO INSURANCE  
REQUIREMENTS:

*[Signature]*  
Risk Manager

APPROVED AS TO CONTENT:

*[Signature]*  
Craig Whittom,  
Community Development Director

APPROVED AS TO FORM:

*[Signature]*  
Frederick G. Soley, City Attorney



RECEIVED  
City of Vallejo  
Housing and Community  
Development Division

AUG 14 2007

August 14, 2007

Ms. Laura Simpson  
Housing Manager  
City of Vallejo  
200 Georgia Street  
Vallejo, CA 94590

Referred to \_\_\_\_\_

Dear Ms. Simpson,

This letter represents a formal request for a line item change in our Exhibit "A" referenced in our FY 2007/2008 services agreement with the City of Vallejo.

As we discussed at our last meeting, as of July 1, 2007, we began taking names off of the Paint Grant waiting list and have since painted eight (8) houses; not in the City Park area. This was an oversight on our part as we assumed, as with this year's allocation for Housing Rehab loans, that we would give a preference to the City Park neighborhood. We have now incurred \$23,196.60 in Paint Grant bills for other homes. We would like to be reimbursed for these homes and we have cut off the waiting list. (There are still seven families on it.)

We still plan to host Paint the Town and Block Blitz in the City Park neighborhood next June. Thank you for your consideration.

Sincerely,

Renee Walton  
Executive Director

de  
Leah  
8/27/07

**EXHIBIT "A"**  
**VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.**  
**SCOPE OF SERVICES**  
**FISCAL YEAR 2007/2008**

I. PROGRAM DESCRIPTION

In Fiscal Year (FY) 2007/2008, Vallejo Neighborhood Housing Services, Inc. (VNHS) will provide housing and related programs designed to improve the community and restore neighborhood pride. VNHS will also provide administrative oversight and management for all programs, and provide related services, including information and referral as needed, to low- and moderate-income residents of the City of Vallejo.

II. OBJECTIVES

Community Development Block Grant (CDBG) Program

1. Complete ten (10) exterior house paint grants, including materials and labor, to housing units owned and occupied by low- and moderate-income residents.
2. Provide two (2) owner-occupied and/or rental housing rehabilitation loans to low- and moderate-income households, with first priority in the City Park neighborhood.
3. Provide down payment and closing cost assistance to two (2) low- and moderate-income households.
4. Provide homebuyers education and counseling to 60 low- and moderate-income residents.
5. Provide post-home purchase counseling and education to fifteen (15) low- and moderate-income residents.

HOME Investment Partnerships Program

1. Provide two (2) owner-occupied and/or rental housing rehabilitation loans to low- and moderate-income households.
2. Provide down payment and closing cost assistance to three (3) low- and moderate-income households.
3. Construct Graham Gardens, consisting of 22 duet homes at Mini and Stanford Drives in North Vallejo, eleven (11) of which will be for sale to low- and moderate-income families.

4. Begin construction of twelve (12) townhouses on the west side of Sonoma and McLane in South Vallejo, six (6) of which will be for sale to low- and moderate-income families.
5. Begin construction on four (4) affordable for-ownership single family housing units on the east side of Sonoma and McLane, two (2) of which will be for sale to low- and moderate-income families.
6. Identify project site for development of for-ownership affordable housing units.

EXHIBIT "B"  
 VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.  
 BUDGET, FISCAL YEAR 2007/2008  
 (Revised 1/23/08)

<b>I. SOURCES</b>	
<b>CDBG:</b>	
Annual Allocation, FY 2007/2008	579,633.00
<b>SUBTOTAL:</b>	<b>579,633.00</b>
<b>HOME:</b>	
Annual Allocation, FY 2007/2008	783,601.00
Estimated Program Income, FY 2007/2008	120,000.00
<b>SUBTOTAL:</b>	<b>903,601.00</b>
<b>GRAND TOTAL, REVENUE:</b>	<b>1,483,234.00</b>
<b>II. USES</b>	
<b>CDBG:</b>	
Admin. Costs, Rehab. Loans	24,000.00
Materials and Labor, Paint Grants	31,101.00
Admin. Costs, Paint Grants	2,600.00
Homebuyers Education and Counseling	25,000.00
Down Payment Assistance	418,557.00
Admin. Costs, Down Payment Assistance	19,400.00
Closing Cost Grants	48,975.00
Post-Purchase Counseling and Education	10,000.00
<b>SUBTOTAL:</b>	<b>579,633.00</b>
<b>HOME:</b>	
Lending Capital, Rehab. Loans	236,735.00
Admin. Costs, Rehab. Loans	19,770.00
Down Payment Assistance	226,045.00
Admin. Costs, Down Payment Assistance	25,061.00
Closing Cost Grants	39,000.00
CHDO Project - Graham Gardens	32,261.00
CHDO Project - Sonoma/McLane, 12 Units	101,855.00
CHDO Project - Sonoma/McLane, 4 Units	95,803.00
CHDO Project	95,303.00
CHDO Admin.	31,768.00
<b>SUBTOTAL:</b>	<b>903,601.00</b>
<b>GRAND TOTAL, EXPENDITURES:</b>	<b>1,483,234.00</b>

EXHIBIT "B"  
 VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.  
 BUDGET, FISCAL YEAR 2007/2008

<b>I. SOURCES</b>	
<b>CDBG:</b>	
Annual Allocation, FY 2007/2008	448,558.00
<b>SUBTOTAL:</b>	<b>448,558.00</b>
<b>HOME:</b>	
Annual Allocation, FY 2007/2008	381,212.00
Estimated Program Income, FY 2007/2008	120,000.00
<b>SUBTOTAL:</b>	<b>501,212.00</b>
<b>GRAND TOTAL, REVENUE:</b>	<b>949,770.00</b>
<b>II. USES</b>	
<b>CDBG:</b>	
Lending Capital, Rehab. Loans	150,000.00
Admin. Costs, Rehab. Loans	24,000.00
Materials and Labor, Paint Grants	23,393.00
Admin. Costs, Paint Grants	2,600.00
Homebuyers Education and Counseling	25,000.00
Down Payment Assistance	146,165.00
Admin. Costs, Down Payment Assistance	19,400.00
Closing Cost Grants	48,000.00
Post-Purchase Counseling and Education	10,000.00
<b>SUBTOTAL:</b>	<b>448,558.00</b>
<b>HOME:</b>	
Lending Capital, Rehab. Loans	103,765.00
Admin. Costs, Rehab. Loans	19,770.00
Down Payment Assistance	186,545.00
Admin. Costs, Down Payment Assistance	25,061.00
Closing Cost Grants	39,000.00
CHDO Project	95,303.00
CHDO Admin.	31,768.00
<b>SUBTOTAL:</b>	<b>501,212.00</b>
<b>GRAND TOTAL, EXPENDITURES:</b>	<b>949,770.00</b>

**EXHIBIT "C"**  
**VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.**  
**CERTIFICATION OF ELIGIBILITY FOR CDBG AND HOME ACTIVITIES**  
**FISCAL YEAR 2007/2008**

TYPE OF ACTIVITY

Rehab Loan \_\_\_\_\_  
Homebuyer Loan / Closing Costs Grant \_\_\_\_\_  
Paint Grant \_\_\_\_\_  
New Housing Construction \_\_\_\_\_

NAME OF RECIPIENT \_\_\_\_\_

ADDRESS / LOCATION / PARCEL NO. \_\_\_\_\_

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

HOUSEHOLD SIZE \_\_\_\_\_

ANNUAL HOUSEHOLD INCOME \_\_\_\_\_

ETHNICITY \_\_\_\_\_

FEMALE-HEADED HOUSEHOLD \_\_\_\_ YES \_\_\_\_ NO

ELDERLY \_\_\_\_ YES \_\_\_\_ NO

DISABLED \_\_\_\_ YES \_\_\_\_ NO

0 - 50% MEDIAN INCOME \_\_\_\_\_

51% - 80% MEDIAN INCOME \_\_\_\_\_

ENVIRONMENTAL REVIEW COMPLETED \_\_\_\_ YES \_\_\_\_ NO

"SOURCES AND USES OF FUNDS" APPROVED BY CITY \_\_\_\_ YES \_\_\_\_ NO

TYPE OF FINANCING / LOAN TERMS

Amount Borrowed \_\_\_\_\_  
Term of Loan \_\_\_\_\_  
Deferred \_\_\_\_\_  
Amortized \_\_\_\_\_

Interest Rate \_\_\_\_\_

Escrow Company / Address / Contact Person \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Escrow # \_\_\_\_\_

TITLE INSURANCE POLICY RECEIVED \_\_\_\_\_ YES \_\_\_\_\_ NO

PROMISSORY NOTE EXECUTED \_\_\_\_\_ YES \_\_\_\_\_ NO  
(CITY as "Beneficiary")

DEED OF TRUST RECORDED \_\_\_\_\_ YES \_\_\_\_\_ NO  
(CITY as "Beneficiary")

REQUEST FOR NOTICE OF DEFAULT RECORDED \_\_\_\_\_ YES \_\_\_\_\_ NO

AFFORDABILITY COVENANT RECORDED \_\_\_\_\_ YES \_\_\_\_\_ NO

YEAR HOUSING UNIT CONSTRUCTED \_\_\_\_\_

NO. OF BEDROOMS \_\_\_\_\_

SOURCE OF FUNDS

VNHS REQUESTS A DRAW FROM CITY OF \$ \_\_\_\_\_.

\_\_\_\_\_ CDBG \_\_\_\_\_ HOME

CERTIFICATION

I hereby certify that the above activity complies with all CDBG and HOME requirements and the Agreement dated for reference July 1, 2007 between the CITY and VNHS, Inc..

\_\_\_\_\_  
Executive Director, VNHS, Inc.

\_\_\_\_\_  
Date



**EXHIBIT "D"**

**VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.**

**EVIDENCE OF INSURANCE**

**FISCAL YEAR 2007/2008**

CERTHOLDER COPY

NB

**STATE  
COMPENSATION  
INSURANCE  
FUND**

P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

**CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**

ISSUE DATE: 03-04-2007

GROUP:  
POLICY NUMBER: 1291797-2007  
CERTIFICATE ID: 10  
CERTIFICATE EXPIRES: 03-04-2008  
03-04-2007/03-04-2008

CITY OF VALLEJO  
CD ANALYST COMM DEV DIV  
PO BOX 3068  
VALLEJO CA 94590

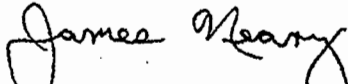
NB


This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

  
AUTHORIZED REPRESENTATIVE

  
PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 03-04-2004 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

RECEIVED  
City of Vallejo  
Housing and Community  
Development Division

FEB 26 2007

EMPLOYER

Referred to \_\_\_\_\_

VALLEJO NEIGHBORHOOD HOUSING SERVICES INC. (A  
NON-PROFIT CORP.) DBA: VALLEJO NEIGHBORHOOD  
HOUSING SERVICES, INC  
PO BOX 7308  
VALLEJO CA 94590

# ACORD. CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)  
06/21/07

**PRODUCER**  
MC DOWELL'S INS AGENCY, LLC  
P O BOX 1917  
VALLEJO CA 94590

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**COMPANIES AFFORDING COVERAGE**

COMPANY  
A PENN STAR INSURANCE COMPANY

**INSURED**  
VALLEJO NEIGHBORHOOD HOUSING SERVICES  
610 LEMON STREET  
VALLEJO, CA 94590

COMPANY  
B

COMPANY  
C

COMPANY  
D

**FRASE**

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	CPS5015230	05/29/07	05/29/08	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ EXCLUDED PERSONAL & ADV INJURY \$ EXCLUDED EACH OCCURRENCE \$ 2,000,000 FIRE DAMAGE (Any one fire) \$ 100,000 MED EXP (Any one person) \$ 5,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				STATUTORY LIMITS EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$
A	<b>OTHER</b> NON-OWNED AL FORM S2045(11/97)	CPS5015230	05/29/07	05/29/08	NON-OWNED AL: INCLUDED HIRED AL: EXCLUDED

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**  
 CERT HOLDER IS NAMED AS AN ADDITIONAL INSURED PER FORM CG2010(07/04).  
 10 DAY NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM. THIS CERT REPLACES AND RESCINDS CERT ISSUED 06/06/07.

**CITY OF VALLEJO, ITS OFFICERS, OFFICIALS, DIRECTORS, EMPLOYEES, AND AGENTS**  
 PO BOX 1432  
 VALLEJO, CA 94589

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*Robert P. Abasman* DENISE 1

POLICY NUMBER: CPS5015230

COMMERCIAL GENERAL LIABILITY  
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
CITY OF VALLEJO, ITS OFFICERS, OFFICIALS DIRECTORS, EMPLOYEES, & AGENTS PO BOX 1432 VALLEJO, CA 94589	

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**PENN-AMERICA INSURANCE COMPANY**  
**NON-OWNED AND HIRED AUTO LIABILITY**

This endorsement modifies insurance provided under the following:

**Commercial General Liability Coverage Part**

**SCHEDULE**

Insurance is provided only with respect to the coverage for which a specific premium charge is shown:

<u>Coverage</u>	<u>Additional Premium</u>
Non-Owned Auto Liability	\$ INCLUDED
Hired Auto Liability	\$ EXCLUDED

**A. NON-OWNED AUTO LIABILITY**

The insurance provided under COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) applies to "bodily injury" or "property damage" arising out of the use of a "non-owned auto" by any person other than you in the course of your business.

**B. HIRED AUTO LIABILITY**

The insurance provided under COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

**C. With respect to the insurance provided by this endorsement:**

- Subparagraphs b., c., e., g., h., j., k., l., m. and n. of paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) do not apply.
- The following exclusions are added to paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages):

This insurance does not apply to:

- "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
  - That the insured would have in the absence of the contract or agreement; or
  - Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.
- "Bodily injury" to:
  - An "employee" of the insured arising out of and in the course of:
    - Employment by the insured; or
    - Performing duties related to the conduct of the insured's business; or
  - The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

- Whether the insured may be liable as an employer or in any other capacity; and
- To any obligation to share damages with or repay someone else who must pay the damages because of the injury.

This exclusion does not apply to:

- Liability assumed by the insured under an "insured contract"; or
- "Bodily injury" to domestic "employees" not entitled to workers compensation benefits.

c. "Property damage" to:

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

D. For the purposes of this endorsement only, WHO IS AN INSURED (Section II) is replaced by the following:  
Each of the following is an insured under this insurance to the extent set forth below:

1. You.
2. Any other person using a "hired auto" with your permission.
3. With respect to a "non-owned auto", any partner or "executive officer" of yours, but only while such "non-owned auto" is being used in your business.
4. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under paragraphs 1., 2. or 3. above.

None of the following is an Insured:

1. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment;
2. Any partner or "executive officer" with respect to any "auto" owned by such partner or officer or a member of his or her household;
3. Any person while employed in or otherwise engaged in performing duties related to the conduct of an "auto business", other than an "auto business" you operate;
4. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;
5. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

E. For the purposes of this endorsement only, the definition of "insured contract" in the DEFINITIONS Section is amended by the addition of the following:

6. "Insured contract" means:
  - g. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

F. For the purposes of this endorsement only, the following definitions are added to the DEFINITIONS Section:

1. "Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".
2. "Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", your partners or your "executive officers", or members of their households.
3. "Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners or your "executive officers", or members of their households, but only while used in your business or your personal affairs.

**YOU MUST READ YOUR POLICY AND ALL ATTACHMENTS CAREFULLY. SHOULD YOU HAVE ANY QUESTIONS REGARDING YOUR POLICY, CONTACT YOUR INSURANCE AGENT OR BROKER.**

All other terms, conditions and agreements of the policy shall remain unchanged.

This endorsement forms a part of Policy No. \_\_\_\_\_

Issued to \_\_\_\_\_

by the PENN-AMERICA INSURANCE COMPANY of HATBORO, PENNSYLVANIA, and is effective

From \_\_\_\_\_  
(12:01 A.M. Standard Time)

PENN-AMERICA INSURANCE COMPANY

Countersigned at \_\_\_\_\_

By \_\_\_\_\_  
(Duly Authorized Representative)

SECRETARY

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

**ACORD. CERTIFICATE OF INSURANCE**

DATE (MM/DD/YY)  
07/30/07

**PRODUCER**

MC DOWELL'S INS AGENCY, LLC  
P O BOX 1917  
VALLEJO CA 94590

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**COMPANIES AFFORDING COVERAGE**

COMPANY  
A UNITED NATIONAL INS. CO.

**INSURED**

VALLEJO NEIGHBORHOOD HOUSING  
610 LEMON STREET  
VALLEJO, CA 94590

COMPANY  
B

COMPANY  
C

COMPANY  
D

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	XTP80050	07/27/07	07/27/08	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				STATUTORY LIMITS EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$
	OTHER				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**

CERTIFICATE HOLDER NAMED ADD'L INSURED PER FORM HGT108-1/97. TEN DAYS NOC FOR NONPAYMENT OF PREMIUM.

**CERTIFICATE HOLDER**

CITY OF VALLEJO  
ITS OFFICERS, OFFICIALS, DIRECTORS,  
EMPLOYEES AND AGENTS  
PO BOX 1432  
VALLEJO, CA 94590

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Robert P. Abraham*

DENISE 1

This endorsement, effective 07/27/07 (12:01 a.m. standard time),  
forms a part of Policy # : XTP80050

Issued To: Vallejo Neighborhood Housing Services By: United National Insurance Company

**ADDITIONAL INSURED AND AMENDED POLICY TERMS**

The paragraphs marked "yes" below apply to such insurance as is afforded by this policy.

A.  yes  no **ADDITIONAL INSURED(S):**

Subject to all its terms, conditions and endorsements, such insurance as is afforded by the policy shall also apply to the following entity(ies) as an Additional Insured, but only as respects liability arising from (1) premises owned by or occupied by the Named Insured, (2) the contract entered into by the Named Insured, or (3) the work or business activities performed by or for the Named Insured as specified under "as respects" below.

**Additional Insured Entity (ies)**

City on Benicia  
Its Officers, Officials, Directors, Employees and Agents  
250 East "L" Street  
Benicia, California 94510

City of Vallejo  
Its Officers, Officials, Director, Employees, and Agents  
P.O. Box 1432  
Vallejo, California

B.  yes  no **WAIVER OF SUBROGATION:**

Where required by contract and agreed to by the Named Insured, the Company shall not have any rights of recovery against any Additional Insured Entity(ies) named in item A. above.

C.  yes  no **CANCELLATION:**

Any policy condition or agreement relating to cancellation (Paragraph A. of Common Policy Conditions, GU267 (11-85), and wherever found anywhere else in the policy) is deleted in its entirety and the following applies instead:

This policy may only be canceled by the Named Insured by mailing to the Company or its representatives and to the additional insured(s) shown in paragraph A. above, written notice stating when not less than Thirty (30) days thereafter such cancellation shall be effective. This policy may only be canceled by the Company by mailing to the Named Insured at the address shown in this policy and to the additional insured(s) shown in paragraph A. above, written notice stating when not less than Thirty (30) days thereafter such cancellation shall be effective, the mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery, with receipt, of such written notices either by the Named Insured or by the Company shall be equivalent to mailing.



**EXHIBIT "E"**

**VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.**

**QUARTERLY REPORT FORM**

**FISCAL YEAR 2007/2008**

FISCAL YEAR 2007/2008

**CITY OF VALLEJO AGENCY QUARTERLY REPORT**

FOR PERIOD: \_\_\_\_\_ TO \_\_\_\_\_

ORGANIZATION: VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.

PROGRAM:

MAILING ADDRESS:

I. STATUS OF PROGRAM OBJECTIVES (attach comments, if any)

II. ANNUAL OBJECTIVE (see Agreement, Exhibit "A")

No. of clients to be served

CDBG \_\_\_\_\_

HOME \_\_\_\_\_

III. CLIENT CHARACTERISTICS OF VALLEJO PERSONS SERVED (UNDUPLICATED COUNT)

	<u>Quarter</u>		<u>Year-to-Date</u> (July 1, 2007 - to Present)	
	<u>CDBG</u>	<u>HOME</u>	<u>CDBG</u>	<u>HOME</u>
A. <u>Number of clients served</u>				
B. <u>Household Income (per attached HUD Chart)</u>				
Low-Income (0-50% MFI)				
Moderate-Income (51-80% MFI)				
Higher Income (81%+ MFI)				
<b>TOTAL</b>				
C. <u>Sex</u>				
Male				
Female				
<b>TOTAL</b>				
D. <u>Ethnicity</u>				
White				
African-American				
Latino				
Asian, Filipino, Pacific Islander				
Native American, Alaskan Native				
<b>TOTAL</b>				
E. <u>Elderly (age 62 and over)</u>				
F. <u>Youth (age 18 and under)</u>				
G. <u>Handicapped</u>				
H. <u>Female-Headed Households</u>				

FISCAL YEAR 2007/ 2008  
CITY OF VALLEJO AGENCY QUARTERLY REPORT

IV. BUDGET REPORT ON USE OF CITY OF VALLEJO FUNDS FOR VALLEJO CLIENTS  
(see Agreement, Exhibit "B")

	Line Item	Budgeted Amount	Amount Expended to Date	Balance
<b>CDBG</b>	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
<b>TOTAL</b>				

FISCAL YEAR 2007/ 2008  
 CITY OF VALLEJO AGENCY QUARTERLY REPORT

	Line Item	Budgeted Amount	Amount Expended to Date	Balance
<b>HOME</b>	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
<b>TOTAL</b>				

FISCAL YEAR 2007/ 2008  
 CITY OF VALLEJO AGENCY QUARTERLY REPORT

V. PROGRAM INCOME

	Received This Quarter	Description	Amount Received to Date	Amount Expended to Date
<b>CDBG</b>				
<b>TOTAL</b>				
<b>HOME</b>				
<b>TOTAL</b>				

VI. SIGNATURE OF REPORT PREPARER \_\_\_\_\_  
 Title \_\_\_\_\_  
 Telephone Number \_\_\_\_\_

**OFFICE USE ONLY** Reviewed by: \_\_\_\_\_

Remarks:

**CITY OF VALLEJO / VALLEJO HOUSING AUTHORITY:  
HOUSING CHOICE VOUCHER / CDBG /  
HOME PROGRAM INCOME LIMITS**

Section 8: 0-50% of Median  
Income  
CDBG/HOME: 0-80% of  
Median Income

		HOUSEHOLD SIZE										
		1	2	3	4	5	6	7	8+			
% OF												
MEDIAN INCOME												
30% OF MEDIAN	\$15,800	\$18,100	\$20,350	\$22,600	\$24,400	\$26,200	\$28,000	\$29,850				
VERY LOW INCOME	\$26,400	\$30,150	\$33,950	\$37,700	\$40,700	\$43,750	\$46,750	\$49,750				
LOW-INCOME	\$41,450	\$47,350	\$53,300	\$59,200	\$63,950	\$68,650	\$73,400	\$78,150				

For each person in excess of eight, 8 percent of the four-person base should be added to the eight-person income limit. (For example, the nine-person limit equals 140 percent [132 + 8] of the relevant four-person income limit.) All income limits are rounded to the nearest \$50 to reduce administrative burden.

**AMENDMENT NO. 1  
TO  
CITY OF VALLEJO  
AGREEMENT WITH  
VALLEJO NEIGHBORHOOD HOUSING SERVICES, INC.  
FISCAL YEAR 2007/2008**

Pursuant to Section XIV. of the above-mentioned Agreement (dated for reference July 1, 2007), entitled Terms and amendments., which states that "Amendments to the terms and conditions of this Agreement shall be requested in writing by the party desiring such revision, and any agreed-upon amendments to this Agreement shall be effective only when the same has been produced in writing and signed by all parties hereto," this Agreement is hereby amended to read, in the following sections, as follows:

**XIX. Closing out.**

2. ...VNHS is responsible for CITY's receipt of final billings **by Tuesday, September 30, 2008**, after which no final billings will be accepted.

**XXII. Term of Agreement.**

The term of this Agreement shall commence on July 1, 2007 and end on September 30, 2008,...CITY shall not be liable for any VNHS expenses incurred prior to July 1, 2007 or incurred after September 30, 2008.

**Exhibit "B-1", Vallejo Neighborhood Housing Services, Inc., Budget, Fiscal Year 2007/2008**

**Additional HOME Program Funding Allocations:**

Rehabilitation Loans: \$125,008 (no more than 16% of this amount may be spent on rehab. admin./staff costs), to provide two loans.

Downpayment Assistance Loans and Closing Cost Grants: \$400,000 (no more than 40% of this amount may be spent on downpayment assistance admin./staff costs), to provide five loans.



All other terms and conditions contained in the above-mentioned Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized representatives, have executed this Agreement in triplicate on the day and year set below each of the parties.

**VALLEJO NEIGHBORHOOD  
HOUSING SERVICES, INC.,  
a California non-profit public  
benefit corporation**

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

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

**CITY OF VALLEJO,  
a municipal corporation**

By: \_\_\_\_\_  
Joseph M. Tanner, City Manager

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

ATTEST:

By: \_\_\_\_\_  
Mary Ellsworth, City Clerk

(City Seal)

APPROVED AS TO INSURANCE  
REQUIREMENTS:

\_\_\_\_\_  
Harry B. Maurer, Risk Manager

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Craig Whittom, Assistant City  
Manager/Community  
Development

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick G. Soley, City Attorney



CONSENT F


Agenda Item No.

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**COUNCIL COMMUNICATION**

Date: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Gary A. Leach, Public Works Director 

SUBJECT: APPROVAL OF A RESOLUTION AWARDING NINE CONTRACTS AND EXTENDING ONE EXISTING CONTRACT FOR SUPPLY OF CHEMICALS FOR APPLICATION TO AND TREATMENT OF WATER FOR FISCAL YEAR 2008/2009

**BACKGROUND AND DISCUSSION**

Since 1995, the City of Vallejo has participated with the North Bay Agency Chemical Pool which includes the City of American Canyon, City of Benicia, City of Calistoga, City of Fairfield, City of Napa, Napa Sanitation District, Rodeo Sanitary District, City of St. Helena, Solano Irrigation District, City of Vacaville, City of West Sacramento, and Vallejo Sanitation and Flood Control District. The objective of the North Bay Agency Chemical Pool is to have the aforementioned agencies join together in order to obtain better pricing from chemical vendors.

The Chemical Pool received the following bids for the supply of chemicals for water treatment for fiscal year 2008/2009.

1. Liquid Aluminum Sulfate  
**General Chemical, Parsippany, NJ** **\$389.00 per ton**  
Rhodia, Inc, Cranbury, NJ \$463.97 per ton
2. Liquid Caustic (50% solution)  
**Olin Chlor Alkali Products, Walnut Creek, CA** **\$549.90 per ton**  
Brenntag Pacific, Richmond, CA \$762.00 per ton  
Basic Chemical Solution, Redwood City, CA \$835.11 per ton
3. Liquid Caustic (25% solution)  
**Olin Chlor Alkali Products, Walnut Creek, CA** **\$599.90 per ton**  
Brenntag Pacific, Richmond, CA \$834.00 per ton  
Basic Chemical Solution, Redwood City, CA \$890.90 per ton



4. Hydrofluorosilicic Acid (24% solution)  
**Brenntag Pacific, Richmond, CA** \$615.00 per ton  
Lucier Chemical Industries, Jacksonville Beach, FL \$678.26 per ton  
Pennco, Inc., Sealy, TX \$739.00 per ton
5. Liquid Chlorine (4 ton or more load)  
**Sierra Chemical Company, Sparks, NV** \$445.00 per ton  
Pioneer Americas, Inc, Walnut Creek, CA \$449.90 per ton
6. Aluminum ChloroHydroxide (Full Load ≈45,000 lb)  
**CalChem, Inc., Modesto, CA** \$594.00 per ton  
General Chemical, Parsippany, NJ \$609.60 per ton  
Kemira Water Solutions, Lawrence, Kansas \$618.00 per ton  
Summit Research Labs, Farmington, NJ \$620.00 per ton
7. CAT-IONIC POLYMER  
**CalChem, Inc., Modesto, CA** \$980.00 per ton
8. Anionic Polymer  
**SNF Polydyne, Riceboro, GA** \$1,700.00 per ton  
Nalco Company, Naperville, IL \$5,224.14 per ton
9. Liquid Oxygen For Fleming Hill Treatment Plant  
**Praxair Inc., San Ramon, CA** \$ 84.97 per ton  
BOC Gases, Hayward, CA \$113.53 per ton
10. Liquid Oxygen For Travis Treatment Plant\*  
**BOC Gases, Hayward, CA** \$0.630 per 100 SCF  
& \$1,110.00/month  
Facility Fee

NOTE: \*This is an existing contract which has been renegotiated and extended for one year (Fiscal Year 2008/2009). The unit charge includes \$0.033 per 100 standard cubic foot for fuel and power surcharges. Since BOC Gases owns the equipment, the City must pay a monthly facility fee for rental of the equipment and is required to purchase liquid oxygen solely from BOC Gases. Only when the U.S. Air Force agrees to purchase a storage tank can the liquid oxygen supplies be competitively bid through the North Bay Agency Chemical Pool.



## Fiscal Impact

Due to increases in fuel cost required to manufacture and transport the chemical, the prices bid will result in an estimated 45% increase in total chemical expenditures for fiscal year 2008/2009. The Water Division has a combined proposed fiscal year 2008/2009 budget of \$1,215,000 for chemical purchases (Funds 401, 402 and 403) which will fully fund the necessary chemical supplies.

## RECOMMENDATION

Staff recommends awarding contracts to the lowest bidders for each of the nine chemicals, retain the second lowest bidders as a backup supplier in case the lowest bidder could not fulfill their obligations and extending the contract to BOC Gases for Liquid Oxygen at Travis Treatment Plant.

## PROPOSED ACTION

Adopt a resolution awarding nine contracts and extending one existing contract for the supply of chemicals for application to and treatment of water for fiscal year 2008/2009 and authorizing the City Manager or his designee to sign the contracts.

## ENVIRONMENTAL REVIEW

Contracting for purchase of chemicals for use in ongoing treatment operations is not considered a project under the California Environmental Quality Act and therefore can be considered "functionally" exempt. [CEQA Guidelines 15378(b)(2)].

## DOCUMENTS ATTACHED

- a. A resolution awarding nine contracts and extending one existing contract for the supply of chemicals for application to treatment of water for fiscal year 2008/2009.

## CONTACT PERSONS

Gary A. Leach  
Public Works Director  
648-4315  
[garyl@ci.vallejo.ca.us](mailto:garyl@ci.vallejo.ca.us)

Erik Nugteren  
Water Superintendent  
648-4482  
[codumford@ci.vallejo.ca.us](mailto:codumford@ci.vallejo.ca.us)

JUNE 24, 2008

K:\PUBLIC\AI\WT\CHEMICALS 2008-2009 AWARD AGENDA.doc

**RESOLUTION NO. 08-\_\_\_\_\_ N.C.**

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

THAT the following low bids for furnishing chemicals for water treatment to the City of Vallejo, Solano County, California, through the North Bay Agency Chemical Pool, are hereby accepted and contracts awarded to said low bidders at the prices bid:

- |    |  |                    |
|----|--|--------------------|
| 1. | <u>Liquid Aluminum Sulfate</u><br>General Chemical, Parsippany, NJ                   | \$389.00 per ton   |
| 2. | <u>Liquid Caustic (50% solution)</u><br>Olin Chlor Alkali Products, Walnut Creek, CA | \$549.90 per ton   |
| 3. | <u>Liquid Caustic (25% solution)</u><br>Olin Chlor Alkali Products, Walnut Creek, CA | \$599.90 per ton   |
| 4. | <u>Hydrofluorosilicic Acid (24% solution)</u><br>Brenntag Pacific, Richmond, CA      | \$615.00 per ton   |
| 5. | <u>Liquid Chlorine (4 ton or more load)</u><br>Sierra Chemical Company, Sparks, NV   | \$445.00 per ton   |
| 6. | <u>Aluminum ChloroHydroxide (Full Load ≈45,000 lb)</u><br>CalChem, Inc., Modesto, CA | \$594.00 per ton   |
| 7. | <u>CAT-IONIC POLYMER</u><br>CalChem, Inc., Modesto, CA                               | \$980.00 per ton   |
| 8. | <u>Anionic Polymer</u><br>SNF Polydyne, Riceboro, GA                                 | \$1,700.00 per ton |
| 9. | <u>Liquid Oxygen For Fleming Hill Treatment Plant</u><br>Praxair Inc., San Ramon, CA | \$ 84.97 per ton   |

BE IT RESOLVED by the Council of the City of Vallejo that the following existing contract for furnishing chemicals for water treatment to the City of Vallejo, Solano County, California, is hereby extended for one year (Fiscal Year 2008/2009):

- |    |   |   |
|----|---|---|
| 1. | <u>Liquid Oxygen</u> For Travis Treatment Plant<br>BOC Gases, Hayward, CA | \$0.630 per 100 SCF<br>& \$1,110.00/month Facility<br>Fee |
|----|---|---|

BE IT RESOLVED that the following second lowest bids be retained as back up suppliers in the event that the lowest bidders could not fulfill their obligations within the fiscal year:

1. Liquid Aluminum Sulfate  
Rhodia, Inc, Cranbury, NJ \$463.97 per ton
2. Liquid Caustic (50% solution)  
Brenntag Pacific, Richmond, CA \$762.00 per ton
3. Liquid Caustic (25% solution)  
Brenntag Pacific, Richmond, CA \$834.00 per ton
4. Hydrofluorosilicic Acid (24% solution)  
Lucier Chemical Industries, Jacksonville Beach, FL \$678.26 per ton
5. Liquid Chlorine (4 ton or more load)  
Olin Chlor Alkali Products, Walnut Creek, CA \$449.90 per ton
6. Aluminum ChloroHydroxide (Full Load ≈45,000 lb)  
General Chemical, Parsippany, NJ \$609.60 per ton
7. Anionic Polymer  
Nalco Company, Naperville, IL \$5,224.14 per ton
8. Liquid Oxygen For Fleming Hill Treatment Plant  
BOC Gases, Hayward, CA \$113.53 per ton

BE IT RESOLVED that all other bids to wit:

Basic Chemical Solution, Redwood City, CA  
Kemira Water Solutions, Lawrence, KS  
Lucier Chemical Industries, Jacksonville Beach, FL  
Pencco, Inc., Sealy, TX  
Summit Research Labs, Farmington, NJ

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

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized to sign agreements, with any modifications recommended by the City Attorney or Risk Manager, between the City of Vallejo and the respective chemical suppliers.

JUNE 24, 2008

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CONSENT  
G

Agenda Item No.

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## COUNCIL COMMUNICATION

Date: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Gary A. Leach, Public Works Director *AK*

SUBJECT: APPROVAL OF A RESOLUTION 1) APPROVING PLANS AND SPECIFICATIONS FOR ABATEMENT AND DEMOLITION ACTIVITIES AT TWO PROPERTIES IN THE CITY OF VALLEJO: 1001 INDIANA STREET AND 318 STARR AVENUE AND 2) AWARDED A CONSTRUCTION CONTRACT TO YELTON COMPANY INC. OF VACAVILLE, CALIFORNIA, IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS

### BACKGROUND

The blighted and vacant properties at 1001 Indiana Street and 318 Starr Avenue pose a significant public nuisance within their respective neighborhoods. The deteriorated structures, dilapidated fencing, recurring trash, junk, debris, overgrown vegetation and weed problem have resulted in numerous communications and the issuance of warning letters, notices and citations per property. These efforts have proven ineffective in motivating the property owners to abate the violations and bring the properties into compliance with the applicable codes.

In accordance with the noticing regulations of Vallejo Municipal Code Chapters: 7.54 (Property Maintenance) and 12.06 (Abatement of Dangerous Building Code), both properties have been properly noticed, inspected, and prepared for violation abatement and demolition activities. Removal of existing structures on private properties requires the involvement of several divisions such as Code Enforcement, Building, City Attorney's Office and Public Works Engineering to work in compliance with the applicable municipal codes. As the owners of subject properties did not respond to notices from the City's Code Enforcement and Building Divisions, staff has proceeded with the required action to arrive at the position where the noted violations can be legally abated and the structures demolished by the City of Vallejo Public Works Department. Upon approval by the City Council, staff will begin the structural demolition and violation abatement activities as contained in the plans and specifications for this project. The City has gone through the exhaustive process of "due process" in order to allow the property owners to remove the noted violations from subject properties as they continue to constitute a significant public nuisance within their neighborhoods. Therefore, the city has reached a point in this process where abatement and demolition are the next and final steps.



As part of the City's recycling program and in order to meet the California Waste Management Act of 1989, Assembly Bill 939(AB 939), this abatement and demolition project will require the contractor to recycle and salvage at least 50% of the materials generated from the building demolition.

On May 20, 2008, the City issued Notice advertising for bids and on June 19, 2008 the City received four bids for the subject project. The responsive and responsible low bidder was Yelton Company Inc., Vacaville, California in the amount of \$49,174.92. All bid documents submitted appear to be in order.

The four bids received on June 19, 2008, for Abatement and Demolition activities at two properties in the City of Vallejo: 1001 Indiana Street and 318 Starr Avenue are as follows:

Yelton Company Inc., Vacaville, California	\$ 49,174.92
R.C. Knapp Inc., El Sobrante California	\$ 52,671.00
Thomas D. Eychner Co., Inc San Pablo California	\$ 68,500.00
Delta Oil Field Services Inc. Woodland California	\$ 79,528.16

The City has also obtained the services of ACC Environmental, Oakland, California to perform a survey of asbestos and lead paint material in these private properties. Abatement of hazardous materials will be done prior to the demolition of the structures.

#### FISCAL IMPACT

The proposed funding from the City's Repair and Demolition Account (Solid Waste Fund 142) has a spending deadline of June 30, 2008. Currently this fund has a balance of \$177,000

Costs for the project construction will be charged to the City's Repair and Demolition Account (Solid Waste Fund 142). This account is not a part of the City's General Fund.

The following is a breakdown in the project costs:

Construction Contract	49,174.92
Contingencies	9,000.00
Professional Consulting Services	13,760.00
Project Management (City Staff)	<u>30,000.00</u>
Total Project Cost	101,934.92





## RECOMMENDATION

Staff recommends adopting the resolution 1) approving plans and specifications and 2) awarding a construction contract to Yelton Company Inc., Vacaville of, California in the amount of \$49,174.92 for Abatement and Demolition activities at two properties in the City of Vallejo: 1001 Indiana Street and 318 Starr Avenue.

## ENVIRONMENTAL ACTION

Demolition and removal of individual and small structures qualifies as a CEQA Class 1 categorical exemption under section 15301 (I). A Notice of Exemption will be filed with the Solano County Clerk upon City Council's approval of this action.

## PROPOSED ACTION

Adoption of a resolution approving the plans and specifications and awarding a construction contract to Yelton Company Inc., Vacaville, California, for Abatement and Demolition activities at two properties in the City of Vallejo: 1001 Indiana Street and 318 Starr Avenue.

## DOCUMENTS ATTACHED

- a. Resolution 1) approving plans and specifications and 2) awarding a construction contract to Yelton Company Inc., Vacaville California, in the amount of \$49,174.92 for Abatement and Demolition activities at two properties in the City of Vallejo: 1001 Indiana Street and 318 Starr Avenue.

## CONTACT PERSONS

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(707) 648-4315  
[dkleinschmidt@ci.vallejo.ca.us](mailto:dkleinschmidt@ci.vallejo.ca.us)

Nimat Shakoor-Grantham, Code Enforcement Manager  
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[Nimat@ci.vallejo.ca.us](mailto:Nimat@ci.vallejo.ca.us)

JUNE 24, 2008

J:\PUBLIC\AIPW\2008\Engineering\PWSR4261

**RESOLUTION NO. 08-\_\_\_\_ N.C.**

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

WHEREAS, those certain plans and specifications for the abatement of excessive weeds, overgrown vegetation, trash, junk and debris; and the demolition of deteriorated structures and dilapidated fences at two properties in the City of Vallejo: 1001 Indiana Street and 318 Starr Avenue, prepared under the direction of David A. Kleinschmidt, City Engineer, located in the City of Vallejo, County of Solano, California are hereby approved and adopted for said work; and

WHEREAS, the City Council has appropriated \$177,000.00 of funding for Abatement and Demolition activities at two properties in the City of Vallejo: 1001 Indiana Street and 318 Starr Avenue in the City's Repair and Demolition Account (Solid Waste Fund 142); and

BE IT RESOLVED that an invitation for bids was duly advertised and bids opened on June 19, 2008. Yelton Company Inc., Vacaville, California, was determined to be the lowest responsive and responsible bidder in the amount of Forty nine thousand one hundred seventy four dollars and ninety two cents (\$49,174.92) be, and is hereby accepted and a contract is awarded to said low bidder at the prices bid.

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

Yelton Company Inc., Vacaville, California	\$ 49,174.92
R.C. Knapp Inc., El Sobrante California	\$ 52,671.00
Thomas D. Eychner Co., Inc San Pablo California	\$ 68,500.00
Delta Oil Field Services Inc. Woodland California	\$ 79,528.16

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

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to sign an Agreement between the City of Vallejo and Yelton Company Inc., with any modifications recommended by City Attorney or the Risk Manager, and the City Clerk to attest the signing of that Agreement.

JUNE 24, 2008

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CONSENT  
H

Agenda Item No.

Date: June 24, 2008

**COUNCIL COMMUNICATION**

TO: Honorable Mayor and Members of the City Council

FROM: Gary A. Leach, Public Works Director 

SUBJECT: APPROVAL OF TWO RESOLUTIONS: 1) AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO SUBMIT THE CITY OF VALLEJO'S FY 2008-2009 APPLICATION FOR TRANSPORTATION DEVELOPMENT ACT AND STATE TRANSIT ASSISTANCE FUNDING AND 2) AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO SUBMIT THE REGIONAL MEASURE 2 (RM2) APPLICATION FOR FY 2008-2009.

BACKGROUND

The Metropolitan Transportation Commission (MTC) administers the Transportation Development Act (TDA) and the State Transit Assistance Regional Funds (STAF) that provide operating and capital assistance for transit operations in the Bay Area and administers the funds for Regional Measure 2 that provide operating assistance for enhanced Vallejo Ferry/Bus services up to the amount of \$2,700,000 and enhanced Solano County Express Bus Service up to the amount of \$1,217,465. Vallejo's Transit operations include fixed route bus service, Baylink ferry service, ADA related paratransit services, and the Taxi Scrip program. Each year, these applications must be submitted to MTC before the City of Vallejo receives these funds. The City of Vallejo is also applying for planning and administration funds on behalf of the Solano Transportation Authority (STA) as part of a pass through agreement. The following table represents the designated projects and the City of Vallejo allocated amounts for the Transportation Development Act and the State Transit Assistance Funds:

<b>Transportation Development Act (TDA)</b>	
Transit Operating	\$4,734,074
Planning & Administration (for STA)	<u>451,424</u>
Subtotal	\$5,185,498
<b>State Transit Assistance Funds (STAF)</b>	
Transit Operating	\$1,516,735
Planning & Administration (for STA)	<u>509,696</u>
Subtotal	\$2,026,431
<b>Total</b>	<b>\$7,211,929</b>



## RECOMMENDATION

Staff recommends that the City Council approve a resolution authorizing the City Manager or his designee to submit the City of Vallejo's FY 2008-2009 application for Transportation Development Act and State Transit Assistance and approve a resolution authorizing the City Manager or his designee to submit an application for Regional Measure 2 (RM2) Funds for enhanced Vallejo Ferry/Bus services and enhanced Solano County Express Bus Service.

## FISCAL IMPACT

Anticipated funding amount from the Transportation Development Act and State Transit Assistance application is \$7,211,929 and from the Regional Measure 2 application is \$3,917,465. The transit program could not pay for services without these funds.

## PROPOSED ACTION

Approve a resolution authorizing the City Manager or his designee to submit the City of Vallejo's FY 2008-2009 application for Transportation Development Act and State Transit Assistance and approve a resolution authorizing the City Manager or his designee to submit an application for Regional Measure 2 (RM2) Funds for enhanced Vallejo Ferry/Bus services and enhanced Solano County Express Bus Service

## ENVIRONMENTAL REVIEW

The action involving the authorization, filing and execution of the application, as well as the subsequent actions related to the funding requests are not an action with direct or indirect foreseeable environmental impacts, and therefore, together or separately, they do not qualify as a project under CEQA.

## DOCUMENTS ATTACHED

- a. A resolution authorizing the City Manager or his designee to submit the City of Vallejo's FY 2008-2009 application for Transportation Development Act and State Transit Assistance.
- b. A resolution authorizing the City Manager or his designee to submit 2008-2009 applications for Regional Measure 2 (RM2) Funds for enhanced Vallejo Ferry/Bus services and enhanced Solano County Express Service.



DOCUMENTS AVAILABLE FOR REVIEW

- a. Opinion of Counsel
- b. Application for TDA/STA and RM-2 (not attached)

CONTACT PERSONS

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Public Works Director  
648-4316  
[gary@ci.vallejo.ca.us](mailto:gary@ci.vallejo.ca.us)

Crystal Odum Ford  
Transportation Superintendent  
648-5241  
[codumford@ci.vallejo.ca.us](mailto:codumford@ci.vallejo.ca.us)

JUNE 24, 2008  
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**RESOLUTION NO. 08 N.C**

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

WHEREAS, the Transportation Development Act (TDA), (Public Utilities Code Section 99200 et seq.) provides for the disbursement of funds from the Local Transportation Fund of the County of Solano for use by eligible applicants for the purpose of public transportation programs; and

WHEREAS, pursuant to the provisions of the TDA, and pursuant to the applicable rules and regulations under (21 Cal. Code of Regulations, Section 6600 et seq.), a prospective applicant wishing to receive an allocation from the Local Transportation Fund shall file its claim with the Metropolitan Transportation Commission; and

WHEREAS, the State Transit Assistance (STA) fund is created pursuant to Public Utilities Code Section §99310 et seq.; and

WHEREAS, the STA makes Funds available pursuant to Public Utilities Code Section §99313.6 for allocation to eligible applicants to support approved transit projects; and

WHEREAS, Transportation Development Act funds and State Transit Assistance funds will be required by the City of Vallejo in Fiscal Year 2008-2009 for the purpose of public transportation programs; and

WHEREAS, THE City of Vallejo is an eligible applicant for the Transportation Development Act and State Transit Assistance funds pursuant to Public Utilities Code Section §99260 as attested by the Opinion of Counsel.

NOW, THEREFORE, BE IT RESOLVED , that the City Manger or his designee is authorized to execute and file the appropriate Transportation Development Act and State Transit Assistance application together with all necessary supporting documents, with the Metropolitan Transportation Commission for allocations of the funds in FY 2008-2009 up to the amount of \$7,211,929.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Metropolitan Transportation Commission in conjunction with the filing of the claims; and the Metropolitan Transportation Commission be requested to grant the allocations of funds as specified herein.

JUNE 24, 2008

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**RESOLUTION NO. 08 \_\_\_\_\_ N.C**

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

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS,, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

WHEREAS, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

WHEREAS, City of Vallejo is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, the enhanced Vallejo Baylink Ferry/Bus Service and enhanced Solano County Express Bus Service are eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

WHEREAS, the Regional Measure 2 allocation request, submitted hereto in the Operating Assistance Proposal and incorporated herein as though set forth at length, demonstrates a fully funded operating plan that is consistent with the adopted performance measures, as applicable, for which City of Vallejo is requesting that MTC allocate Regional Measure 2 funds; and

WHEREAS, Part 2 of the project application, submitted hereto and incorporated herein as though set forth at length, includes the certification by City of Vallejo of assurances required for the allocation of funds by MTC; and

NOW, THEREFORE, BE IT RESOLVED, that City of Vallejo and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and

BE IT FURTHER RESOLVED, that City of Vallejo certifies that the project is consistent with the Regional Transportation Plan (RTP).

NOW, THEREFORE, BE IT RESOLVED, that City of Vallejo approves the updated Operating Assistance Proposal, submitted with this resolution; and

BE IT FURTHER RESOLVED, that City of Vallejo approves the certification of assurances, attached to this resolution; and

BE IT FURTHER RESOLVED, that City of Vallejo is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(d); and

BE IT FURTHER RESOLVED, that City of Vallejo is authorized to submit an application for Regional Measure 2 funds for the enhanced Vallejo Baylink Ferry/Bus Service and enhanced Solano County Express Bus Service in accordance with California Streets and Highways Code 30914(d); and

BE IT FURTHER RESOLVED, that City of Vallejo certifies that the projects and purposes for which RM2 funds are being requested are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and, if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and

BE IT FURTHER RESOLVED, that there is no legal impediment to City of Vallejo making allocation requests for Regional Measure 2 funds; and

BE IT FURTHER RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of City of Vallejo to deliver such project; and

BE IT FURTHER RESOLVED that City of Vallejo indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of City of Vallejo, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

NOW, THEREFORE, BE IT RESOLVED, that City of Vallejo shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and



NOW, THEREFORE, BE IT FURTHER RESOLVED, that City of Vallejo authorizes the City Manager or his/her designee to execute and submit an allocation request for operating or planning costs for 2007-2008 with MTC for Regional Measure 2 funds in the amount of \$2,700,000 for the enhanced Vallejo Baylink Ferry/Bus Service and \$1,217,465 for the enhanced Solano County Express Bus Service for the project, purposes and amounts included in the project application submitted with this resolution; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Manager or his/her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate.

NOW, THEREFORE, BE FURTHER IT RESOLVED that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the City of Vallejo application referenced herein.

JUNE 24, 2008

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**COUNCIL COMMUNICATION**

Date: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager/Community Development *W*  
Bob Adams, Development Services Director *BA*  
Nimat Shakoor-Grantham, Code Enforcement Manager *ng*

SUBJECT: CONSIDERATION OF A RESOLUTION CONFIRMING AND LEVYING ASSESSMENTS AGAINST PROPERTIES FOR UNPAID GARBAGE BILLS

**SUMMARY**

In January 2008, a mailing of 11,231 courtesy notices were sent to affected property owners reminding them of the need to pay their unpaid garbage bills accrued during the period extending from April 1, 2007, to December 31, 2007. Each property owner was informed of the following:

- A. The amount of the unpaid bill.
- B. The potential for an imposition of a penalty of \$50.00 or 10% of the unpaid portion of the bill, whichever is greater, if the bill is not paid by July 15, 2008.
- C. A warning stating that, if the bills are not paid by July 15, 2008, the bills and penalties would be added to the property owner's property taxes.

On June 4, 2008, the notice of public hearing required by Vallejo Municipal Code section 7.48.090 was mailed out to 4,885 delinquent garbage service customers for the time period of April 1, 2007 to March 31, 2008.

The City Council will conduct a public hearing to consider the report and assessment list concerning unpaid garbage bills for the time period of April 1, 2007 to March 31, 2008 and hear any protests or objections to said report and list. Upon the conclusion of the hearing, the Council should make such corrections or modifications in any proposed assessment which it deems to be excessive or otherwise incorrect after which such assessment shall be confirmed by Council resolution.

Upon confirmation, unless said assessments are paid by July 15, 2008, the City Manager will be authorized and directed to place said assessments on the 2008-2009 property tax rolls for the properties described and/or file appropriate liens for said properties.

**BACKGROUND AND DISCUSSION:**

Section 7.48.030 B of the Vallejo Municipal Code requires owners of properties to subscribe and pay for minimum garbage service. An owner may authorize a tenant to subscribe and pay for services on his/her behalf but this does not relieve the owner from responsibility to provide service.

Since garbage service is mandatory, the Vallejo Garbage Service cannot stop service for nonpayment. Vallejo Garbage Service bills the City of Vallejo for unpaid garbage accounts which the City collects by levying assessments on properties with unpaid garbage bills. Section 7.48.050 of the Vallejo Municipal Code allows exemptions to mandatory garbage services for senior citizens, at least 62 years of age or older, on low to moderate fixed incomes that share a one-can service with an immediately adjacent neighbor. This section also allows exemptions for occupants of single-family dwellings who recycle all, or virtually all, garbage and refuse produced by the occupants of the premises.

The Vallejo Garbage Services has provided staff with an Accounting and Cost Report and assessment list for all unpaid garbage bills through March 31, 2008. This report and assessment list identifies all delinquent amounts subject to assessment upon the City Council's adoption of the attached confirmation resolution. The Vallejo Garbage Service will accept payment through July 15, 2008. Any accounts paid prior to that date will be removed from the assessment list prior to it being forwarded to the County Tax Collector for entering on the next fiscal year tax roll as a lien against the properties listed in the assessment list.

The City is obligated to pay Vallejo Garbage Service for unpaid garbage amounts. If the City levies the assessment, there is no negative financial impact except for staff costs associated with the assessment process. The City will receive the penalty portion of the assessment in December 2008 and April 2009. The accounting and cost report submitted by Vallejo Garbage to the City shows a total delinquent lien amount of \$1,420,791.43 as of June 4, 2008. This amount could be reduced as payments are made up until the July 15, 2008 deadline. All estimated receipts from the County and subsequent disbursements to Vallejo Garbage Service related to this transaction are budgeted in the Solid Waste Fund, #135.

**RECOMMENDATION:**

Staff has completed all necessary steps to levy assessments against properties for unpaid garbage bills. It is necessary for Council to adopt the attached resolution in order for the City to recoup costs in the City associated with unpaid garbage accounts.

**ALTERNATIVES CONSIDERED**

Not applicable.

**ENVIRONMENTAL REVIEW**

The 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 it involves continuing administrative activities.

**PROPOSED ACTION**

Adopt the resolution confirming and levying assessments against properties for unpaid garbage bills.

**DOCUMENTS ATTACHED OR AVAILABLE:**

- a. Resolution confirming and levying assessments against properties for unpaid garbage bills.
- b. List not attached but available in the City of Vallejo Office of the City Clerk, 555 Santa Clara Street, Vallejo CA.

**CONTACT PERSON:** Nimat Shakoор-Grantham, Code Enforcement Manager  
(707) 648-4522

JUNE 24, 2008

K:PUBLIC\AICE\GARBAGE ASSESSMENT RESOLUTION OF INTENT 2008

**RESOLUTION NO. \_\_\_\_\_ N.C.**

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

**WHEREAS**, Staff has presented to City Council an Accounting and Cost Report and assessment list prepared pursuant to Section 7.48.080 of the Vallejo Municipal Code; and

**WHEREAS**, said report and list shall be filed with the City Clerk; and

**WHEREAS**, on June 24, 2008, the City Council conducted a public hearing on assessments and penalties against properties in the City of Vallejo for unpaid garbage bills prepared in accordance with Chapter 7.48 of the Vallejo Municipal Code; and

**WHEREAS**, at said public hearing the Council heard all protests, written and oral, and reaffirmed the general policy of prior years that garbage assessments will not be confirmed or filed against the new owners of property for garbage bills which former owner did not pay or cause to be paid.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City Vallejo that protests and objections to the Accounting and Cost Report, if any, are hereby overruled; and

**BE IT FURTHER RESOLVED** that the Accounting and Cost Report and assessment list is hereby confirmed and assessments are hereby authorized to be levied upon the properties described and in the amounts noted in the said Report; and

**BE IT FURTHER RESOLVED** that if any assessment levied is not paid before the final payment date of July 15, 2008, the City Manager or his designee is authorized and directed to present the itemized assessment list to the Solano County Tax Collector to be placed on the 2008-2009 property tax rolls for the properties described and/or file appropriate liens for said properties; and

**BE IT FURTHER RESOLVED** that the City Manager or his designee is authorized to amend the assessment list to remove properties in which there has been a change in ownership or to correct inaccuracies prior to filing the assessment list with the Solano County Tax Collector; and

**BE IT FURTHER RESOLVED** that said report and assessment list shall be filed with the City Clerk.

ADOPTED by the Council of the City of Vallejo at a regular meeting held on June 24, 2008 with the following vote:

JUNE 24, 2008

K:PUBLICAICE\GARBAGE ASSESSMENT RESOLUTION OF INTENT 2008



PUBLIC  
HEARING B


Agenda Item No.

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## COUNCIL COMMUNICATION

Date: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Gary Leach, Public Works Director 

SUBJECT: PUBLIC HEARING REGARDING FISCAL YEAR 2008/2009  
ASSESSMENTS AND ADOPTION OF A RESOLUTION ORDERING THE  
LEVY AND COLLECTION OF ASSESSMENTS WITHIN FOURTEEN (14)  
IMPROVEMENT ACT OF 1911 LANDSCAPE MAINTENANCE  
DISTRICTS

### BACKGROUND AND DISCUSSION

The City of Vallejo currently has twenty-six (26) Landscape Maintenance Districts, fourteen (14) of which, were created in accordance with the Improvement Act of 1911. The Improvement Act of 1911 requires the City Council to hold a public hearing to take public comments regarding fiscal year (FY) 2008/2009 assessments within these districts. The fourteen (14) districts are as follows: Cimarron Hills/Madigan; College Hills; Costa Del Rio (Seaview); Somerset Highlands I/II; Greenmont/Seaport Hills; Monica Place; Ridgecrest; Somerset Highlands III; Springtree/Fleming Hill; Summit II; Town & Country I; Woodridge; Glen Cove I/II and Hunter Ranch I/II. The assessments for these districts are ad valorem, meaning that they are based upon the value of the property. The assessment is per dwelling unit and individual levies are determined by applying the proposed assessment rate to each one hundred dollars (\$100.00) of the assessed value.

The assessments are collected by the County of Solano and forwarded to the City for deposit into specific fund accounts for each district. All assessments are expended for landscape maintenance, repair of damage due to vandalism or natural occurrence, site rehabilitation or improvements, water and utilities, and City inspection and administration.

The FY 2007/2008 and the proposed FY 2008/2009 assessments are shown below. The fourteen (14) districts are recommended to remain at the same rate as assessed in FY 2007/2008:



<b><u>DISTRICT</u></b>	<b><u>MAX RATE</u></b>	<b><u>FY 2007/08</u></b>	<b><u>PROPOSED FY2008/2009</u></b>	<b><u>% ANNUAL INCREASE</u></b>
Cimarron Hills-Madigan	1.50/100	\$.153	\$.153	0
College Hills	1.50/100	\$.124	\$.124	0
Costa Del Rio (Seaview)	4.00/100	\$.373	\$.373	0
Somerset I/II	1.25/100	\$.081	\$.081	0
Greenmont/Seaport Hills	1.25/100	\$.103	\$.103	0
Monica Place	1.25/100	\$.187	\$.187	0
Ridgecrest	1.50/100	\$.060	\$.060	0
Somerset III	1.50/100	\$.139	\$.139	0
Springtree-Fleming	1.50/100	\$.210	\$.210	0
Summit II	1.50/100	\$.103	\$.103	0
Town & Country I	1.50/100	\$.134	\$.134	0
Woodridge	1.50/100	\$.117	\$.117	0
Glen Cove I/II	1.50/100	\$.140	\$.140	0
Hunter Ranch I/II	1.50/100	\$.103	\$.103	0

All of the costs associated with the above landscape maintenance districts are paid by the assessments levied upon the parcels within them. The amount of funds to assess for all 1911 Acts is \$1,343,594 (One Million Three Hundred Forty-three thousand Five Hundred Ninety-Four Dollars).

**RECOMMENDATION**

Conduct a public hearing for establishing ad valorem assessments for fourteen (14) Landscape Maintenance Districts for fiscal year 2008/2009. This is to comply with the legal requirements of the 1911 Act and the provisions of the California Constitution Article XIID (Proposition 218).

**ENVIRONMENTAL REVIEW**

The levy and collection of these assessments is exempt from the California Environmental Quality Act under section 15273 of Title 14 of the California Code of Regulations.

**PROPOSED ACTION**

Hold a public hearing for setting the ad valorem assessments for fourteen (14) Landscape Maintenance Districts for fiscal year 2008/2009. Adopt a resolution ordering the levy and collection of the assessments within the fourteen (14) Landscape Maintenance Districts for fiscal year 2008/2009.





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## COUNCIL COMMUNICATION

Page No. 3

### DOCUMENTS ATTACHED

- a. A resolution, ad valorem, ordering the levy and collection of assessments within fourteen (14) Improvement Act of 1911 Landscape Maintenance Districts for fiscal year 2008/2009.
- b. Location Map

### DOCUMENTS AVAILABLE FOR REVIEW

- a. Engineer's Report

### CONTACT PERSONS

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John Cerini, Maintenance Superintendent  
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JUNE 24, 2008  
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RESOLUTION NO. 08-\_\_\_\_\_ N.C.

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

WHEREAS, the fourteen Districts are Cimarron Hills/Madigan, College Hills, Costa Del Rio (Seaview), Somerset Highlands I/II, Greenmont/Seaport Hills, Monica Place, Ridgecrest, Somerset Highlands III, Springtree/Fleming Hill, Summit II, Town & Country I, Woodridge, Glen Cove I/II and Hunter Ranch I/II (hereinafter referred to as the "Districts"); and,

WHEREAS, the City Council has by previous Resolutions preliminarily approved the Engineer's Reports (hereafter referred to as the "Reports") that describe the assessments against parcels of land within the Districts for the Fiscal Year commencing July 1, 2008 and ending June 30, 2009; and

WHEREAS, the provisions of the Improvement Act of 1911 (California Streets and Highways Code section 5000 et seq.) (hereafter referred to as the "Act") provides the levy and collection of assessments by the County of Solano for the City of Vallejo to pay the costs and expenses of operating, maintaining and servicing of landscaping and all appurtenant facilities and operations related thereto located within the Districts; and

WHEREAS, the City Council desires to levy and collect assessments against parcels of land within the Districts for the Fiscal Year commencing July 1, 2008 and ending June 30, 2009, to pay the costs and expenses of operating, maintaining and servicing the landscaping and all appurtenant facilities and operations related thereto located within the Districts; and

WHEREAS, the City Council and its legal counsel have reviewed Proposition 218 and found that these assessments comply with applicable provisions of Article XIII D of the California State Constitution.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL AS FOLLOWS:

**Section 1.** Following notice duly given, the City Council has held a full and fair Public Hearing regarding the Districts, the levy and collection of assessments, the Reports prepared in connection therewith, and considered all oral and written statements, protests and communications made or filed by interested persons regarding these matters.

**Section 2.** Based upon its review of the Reports, the City Council hereby approves the Reports estimating the cost to maintain and operate the Districts for fiscal year 2008/2009 and finds and determines that the net amount to be assessed upon the lands within the Districts for the Fiscal Year commencing July 1, 2008 and ending June 30, 2009 is apportioned by a formula and method which fairly distributes the

net amount among all eligible parcels in proportion to the estimated special benefits to be received by each parcel from the improvements and services.

**Section 3.** The City Council hereby levies against and upon all of the real property within the Districts a special assessment upon each one hundred dollars (\$100.00) of assessed value thereof, for the maintenance and operating costs of the Districts for the Fiscal Year commencing July 1, 2008 and ending June 30, 2009, as follows:

<u>DISTRICT</u>	
Cimarron Hills-Madigan	\$0.153/\$100.00
College Hills	\$0.124/\$100.00
Costa Del Rio (Seaview)	\$0.373/\$100.00
Somerset I/II	\$0.081/\$100.00
Hunter Ranch I/II	\$0.103/\$100.00
Monica Place	\$0.187/\$100.00
Ridgecrest	\$0.060/\$100.00
Somerset III	\$0.139/\$100.00
Springtree-Fleming	\$0.210/\$100.00
Summit II	\$0.103/\$100.00
Town & Country I	\$0.134/\$100.00
Woodridge	\$0.117/\$100.00
Glen Cove I/II	\$0.140/\$100.00
Greenmont/Seaport Hills	\$0.103/\$100.00

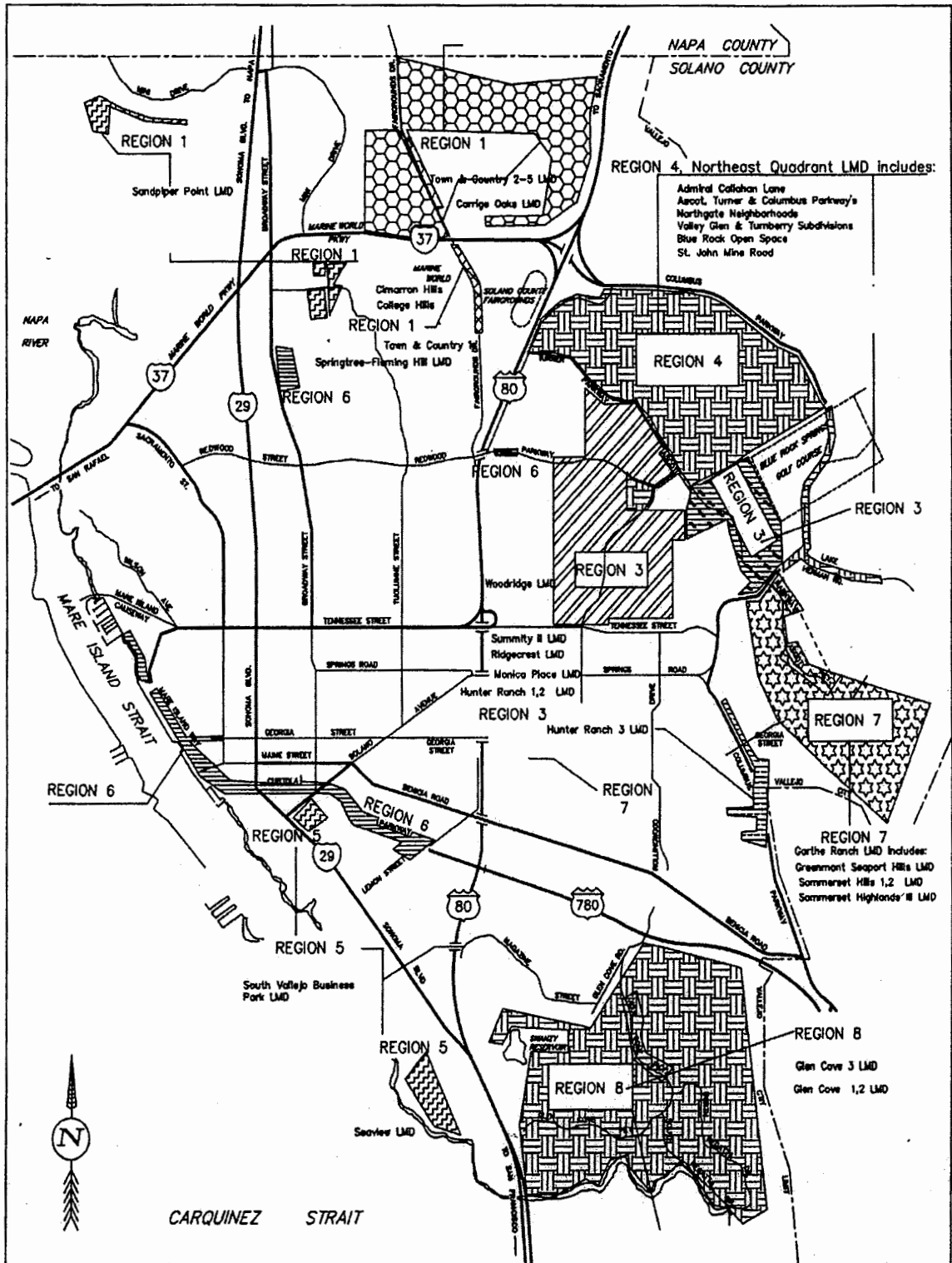
**Section 4.** The County Auditor of the County of Solano shall enter on the County Assessment Roll opposite each eligible parcel of land the amount of levy so apportioned by the formula and method outlined in the Reports, and such levies shall be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the levy shall be paid to the City Treasurer.

**Section 5.** The Finance Director shall deposit all money representing assessments collected by the County for the Districts to the credit of a fund for each of the fourteen Landscape Maintenance Districts and such money shall be expended only for the maintenance, operation and servicing of each of the landscape maintenance districts.

**Section 6.** The City Clerk, or their designate, is hereby authorized and directed to file the levy with the County Auditor upon adoption of this Resolution.

JUNE 24, 2008

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**CITY OF VALLEJO**

DEPARTMENT OF PUBLIC WORKS  
LANDSCAPE DIVISION

DWG. NO. <u>Regions</u>	SHEET <u>1</u> OF <u>1</u>
DRAWN BY <u>SSG</u>	FILE NO. <u>REGION</u>
DATE <u>Rev.03/27/06</u>	REF. _____
CHECKED <u>SSG</u>	SCALE <u>NONE</u>

**DISTRICT KEY MAP by REGION**

PREPARED BY: \_\_\_\_\_  
LANDSCAPE MAINTENANCE MANAGER \_\_\_\_\_ DATE \_\_\_\_\_



**COUNCIL COMMUNICATION**

Date: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Craig Whittom, Assistant City Manager / Community Development *CW*  
Susan McCue, Economic Development Program Manager *SMC*

SUBJECT: PUBLIC HEARING AND CONSIDERATION OF A DEVELOPMENT AGREEMENT, AN ACQUISITION AGREEMENT, A RIGHT OF ENTRY AND DEMOLITION AGREEMENT, AND A PUBLIC IMPROVEMENT AGREEMENT FOR A CANCER TREATMENT AND RESEARCH CENTER PROJECT ON MARE ISLAND.

**BACKGROUND**

On January 9, 2007, the City Council authorized an Exclusive Right to Negotiate (ERN) Agreement with Touro University (Touro) for Mare Island Reuse Area 1A, consisting of 190 acres north of G Street on Mare Island. The ERN period was extended by City Council action and remains in effect.

Touro has prepared and submitted a Unit Plan application and a Development Agreement application for a proposed 125,000 square foot advanced particle beam cancer treatment and research center on 27.89 acres of Reuse Area 1A (Project #1). On June 2, 2008, the Vallejo Planning Commission conducted a public hearing to consider the Unit Plan. The Commission unanimously approved the Unit Plan, which, unless appealed to the City Council, is the final discretionary action required for the Unit Plan.

The Planning Commission also unanimously recommended approval of the Development Agreement to the City Council.

A public hearing has been noticed for June 24, 2008, to consider the proposed Development Agreement. In addition, the City Council will consider approval of related documents, including an Acquisition Agreement, a Public Improvements Construction Agreement and a Right of Entry and Demolition Agreement.

The ERN also establishes performance benchmarks and target dates for the potential transfer and development of the remainder of Reuse Area 1A parcels (Project #2). The ERN period for Project #2 will continue to October 4, 2009, and the City Manager is authorized to extend that period to January 2, 2010. At the conclusion of the ERN period, it is expected that Project #2 will be considered in separate planning documents, a Development Agreement, environmental documents and other related documents.

**DISCUSSION**

There are four agreements that are proposed for City Council consideration.

Development Agreement

The Vallejo Municipal Code permits an applicant to submit a proposed Development Agreement (DA) related to a project. The purpose of a DA is to strengthen the public planning process, to encourage private participation and comprehensive planning, and to reduce the economic costs of development. City staff and the applicant negotiated a draft DA, which has been reviewed by Planning Commission and recommended for City Council approval. The Planning Commission found that the proposed DA:

- Includes the required terms and conditions;
- Is consistent with the objectives, policies, general land uses and programs specified in the General Plan and Mare Island Specific Plan;
- Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
- Is in conformity with public convenience, the general welfare and good land use practice; and
- Will not be detrimental to the health, safety and general welfare nor adversely affect the orderly development of property or the preservation of property values.

The primary terms and conditions in the DA include the following:

- The DA would vest and permit the development of the Project Site under the Vallejo General Plan, Mare Island Specific Plan, Zoning Ordinance, and any other City ordinances, resolutions, rules, and standards in place or adopted at the time of approval.
- The proposed initial term of the DA is five years from the date of acquisition of the property. The term may be extended by the City Council for one additional two (2) year period upon Touro's request.
- Touro will pay all regular City processing fees in effect at the time applications for permits are submitted.
- Touro will pay all City impact fees in effect as of the date of the Development Agreement, and any citywide increases to those fees.
- The project will be "revenue neutral" to the City; the annual cost of City services will be fully recouped from project property taxes, CFD payments and other project-related revenues.
- Touro will construct the infrastructure improvements (Azuar Drive, Railroad Avenue, and other improvements) as described later in this staff report.
- The parties will use good faith efforts to negotiate a reimbursement agreement among Touro, Lennar Mare Island (LMI) and the City, or the City will form a benefit assessment district, setting forth Touro and LMI obligations and reimbursements for constructing over-sized infrastructure serving Mare Island.
- Touro will pay \$2,500 per month from the effective date of the DA until the ERN expires, to be used exclusively for the maintenance of North Mare Island Reuse Area 1A properties owned by the City.
- The project and the infrastructure improvements will be subject to Davis-Bacon prevailing wage laws.
- Touro will make reasonable efforts to design the project to meet and achieve "LEED" platinum certification under the Green Building Rating System.
- Touro and its contractors will make good faith efforts to hire qualified Vallejo residents or former Mare Island employees, and to use qualified Vallejo businesses for services and products.

Public Improvements Construction Agreement

The Public Improvements Construction Agreement (PICA) sets forth Touro's obligations with regard to the financing, construction, installation, and dedication of the infrastructure improvements required in the DA. Specifically, the PICA would require Touro to construct the following improvements:

- Approximately 4,100 feet of Azuar Drive from G Street to Railroad Avenue will be regraded, repaved and widened to four traffic lanes, 12-foot wide parkways and a central median divider. A new water line, sewer line, storm drain and dry utilities (electrical, gas, cable TV and communications) will also be installed.
- An approximately 900-foot long section of Railroad Avenue adjacent to the project site will be regraded and resurfaced to provide six traffic lanes, 12-foot wide parkways, and a central median divider. New water and sewer lines, storm drain and dry utilities will also be installed.
- Touro will construct interim improvements to Railroad Avenue, including restriping, to allow two-way traffic from G Street to the Highway 37 interchange.
- I Street will be reconstructed as a new street and will provide the primary access to the cancer treatment center. A new water line and a new sewer line will also be installed.
- The approximately 1,330-foot by 17-foot parkway along the project site frontage on G Street will be regraded and reconstructed to provide a new sidewalk and landscape improvements.
- The existing State Route 37 interchange will be modified to align with the internal street system of Reuse Area 1A. Improvements will also include construction of a bike/pedestrian path that connects to a scenic viewpoint north of State Route 37.
- An approximately 2,000-foot storm drain will be constructed to collect runoff from portions of Azuar Drive and I Street and convey it to an extended detention basin located east of Railroad Avenue. The detention basin will tie into an existing 36-inch RCP that connects to an existing outfall and discharges to Mare Island Strait.

The PICA includes a schedule for the completion of the infrastructure improvements, and the requirement for performance security to assure completion of the infrastructure improvements.

Acquisition Agreement

The proposed Acquisition Agreement (AA) specifies the terms and timing under which Touro will acquire the property from the City for one-dollar, and the conditions required precedent to acquisition of the property by Touro. The close of escrow for the AA is six months following the date of the agreement (estimated to be approximately the end of January, 2009). The conditions to close escrow include:

- Receipt of all land use approvals and entitlements.
- Evidence of financing and loan/equity commitments.
- Evidence of an executed construction contract with a licensed contractor.
- Evidence of an agreement to purchase the particle beam equipment for the project.
- Evidence of a contract with University of California, San Francisco or another operator qualified to operate and manage the project.
- Execution of the PICA and delivery of security for the infrastructure improvements.
- Commencement of demolition on three specified buildings.

- A benefit assessment district shall have been adopted, or a reimbursement agreement shall have been executed between the City, Touro and LMI for island-wide infrastructure.
- The Navy shall have agreed to timely cause remediation of hazardous materials, or to reimburse Touro for such remediation.

#### Right of Entry and Demolition Agreement

The Right of Entry and Demolition Agreement identifies the seventeen structures on the project site and within the infrastructure improvement areas that will be demolished by Touro, as well as the schedule for demolition. Demolition of three structures will commence prior to the close of escrow. Demolition of the other fourteen structures will commence no later than the close of escrow (anticipated to be at the end of January 2009), and will be completed by June, 2009. The Right of Entry and Demolition Agreement requires Touro to submit security in the form of a letter of credit to assure the completion of any demolition work that is commenced but not completed.

#### FISCAL IMPACT

The Development Agreement requires that the project be revenue neutral to the City. The cost of providing City services will be fully recouped from taxes, fees and CFD assessments. Touro will pay all regular City processing fees in effect at the time applications for permits are submitted. Touro will also pay all City impact fees in effect as of the effective date of the Development Agreement, and any citywide increases to those fees.

Touro will pay \$2,500 per month from the effective date of the DA until the ERN expires, to be used exclusively for the maintenance of North Mare Island Reuse Area 1A properties owned by the City.

The Acquisition Agreement has a covenant that requires the property to be subject to real and personal property taxes. If a property tax exemption is sought and granted, an annual payment in-lieu of property taxes to the City and GVRD would be required, equivalent to the amount that would have been received from property taxes.

City staff has consulted with the City's real estate/economic consultant (ERA), who analyzed the fiscal impact of the proposed project. The consultant has concluded that the project will be revenue neutral.

#### RECOMMENDATION

It is recommended that the City Council adopt the proposed resolutions, approving the Acquisition Agreement, the Public Improvements Construction Agreement and the Right of Entry Agreement, and introducing the ordinance approving the Development Agreement between the City of Vallejo and Touro Mare Island LLC for the Touro Cancer Treatment and Research Center Project.

#### ALTERNATIVES CONSIDERED

During the past several years, the City has entered into Exclusive Right to Negotiate Agreements with other potential developers of the North Mare Island Reuse Area 1A, none of which have resulted in proposed acquisition and development agreements.



### ENVIRONMENTAL REVIEW

On or about March 30, 1999, the City adopted the Mare Island Specific Plan governing the land use policy and development process for Mare Island. On November 29, 2005, in connection with the adoption of the Mare Island Specific Plan Amended and Restated, the City certified a final Subsequent Environmental Impact Report ("SEIR"), which identified and analyzed the significant impacts associated with the incremental change in intensity and distribution of land uses on Mare Island from the 1999 Specific Plan. In accordance with CEQA, an Initial Study and Mitigated Negative Declaration ("IS/MND"), was prepared in connection with this Project and the IS/MND concludes that the Project, with the proposed mitigation measures contained in the IS/MND and associated Mitigation Monitoring and Reporting Program ("MMRP") would not have a significant adverse effect on the environment. Touro has agreed to incorporate in the Project all applicable mitigation measures identified in the IS/MND and MMRP. The Planning Commission adopted the IS/MND and the Mitigation Monitoring Program on June 3, 2008.

The City Council of the City of Vallejo may rely on the previous environmental documentation for this project pursuant to CEQA guidelines section 15162 and Cal. Pub. Resources Code section 21166 because the IS/MND considered and adopted by the Planning Commission on June 3, 2008 MND considered the entire underlying activity and no new circumstances or information within the meaning of CEQA Guidelines section 15162((a)((1)-(3)) exists. Thus, the Planning Commission's approval of the unit plan, recommendation for approval of the Development Agreement, and adoption of the IS/Mitigated Negative Declaration and Mitigation Monitoring Program constituted a project approval for the entire project within the meaning of CEQA, as such approval and adoption was "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. (See CEQA Guidelines section 15352(a)). Project approval, for CEQA purposes, occurs upon *the earliest commitment to issue* or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project." (See CEQA Guidelines, section 15352(b)) and *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App. 4<sup>th</sup> 91. Thus, no further environmental review is necessary, and reliance on the previous environmental documents for the project is proper.

### PROPOSED ACTION

Adopt the proposed resolutions, approving the Acquisition Agreement, the Public Improvements Construction Agreement and the Right of Entry Agreement, and introducing the ordinance approving the Development Agreement between the City of Vallejo and Touro Mare Island LLC for the Touro Cancer Treatment and Research Center Project.

DOCUMENTS ATTACHED

- a. Resolution of the City of Vallejo City Council approving and authorizing the execution of an Acquisition Agreement, Right of Entry and Demolition Agreement and Public Improvements Construction Agreement by and between the City of Vallejo and Touro Mare Island, LLC, a California Limited Liability Company, for the Touro Cancer Treatment and Research Center Project
- b. Resolution of the City of Vallejo City Council approving Development Agreement #DA 08-0002 by and between the City of Vallejo and Touro Mare Island, LLC, a California Limited Liability Company for the Touro Cancer Treatment and Research Center Project
- c. Ordinance of the City of Vallejo approving Development Agreement #DA 08-0002 by and between the City of Vallejo and Touro Mare Island, LLC, a California Limited Liability Company, for the Touro Cancer Treatment and Research Center Project
- d. Development Agreement #DA 08-0002 by and between the City of Vallejo and Touro Mare Island, LLC
- e. Acquisition Agreement by and between the City of Vallejo and Touro Mare Island, LLC
- f. Public Improvements Construction Agreement by and between the City of Vallejo and Touro Mare Island, LLC
- g. Right of Entry and Demolition Agreement by and between the City of Vallejo and Touro Mare Island, LLC

CONTACT: Craig Whittom, Assistant City Manager / Community Development  
(707) 648-4579, [cwhittom@ci.vallejo.ca.us](mailto:cwhittom@ci.vallejo.ca.us)

Susan McCue, Economic Development Program Manager  
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**RESOLUTION NO. \_\_\_\_ N.C.**

**RESOLUTION OF THE CITY OF VALLEJO CITY COUNCIL APPROVING AND  
AUTHORIZING THE EXECUTION OF AN ACQUISITION AGREEMENT, RIGHT OF  
ENTRY AND DEMOLITION AGREEMENT AND PUBLIC IMPROVEMENTS  
CONSTRUCTION AGREEMENT BY AND BETWEEN THE CITY OF VALLEJO AND  
TOURO MARE ISLAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY FOR  
THE TOURO CANCER TREATMENT AND RESEARCH CENTER PROJECT**

WHEREAS, in accordance with procedures established under Federal and State law governing the planning, disposition and reuse of closed military bases, the City of Vallejo accepted on July 26, 1994, a Final Reuse Plan ("Reuse Plan") for Mare Island, which Reuse Plan established goals for the reuse of Mare Island, including the creation of jobs and other economic development opportunities in the City, the creation of a self-sustaining and multi-use community and the use of a variety of innovative economic development tools for the marketing, financing and acquisition of Mare Island following its closure by the Federal Government; and

WHEREAS, on March 30, 1999, City adopted the Mare Island Specific Plan governing the land use policy and development process for Mare Island. On December 6, 2005, City amended the Mare Island Specific Plan by adopting the Mare Island Specific Plan Amended and Restated; the Mare Island Specific Plan Amended and Restated was further amended by the City on June 26, 2007. The Mare Island Specific Plan Amended and Restated, as amended to date, is hereinafter referred to as the "Specific Plan"; and

WHEREAS, City and Touro University are parties to an Amended and Restated Exclusive Right to Negotiate Agreement ("ERN") dated April 1, 2008, providing, among other things, for City and Touro University to negotiate with each other regarding Touro University's potential acquisition of that certain real property comprising an approximately 27.89 acre portion of Mare Island Reuse Area 1A located at the northeast corner of Azuar Drive and G Street ("Project Site"), for development of an approximately 125,000 square foot advanced particle beam cancer-treatment center and related research and administrative/office space, and ancillary on-site and off-site public improvements ("Project"); and

WHEREAS, as contemplated by the ERN, Touro Mare Island, LLC, a California limited liability company ("Touro") filed a Unit Plan application (#PD 08-2002) with the City of Vallejo pursuant to Vallejo Municipal Code Section 16.116.140(A)(2), for the purpose of developing the Project; and

WHEREAS, in accordance with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) and Implementing Guidelines ("CEQA"), an Initial Study/Mitigated Negative Declaration, dated April 4, 2008, was prepared in connection with the Project; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that the Project, with the mitigation measures contained therein and in the associated Mitigation Monitoring and Reporting Plan, would not have a significant adverse effect on the environment; and

WHEREAS, on June 2, 2008, at a duly noticed public hearing, the Planning Commission by Resolution No. PC 08-12 approved the Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Plan and by Resolution No. PC 08-13 approved the Unit Plan for the Project; and

WHEREAS, pursuant to the ERN the City and Touro have negotiated the proposed Acquisition Agreement ("Acquisition Agreement"), for the conveyance of Property from City to Touro; and

WHEREAS, the Acquisition Agreement authorizes and obligates Touro to demolish, at Touro's risk and expense, certain buildings and improvements located on the Property; and

WHEREAS, the City and Touro have negotiated a Right of Entry and Demolition Agreement ("Right of Entry and Demolition Agreement") to allow Touro and its contractors and subcontractors to enter onto the Property and, to the extent necessary, adjacent property for the purpose of conducting demolition activities on the Property; and

WHEREAS, the City and Touro have negotiated a Public Improvements Construction Agreement ("Public Improvements Construction Agreement") which, among other things, obligates Touro to construct or cause the construction of certain infrastructure improvements; and

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

Section 1. 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:

a. By entering into the Acquisition Agreement, Right of Entry and Demolition Agreement and the Public Improvements Construction Agreement, the City will promote orderly growth and quality development on Mare Island in accordance with the goals and policies set forth in the Reuse Plan, the City's General Plan and the Specific Plan, and the City will benefit from increased employment and commercial opportunities created by the Project for residents of City.

b. The terms and conditions of the Acquisition Agreement, Right of Entry and Demolition Agreement and Public Improvements Construction Agreement are fair, just and reasonable and in conformance with the City's General Plan and Specific Plan.

c. The economic interests of City's citizens and the public health, safety and welfare will be best served by entering into the Acquisition Agreement, Right of Entry and Demolition Agreement and Public Improvements Construction Agreement.

d. Planning Commission Resolution No. PC 08-12 adopting findings and an Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring Reporting Plan and for the Project and Planning Commission Resolution No. PC 08-13 approving the Unit Plan for the Project are each incorporated herein by reference as though fully set forth.

e. Based on the entire record before the City with respect to the Project, 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.

Section 2. The City Council hereby approves the Acquisition Agreement in substantially the form on file with the City Clerk, which Acquisition Agreement is incorporated herein by reference. The City Manager is hereby authorized to execute the Acquisition Agreement on behalf of the City, subject to any minor clarifying and technical changes as may be approved by the City Attorney.

Section 3. The City Council hereby approves the Right of Entry and Demolition Agreement in substantially the form on file with the City Clerk, which Right of Entry and Demolition Agreement is incorporated herein by reference. The City Manager is hereby authorized to execute the Right of Entry and Demolition Agreement on behalf of the City, subject to any minor clarifying and technical changes as may be approved by the City Attorney.

Section 4. The City Council hereby approves the Public Improvements Construction Agreement in substantially the form on file with the City Clerk, which Public Improvements Construction Agreement is incorporated herein by reference. The City Manager is hereby authorized to execute the Public Improvements Construction Agreement on behalf of the City, subject to any minor clarifying and technical changes as may be approved by the City Attorney.

**RESOLUTION NO. \_\_\_\_\_ N.C.**

**RESOLUTION OF THE CITY OF VALLEJO CITY COUNCIL APPROVING  
DEVELOPMENT AGREEMENT #DA 08-0002 BY AND BETWEEN THE CITY OF  
VALLEJO AND TOURO MARE ISLAND, LLC, A CALIFORNIA LIMITED LIABILITY  
COMPANY FOR THE TOURO CANCER TREATMENT AND RESEARCH CENTER  
PROJECT**

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

WHEREAS, in accordance with procedures established under Federal and State law governing the planning, disposition and reuse of closed military bases, the City of Vallejo accepted on July 26, 1994, a Final Reuse Plan ("Reuse Plan") for Mare Island, which Reuse Plan established goals for the reuse of Mare Island, including the creation of jobs and other economic development opportunities in the City, the creation of a self-sustaining and multi-use community and the use of a variety of innovative economic development tools for the marketing, financing and acquisition of Mare Island following its closure by the Federal Government; and

WHEREAS, on March 30, 1999, City adopted the Mare Island Specific Plan governing the land use policy and development process for Mare Island. On December 6, 2005, City amended the Mare Island Specific Plan by adopting the Mare Island Specific Plan Amended and Restated; the Mare Island Specific Plan Amended and Restated was further amended by the City on June 26, 2007. The Mare Island Specific Plan Amended and Restated, as amended to date, is hereinafter referred to as the "Specific Plan"; and

WHEREAS, City and Touro University are parties to an Amended and Restated Exclusive Right to Negotiate Agreement ("ERN") dated April 1, 2008, providing, among other things, for City and Touro University to negotiate with each other regarding Touro University's potential acquisition of that certain real property comprising an approximately 27.89 acre portion of Mare Island Reuse Area 1A located at the northeast corner of Azuar Drive and G Street ("Project Site"), for development of an approximately 125,000 square foot advanced particle beam cancer-treatment center and related research and administrative/office space, and ancillary on-site and off-site public improvements ("Project"); and

WHEREAS, as contemplated by the ERN, Touro Mare Island, LLC, a California limited liability company ("Touro") filed a Unit Plan application (#PD 08-2002) with the City of Vallejo pursuant to Vallejo Municipal Code Section 16.116.140(A)(2), for the purpose of developing the Project; and

WHEREAS, in accordance with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) and Implementing Guidelines ("CEQA"), an Initial Study/Mitigated Negative Declaration, dated April 4, 2008, was prepared in connection with the Project; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that the Project, with the mitigation measures contained therein and in the associated Mitigation Monitoring and Reporting Plan, would not have a significant adverse effect on the environment; and

WHEREAS, on June 2, 2008, at a duly noticed public hearing, the Planning Commission by Resolution No. PC 08-12 approved the Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Plan and by Resolution No. PC 08-13 approved the Unit Plan for the Project; and

WHEREAS, pursuant to the ERN the City and Touro have negotiated the proposed Development Agreement ("Development Agreement") attached hereto as Exhibit A, for the development of the Project on the Project Site; and

WHEREAS, Touro submitted an application requesting the approval of the Development Agreement (#DA 08-0002) which was prepared and submitted to the City for review and processing consistent with the provisions of Title 17 of the Vallejo Municipal Code (Land Planning); and

WHEREAS, the Development Agreement proposes among others, the following terms and conditions:

1. The Development Agreement covers the development of the Project Site, specifying the intent to develop the Project Site with the Project, along with certain on-site and off-site infrastructure improvements. Development of the Project Site is required to comply with the regulations, provisions and guidelines of the Vallejo General Plan, the Specific Plan, the City's Zoning Ordinance, and any other City regulations and standards existing on the date of approval of the Development Agreement, including regulations for permitted land uses and maximum building heights.

2. The Development Agreement would "lock-in" or vest the development of the Project Site under the Vallejo General Plan, Specific Plan, Zoning Ordinance, and other City ordinances, resolutions, rules, and standards in place or adopted at the time of approval. The proposed initial term for this vesting commences on the date that the ordinance approving the Development Agreement becomes effective and expires on the date which is five (5) years following the date City transfers title to the Project Site to Touro. The proposed initial term to vest the development of the Project Site may be extended by City for one additional two (2) year period upon Touro's request in accordance with the terms of the Development Agreement.

3. The obligations of the City are set forth in Section 4.15 of the Development Agreement.

WHEREAS, the City of Vallejo Planning Commission conducted a duly noticed public hearing to consider the proposed Development Agreement at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission; and

WHEREAS, on June 2, 2008, the Vallejo Planning Commission adopted Resolution No. PC 08-14 recommending City Council approval of Development Agreement #DA 08-0002; and

WHEREAS, in considering the statements, findings, determinations, certification, approvals and other actions set forth in this Resolution, the City Council has considered the entire administrative record for the Project, including, without limitation, (1) the Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program and Unit Plan for the Project, (2) the June 24, 2008 staff report (including all attachments thereto) concerning the Development Agreement, (3) all written and oral testimony presented to the City of Vallejo Planning Commission, the City Council and other boards and commissions of the City in connection with the Project; and based on the above, 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 Development Agreement, as proposed:
  - a. Is consistent with the goals, objectives, policies, general land uses, and programs specified in the City of Vallejo General Plan and the Specific Plan in that: a) the Project will facilitate employment opportunities on the Project Site which is consistent with the City of Vallejo General Plan land use designation of Employment for the Project Site; b) the Project is consistent with the Specific Plan land use designation of Research and Development for the Project Site; c) the proposed grid alignment of Project streets is consistent with the existing North Mare Island grid pattern; d) the Project building complex will be located in the western portion of Reuse Area 1A consistent with the Specific Plan goal that large-scale buildings be located on the western portion of Reuse Area 1A; e) the height, scale and massing of the Project are compatible with other prominent large developments on Mare Island; f) the Project provides for additional off-site area-wide street and related infrastructure improvements of approximately 15 acres that includes portions of G Street, Azuar Drive, I Street, Railroad Avenue, and construction of the planned State Route 37 interchange improvements at North Mare Island; and g) the Project will not affect or conflict with any known agency or jurisdictional plans that are intended to avoid or mitigate an environmental effect;
  - b. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Project Site is located in that the Development Agreement requires that development on the Project Site be consistent with the proposed zoning designation of Mixed Use Planned Development (MUPD) and requires conformance with the policies of the Specific Plan which are the uses authorized in, and regulations prescribed for, the MUPD zoning designation;
  - c. Is in conformity with the public convenience, the general welfare, and good land use practice, in that the Development Agreement: a) requires conformance and is compatible with all City of Vallejo ordinances, resolutions, regulations, standards and specifications existing at the time of approval of the Development Agreement, including the Vallejo General Plan and the Specific Plan, and Zoning Ordinance; and b) will implement the Specific Plan by facilitating increased employment opportunities created by the Project for residents of the City;



d. Will not be detrimental to the health, safety and general welfare, nor will it adversely affect the orderly development of Mare Island or the preservation of Mare Island property values, in that the Development Agreement will: a) require that development of the Project on the Project Site conform with all ordinances, resolutions, regulations, standards, and specifications existing at the time of approval of the Development Agreement and applicable to the Project, including the Vallejo General Plan, Specific Plan, and Zoning Ordinance; b) allow new City laws and regulations which are necessary to protect the public health and safety to be applied to the Project; c) result in development that will eliminate blighting conditions on the Project Site; d) the Project will result in a cutting edge, state of the art cancer treatment and research center which is unique to other radiation treatment facilities in California in that the Project treatment facility will utilize proton ion and carbon beams; and e) result in the extension of public infrastructure to support the planned uses on the Project Site and other development on Mare Island; and

e. Is consistent with the provision of California Government Code Sections 65864 through 65869.5.

3. Based on the entire record before the City Council with respect to the Project, 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.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council hereby approves Development Agreement # DA08-0002, by and between the City of Vallejo and Touro Mare Island, LLC, for the Project, and directs the holding of the first reading of the Ordinance approving this Agreement, which is attached as Exhibit A.

**ORDINANCE NO. \_\_\_\_\_ (2d)**

ORDINANCE OF THE CITY OF VALLEJO APPROVING DEVELOPMENT AGREEMENT #DA 08-0002 BY AND BETWEEN THE CITY OF VALLEJO AND TOURO MARE ISLAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY FOR THE TOURO CANCER TREATMENT AND RESEARCH CENTER PROJECT

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 #DA 08-0002 ("Development Agreement") by and between the City of Vallejo and Touro Mare Island, LLC, a California limited liability company and attached hereto as Exhibit A, sets forth terms and provisions for the development of a 27.89 acre portion of Reuse Area 1A of Mare Island with an approximately 125,000 square foot advanced particle beam cancer-treatment center and related research and administrative/office space, and ancillary on-site and off-site improvements. The Development Agreement is available and on file with the Community Development Department and the Development Services Department.

C. In connection with the approval of the Reuse Plan for Mare Island on July 26, 1994, the City certified a final Environmental Impact Statement/Environmental Impact Report (SCH #940930029) pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) and Implementing Guidelines ("CEQA").

D. On March 30, 1999, the City adopted the Mare Island Specific Plan governing the land use policy and development process for Mare Island.

E. On November 29, 2005, in connection with the adoption of the Mare Island Specific Plan Amended and Restated, the City certified a final Subsequent Environmental Impact Report, which identified and analyzed the significant impacts associated with the incremental change in intensity and distribution of land uses on Mare Island from the 1999 Specific Plan.

F. Touro Mare Island, LLC, a California limited liability company ("Touro") filed a Unit Plan application (#PD 08-2002) with the City of Vallejo pursuant to Vallejo Municipal Code Section 16.116.140(A)(2), for the purpose of developing the Project.

G. In accordance with CEQA, an Initial Study/Mitigated Negative Declaration, dated April 4, 2008, was prepared in connection with the Project.

H. The Initial Study/Mitigated Negative Declaration concluded that the Project, with the mitigation measures contained therein and in the associated Mitigation Monitoring and Reporting Plan, would not have a significant adverse effect on the environment.

I. On June 2, 2008, at a duly noticed public hearing, the Planning Commission by Resolution No. PC 08-12 approved the Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Plan and by Resolution No. PC 08-13 approved the Unit Plan for the Project.

J. By separate Resolution No. \_\_\_\_\_, the City Council has found that Development Agreement #DA-08-0002 is consistent with the land use designations, goals, and policies of the Vallejo General Plan and Mare Island Specific Plan Amended and Restated, 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 #DA 08-0002.

SECTION 3. Effective Date.

The effective date of this ordinance shall be thirty (30) days after the final passage.

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Vallejo  
555 Santa Clara Avenue  
Vallejo, CA 94590  
Attention: City Clerk

---

Space Above This Line Reserved for Recorder's Use  
Exempt from Recording Fee Per Government Code Section 27383

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**CITY OF VALLEJO**

**AND**

**TOURO MARE ISLAND, LLC**

DATED \_\_\_\_\_, 2008

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Exhibit B	Legal Description of Property
Exhibit C	Project Site Plan
Exhibit D	Project Infrastructure and Demolition Schedule
Exhibit E	Infrastructure Improvements
Exhibit F	Demolition Work
Exhibit G	List of Taxes, Assessments, Fees and Exactions

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("*Agreement*") dated for reference purposes as of \_\_\_\_\_ 2008, is entered into by and between TOURO MARE ISLAND, LLC, a California limited liability company ("*Touro*"), and the CITY OF VALLEJO, a California municipal corporation ("*City*"). Touro and City are sometimes referred to individually herein as a "*Party*" and collectively as "*Parties*."

### RECITALS

A. The Mare Island Naval Shipyard ("*Mare Island*") was ordered closed in July 1993 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended.

B. In accordance with procedures established under Federal and State law governing the planning, disposition and reuse of closed military bases, the City of Vallejo accepted on July 26, 1994, a Final Reuse Plan ("*Reuse Plan*") for Mare Island, which Reuse Plan established goals for the reuse of Mare Island, including the creation of jobs and other economic development opportunities in the City, the creation of a self-sustaining and multi-use community and the use of a variety of innovative economic development tools for the marketing, financing and acquisition of Mare Island following its closure by the Federal Government.

C. The Reuse Plan divided Mare Island into thirteen (13) Reuse Areas consisting of property owned by the United States of America, including Reuse Area 1A ("*Reuse Area 1A*"), consisting of approximately 190 acres located north of G Street.

D. In connection with the final approval of the Reuse Plan, the City certified a final Environmental Impact Statement/Environmental Impact Report (SCH #940930029) ("*EIS/EIR*") pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) ("*CEQA*"). Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. §§4321-4347) ("*NEPA*") the Navy issued a Record of Decision in connection with the EIS/EIR on or about October 23, 1998.

E. On or about January 4, 2001, the Navy approved a Finding of Suitability for Transfer ("*FOST*") finding, among other things, that certain Mare Island property, including the Property and other portions of Reuse Area 1A, was environmentally suitable for transfer in accordance with and subject to Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9620 *et seq.* ("*CERCLA*").

F. On or about September 2001, the Navy conveyed to City pursuant to the FOST certain Mare Island property, including the Property and other portions of Reuse Area 1A, by Quitclaim Deed dated September 26, 2001, recorded on October 17, 2001, Series No. 2001 00120695, in the Official Records of the County of Solano.



G. On or about March 30, 1999, City adopted the Mare Island Specific Plan governing the land use policy and development process for Mare Island. On or about December 6, 2005, City amended the Mare Island Specific Plan by adopting the Mare Island Specific Plan Amended and Restated ("*Specific Plan Amendment No. 1*"); the Mare Island Specific Plan Amended and Restated was further amended by the City on June 26, 2007. The Mare Island Specific Plan Amended and Restated, as further amended, is hereinafter referred to as the "*Specific Plan*".

H. In connection with the adoption of Specific Plan Amendment No. 1, the City certified a final Subsequent Environmental Impact Report on November 29, 2005 ("*SEIR*"). The SEIR identified and analyzed the significant impacts associated with the incremental change in intensity and distribution of land uses on Mare Island from the 1999 Specific Plan, as described in Specific Plan Amendment No. 1.

I. City and Touro University, a non-profit public benefit corporation, entered into an Exclusive Right to Negotiate Agreement dated January 9, 2007, providing, among other things, for City and Touro University to negotiate with each other regarding Touro University's potential acquisition and development of Reuse Area 1A. Touro University is a California non-profit public benefit corporation, whose sole shareholder is Touro College, a New York educational corporation, and Touro College is the sole member and manager of Touro Mare Island, LLC.

J. On or about October 2, 2007, City and Touro University entered into a First Amendment to Exclusive Negotiating Agreement pursuant to which City and Touro University agreed, among other things, to (i) extend the exclusive negotiating period, (ii) negotiate one or more agreements addressing development of that portion of Reuse Area 1A (the "*Property*") consisting of approximately 27.89 acres, as depicted in Exhibit A and described in Exhibit B attached hereto with an approximately 125,000 square foot advanced particle beam cancer-treatment center and ancillary related research and administrative/office space ("*Project*") as more particularly described in the Scope of Work attached as "Exhibit C" to the Acquisition Agreement, and (iii) defer negotiation of agreements addressing the balance of Reuse Area 1A to a later date while the acquisition of that property from the Navy by the City is being negotiated and while the scope, cost and extent of required remediation is being investigated and negotiated with the Navy and third parties. Subsequently, on or about April 1, 2008, City and Touro University entered into an Amended and Restated Exclusive Right to Negotiate Agreement. The Amended and Restated Exclusive Right to Negotiate Agreement is hereinafter referred to as the "*ERN*."

K. As contemplated by the ERN, City and Touro desire to enter into this Agreement and an Acquisition Agreement of even date herewith ("*Acquisition Agreement*") setting forth the terms and conditions for Touro's acquisition of the Property from City and Touro's development thereon of an advanced particle beam cancer-treatment center and ancillary related research and administrative/office space, or subject to City's approval in its sole discretion, an Alternate Project as described in Section 301.1 of the Acquisition Agreement.

L. Prior to or concurrently with approval of this Agreement, City has taken numerous actions in connection with the development of the Project on the Property. These include:

- (1) the EIS/EIR and SEIR;
- (2) the Specific Plan;
- (3) the Acquisition Agreement;
- (4) the Right of Entry dated September 25, 2007 ("**Right of Entry**") authorizing Touro and its contractors to enter upon the Property and conduct surveys and inspections to prepare for demolition of certain structures on the Property;
- (5) the Unit Plan for the Project approved by the City Planning Commission on \_\_\_\_\_, 2008;
- (6) the Right of Entry and Demolition Agreement ("**Right of Entry and Demolition Agreement**") entered into by City and Touro providing for Touro and its contractors and subcontractors to enter onto the Property and adjacent properties and, at Touro's risk and expense, demolish certain buildings and improvements located thereon; and
- (7) an Initial Study/Mitigated Negative Declaration ("**Mitigated Negative Declaration**"), including Mitigation Monitoring and Reporting Program ("**MMRP**"), approved by the \_\_\_\_\_ by Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 2008.

The approvals and development policies described in this Recital L. are collectively referred to herein as the "**Existing Project Approvals**".

M. Subsequent to approval of this Agreement, certain additional approvals and agreements ("**Subsequent Project Approvals**") will be required from City and other agencies in order to facilitate the development of the Project. The Subsequent Project Approvals may include, without limitation, amendments of the Existing Project Approvals, design review approvals, the Public Improvements Construction Agreement ("**Public Improvements Construction Agreement**") setting forth Touro's right and obligation to construct, install and dedicate to City the Infrastructure Improvements, building permits, unit plans, improvement agreements, use permits, grading permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, rezonings, permits, any other discretionary or ministerial approvals, and any amendments to, or actions repealing of, any of the foregoing and any subsequent or supplemental environmental impact report or other environmental review required under any applicable provision of CEQA or NEPA, including all mitigation measures, monitoring programs and conditions adopted as a result of any such environmental review for such approvals. Subsequent Project Approvals required from other agencies may include, without limitation, Vallejo Sanitation and Flood Control District ("**VSFCD**"); orders, permits, requirements and approvals of BCDC, DTSC and/or the Regional Water Quality Control

Board; or any amendments to any of the foregoing. The Subsequent Project Approvals from the City are referred to collectively as the "**City Subsequent Project Approvals.**" The Subsequent Project Approvals from other agencies are referred to collectively as "**Other Agency Subsequent Project Approvals.**" The term "Subsequent Project Approvals" refers to both the City Subsequent Project Approvals and the Other Agency Subsequent Project Approvals.

N. California Government Code Section 65864 *et seq.* ("**Development Agreement Statute**") 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 development rights in such property.

O. 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.

P. The City Council has found that this Agreement is consistent with the City's General Plan and the Specific Plan and it has been reviewed and evaluated in accordance with Section 17.14.010 of the City of Vallejo Municipal Code.

Q. City has determined that by entering into this Agreement, City will promote orderly growth and quality development on Mare Island in accordance with the goals and policies set forth in the Reuse Plan, the General Plan and the Specific Plan, and City will benefit from increased employment and commercial opportunities created by the Project for residents of City.

R. As a material inducement for City to enter into this Agreement, Touro has agreed to construct or cause the construction of certain on and off-site Infrastructure Improvements described in this Agreement within the time set forth herein.

S. The Parties intend that the Project will be revenue neutral to the City, and shall fully cover the cost of providing municipal services to the Project.

T. The terms and conditions of this 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 Specific 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 Agreement.

U. On \_\_\_\_\_, 2008, the Planning Commission of the City of Vallejo recommended approval of this Agreement. On \_\_\_\_\_, 2008, the City Council of the City of Vallejo adopted Ordinance No. \_\_\_\_\_ approving this Agreement. The Ordinance took effect on \_\_\_\_\_, 2008.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

### ARTICLE 1. DEFINITIONS

#### Section 1.01. Definitions.

"*Acquisition Agreement*" is defined in Recital K.

"*Additional Properties*" is defined in Section 4.15.B.

"*Affiliate of Touro*" is defined in Section 10.01.B.

"*Agreement*" means this Development Agreement.

"*Applicable Law*" is defined in Section 4.02.

"*Applicable Infrastructure*" is defined in Section 5.05.A.

"*Architect Fees*" is defined in Section 5.01.

"*Assignee*" is defined in Section 10.01.

"*BCDC*" means San Francisco Bay Conservation and Development Commission.

"*Benefit Assessment District*" is defined in Section 5.05.

"*CEQA*" is defined in Recital D.

"*CERCLA*" is defined in Recital E.

"*CFD*" is defined in Section 5.03.

"*Changes in the Law*" is defined in Section 4.12.

"*City*" means the City of Vallejo, a California municipal corporation.

"*City Impact Fees*" is defined in Section 5.01.

*"City Subsequent Project Approvals"* is defined in Recital M.

*"City Law"* is defined in Section 4.02.

*"City Parties"* is defined in Section 12.01.

*"Claims"* means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys' fees and costs.

*"Closing Date"* is defined in the Acquisition Agreement.

*"Consultant Fees"* is defined in Section 5.01.

*"Default"* is defined in Section 11.02.

*"Demolition Activities"* is defined in the Right of Entry and Demolition Agreement.

*"Development Agreement Statute"* is defined in Recital N.

*"Development Services Director"* is defined in Section 6.09.

*"DTSC"* means the California Environmental Protection Agency, Department of Toxic Substances Control.

*"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 Waste Disposal Act, 42 U.S.C. §6901 *et seq.*, the Hazardous Substance Account Act, California Health and Safety Code, §25300 *et seq.*, the Hazardous Waste Control Law, California Health and Safety Code, §25100 *et seq.*, and the Porter-Cologne Water Quality Control Act, California Water Code, §13000 *et seq.*

*"Effective Date"* is defined in Section 3.01.

*"EIS/EIR"* is defined in Recital D.

*"ERN"* shall have the meaning set forth in Recital J.

*"Existing Project Approvals"* is defined in Recital L.

*"Existing Properties"* is defined in Section 4.15.B.

*"Extended Term"* is defined in Section 3.02.

*"Federal/State Compliance Fees"* is defined in Section 5.01.

*"FOST"* is defined in Recital E.

*"Infrastructure Improvements"* is defined in Section 5.04.

*"Initial Term"* is defined in Section 3.02.

*"Insubstantial Amendment"* is defined in Section 8.02.

*"LEED"* is defined in Section 6.05.

*"LMI"* is defined in Section 5.05.

*"Maintenance Fee"* is defined in 5.06.B.

*"Mare Island"* is defined in Recital A.

*"Mello-Roos Act"* is defined in Section 5.03.B.

*"Mitigated Negative Declaration"* is defined in Recital L.

*"MMRP"* is defined in Recital L.

*"Mortgage"* is defined in Section 7.01.

*"Mortgagee"* is defined in Section 7.01.

*"Navy"* means the United States of America, acting by and through the Department of Navy.

*"NEPA"* is defined in Recital D.

*"North Island Backbone Infrastructure Improvements"* means those backbone infrastructure improvements that will benefit the Project and other developments and properties on Mare Island, including improvements to Highway 37, Azuar Drive and Railroad Avenue, as more particularly described in Exhibit E.

*"Ordinary Frontage Improvements"* means the curbs, gutters, sidewalks, storm drainage and other frontage public improvements, as more particularly described in Exhibit E.

*"OSHPD"* is defined in Section 9.03.

*"Other Agency Subsequent Project Approvals"* is defined in Recital M.

*"Other Local Agency Compliance Fees"* is defined in Section 5.01.

*"Party/Parties"* is defined in the introductory paragraph preceding the Recitals of this Agreement.

*"Prevailing Wage Laws"* is defined in Section 6.04.

*"Processing Fees"* is defined in Section 5.01.

*"Project"* is defined in Recital J.

*"Project Approvals"* is defined in Section 4.01.

*"Property"* is defined in Recital J.

*"Public Improvements Construction Agreement"* means the Public Improvements Construction Agreement in the form attached to the Acquisition Agreement as Exhibit J.

*"Reimbursement Agreement"* is defined in Section 5.05.

*"Reuse Plan"* is defined in Recital B.

*"Right of Entry"* is defined in Recital L.

*"Right of Entry and Demolition Agreement"* is defined in Recital L.

*"Scope of Work"* means the Scope of Work for the Project attached as Exhibit C to the Acquisition Agreement.

*"SEIR"* is defined in Recital H.

*"Site Plan"* means the Site Plan for the Project attached hereto as Exhibit C.

*"Specific Plan"* is defined in Recital G.

*"Specific Plan Amendment No. 1"* is defined in Recital G.

*"Subsequent Discretionary Approvals"* is defined in Section 9.01.

*"Subsequent Ministerial Approvals"* is defined in Section 9.01

*"Subsequent Project Approvals"* is defined in Recital M.

*"Term"* is defined in Section 3.02.

*"Touro"* means Touro Mare Island, LLC, a California limited liability company, and includes permitted approved transferees who qualify as such under this Agreement.

*"Transfer Agreement"* is defined in the Acquisition Agreement.

"Unit Plan" is defined in Recital L.

"VSFCD" is defined in Recital M.

"Water Fees" is defined in Section 5.01.

## ARTICLE 2. GENERAL PROVISIONS

Section 2.01. Ownership of Property. The Parties hereby acknowledge that, as of the Effective Date, Touro has an equitable interest in the Property by virtue of its contractual right to acquire fee title to the Property from the City pursuant to the terms of the Acquisition Agreement.

Section 2.02. Condition of Property. Subject to the terms of the Acquisition Agreement and satisfaction of the conditions precedent to conveyance set forth in the Acquisition Agreement, the Property which is the subject of this Agreement will be acquired by Touro in its "AS-IS, WHERE-IS, WITH ALL FAULTS" condition.

## ARTICLE 3. EFFECTIVE DATE AND TERM

Section 3.01. Effective Date. This Agreement shall become effective following execution of the Parties and upon the date that the ordinance approving this Agreement becomes effective ("*Effective Date*"). Notwithstanding the foregoing, the effectiveness of this Agreement shall be conditioned upon the Acquisition Agreement being fully executed by the Parties and taking effect. If the Parties have failed to execute the Acquisition Agreement or if the Acquisition Agreement has not become effective by August 31, 2008, this Agreement shall automatically terminate.

Section 3.02. Term. The term of this Agreement shall be the Initial Term together with the Extended Term, if any ("*Term*").

A. Initial Term. The initial term of this Agreement shall commence upon the Effective Date and expire on the date which is five (5) years after the Closing Date as defined in the Acquisition Agreement ("*Initial Term*"). The Initial Term has been established by the Parties as a reasonable estimate of the time required to develop the Project, including the Infrastructure Improvements, and obtain the public benefits of the Project.

B. Extended Term. City and Touro agree that it may be mutually desirable for the Initial Term to be extended as provided below. Accordingly, Touro may request in writing that City extend the Initial Term of this Agreement for up to one additional two (2) year period ("*Extended Term*"). Such written request shall be delivered, if at all, to City not earlier than two hundred seventy (270) days nor later than one hundred twenty (120) days prior to the expiration date of the Initial Term. Except as expressly provided in this Subsection B., there shall be no further extensions of the Initial Term.



C. City Review of Request for Extended Term. Following receipt of a timely Initial Term extension request, City shall undertake a review of Touro's good faith compliance with the terms of this Agreement in the same manner as set forth in Section 6.09 for a periodic review of this Agreement, unless the annual review for the prior year has been concluded within 90 days of the request in which case City may elect to use the findings of such recent annual review. Touro and City shall comply with the provisions of Section 6.09 with respect to such review so that it can be completed prior to the expiration of the Initial Term. The City Council may approve, deny or conditionally approve Touro's request for extension of the Initial Term in its reasonable discretion, subject to the following: The Parties agree that City may deny Touro's request for the Extended Term if, following such review, the City Council determines, in the exercise of its reasonable legislative discretion, based on substantial evidence in the record, any of the following: (i) Touro is in Default under this Agreement or any event has occurred which with the passage of time or giving of notice or both would constitute a Default by Touro hereunder; (ii) any of the representations and warranties of Touro set forth in Section 3.03 are no longer materially true and correct; (iii) Touro has not satisfied all material requirements and conditions of the Project Approvals; (iv) any delinquent unpaid property taxes or assessments, are payable with respect to the Property that are owed by Touro; (v) subject to enforced delay under Section 11.06 below, Touro has failed to complete demolition of all structures (as described and listed in Exhibit F) located on the Property and the land underlying the Infrastructure Improvements; (vi) subject to enforced delay under Section 11.06 below, Touro has failed to complete construction and installation of all Infrastructure Improvements (as described and listed in Exhibit E); or (vii) Touro has failed to provide timely payment of property taxes, CFD assessments, fees, exactions or other monetary requirements pursuant to this Agreement. If the Initial Term of this Agreement is extended in accordance with the provisions of this Section 3.02, City shall record an instrument giving notice of the Extended Term and the expiration date thereof in the Official Records of Solano County.

D. Termination Following Expiration. Following the expiration of the Term, or the earlier completion of development of the Project and all of City's and Touro's obligations in connection therewith, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 11.08.

Section 3.03. Touro Representations and Warranties. Touro represents and warrants to City that, as of the Effective Date:

A. Touro is duly organized and validly existing under the laws of the State of California, and is 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 Touro under this Agreement.

B. No approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by Touro, except as have been obtained;

C. The execution and delivery of this Agreement and the performance of the obligations of Touro hereunder have been duly authorized by all necessary corporate action, including the submission and approval of this Agreement by Touro's Managing Member and its Board of Trustees; and

D. This Agreement is a valid obligation of Touro and is enforceable in accordance with its terms.

E. Touro has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Touro's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Touro's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Touro's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

During the Term of this Agreement, Touro shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.03 not to be true, immediately give written notice of such fact or condition to City.

#### ARTICLE 4. DEVELOPMENT OF PROPERTY

**Section 4.01. Vested Rights.** The Property is hereby made subject to the provisions of this Agreement. Touro shall have the right and obligation to develop the Property with the Project and use the Property and the Project for the uses specified herein and in the Acquisition Agreement and for no other uses or purposes except as otherwise expressly provided in this Agreement and the Acquisition Agreement. The development of the Property, or any portion thereof, shall be undertaken only in compliance with the Existing Project Approvals, Subsequent Project Approvals, Applicable Law and the provisions of this Agreement including the Site Plan and Scope of Work. Touro shall have a vested right to develop the Project on the Property in accordance with the Existing Project Approvals, the Subsequent Project Approvals, Applicable Law and this Agreement. The Project shall be subject to all Subsequent Project Approvals (which, upon final approval, shall be deemed part of the Existing Project Approvals hereunder). The Existing Project Approvals and the Subsequent Project Approvals are sometimes hereinafter referred to as the "***Project Approvals***". Additionally, the City hereby approves the proposed uses of the Property, the density and intensity of use, and the maximum height and size of proposed buildings as set forth in the Unit Plan, Scope of Work and Site Plan.

**Section 4.02. Applicable Law.** In recognition of the extraordinary investment and commitment in planning and engineering the development of the Property, the Parties agree that except as otherwise expressly set forth herein, the rules, regulations, official policies, standards and specifications applicable to the development of the Property shall be those in force and in effect on the Effective Date and as may be set forth in the Existing Project Approvals and this Agreement, and, with respect to matters not

addressed by these documents, those laws, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure established by the City (each, individually, a "*City Law*")), governing permitted uses, building locations, timing of construction, densities, design, infrastructure, affordable housing, parks and recreation and heights in force and effect on the Effective Date (collectively, the "*Applicable Law*"). Prior to the Effective Date of this Agreement, the Parties shall prepare two (2) sets of the Project Approvals and Applicable Laws applicable to the Project as of the Effective Date, one (1) set for City and one (1) set for Touro, to which shall be added from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable Law, there will be a common set available to the Parties. Failure to include in the sets of Project Approvals and Applicable Law any rule, regulation, policy, standard or specification that is within the Applicable Law and Project Approvals as described in this provision shall not affect the applicability of such rule, regulation, policy, standard or specification. Except as otherwise set forth herein, no amendment or repeal of the Applicable Law shall apply to the Project, and Touro is hereby vested with the right to develop the Property in accordance with this Agreement and the Applicable Law.

Section 4.03. Right of Entry. Prior to close of escrow for conveyance of the Property pursuant to the Acquisition Agreement, Touro shall have the right to access the Property and certain other property in Reuse Area 1A required for demolition and, if Touro so elects, construction of the Infrastructure Improvements. Touro's right to enter those portions of Reuse Area 1A and conduct investigations and demolition shall be pursuant to the Right of Entry and Demolition Agreement. Touro shall be required to enter into the Public Improvements Construction Agreement and deliver the Security Instrument (as defined therein) to City prior to commencing any pre-conveyance construction of the Infrastructure Improvements.

Section 4.04. Reservations of Authority.

A. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract.

B. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property:

(1) Processing fees and charges of every kind and nature usually and uniformly imposed by City on substantially similar development projects and properties to cover the actual costs to City of processing applications for Project Approvals or for monitoring compliance with any Project Approvals granted or issued, as such fees and charges are adjusted from time to time.

(2) 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 usually and uniformly applied on a city-wide basis to all substantially similar types of development projects and properties.

(3) Regulations governing construction standards and specifications including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then adopted by and applicable in City at the time of permit application.

(4) New City Laws which may be in conflict with this Agreement or the Project Approvals, but only if such New City Laws are necessary to protect the public health and safety and are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

(5) New City Laws applicable to the Property, which do not conflict with this Agreement or the Project Approvals, provided such New City Laws are uniformly and usually applied on a City-wide basis to all substantially similar types of development projects and properties.

(6) City Impact Fees or other monetary and non-monetary exactions, connection fees and other fees and exactions of every kind and nature imposed by the City and adopted and in effect as of the Effective Date of this Agreement, together with any increases or modifications to those existing City Impact Fees and exactions, provided such increases or modifications are uniformly and usually applied on a City-wide basis to all substantially similar types of development projects and properties.

**Section 4.05. Regulation by Other Public Agencies.** City and Touro acknowledge and agree that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Touro shall, at the time required by Touro in accordance with Touro's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities, including VSFCD, Solano County, the Vallejo Unified School District and the Greater Vallejo Recreation District, in connection with the development of, or the provision of services to, the Project. Touro shall also pay all required fees when due to such public agencies. Touro acknowledges that City does not control the amount of any such fees. City shall cooperate with Touro in Touro's effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

**Section 4.06. Compliance with Acquisition Agreement.** Touro shall faithfully comply with all terms and conditions of the Acquisition Agreement in connection with development of the Project on the Property.

**Section 4.07. Life of Project Approvals.** The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

**Section 4.08. Vesting Tentative Maps.** If any tentative map heretofore or hereafter approved in connection with development of the Property is a vesting map under the Subdivision Map Act, Government Code §§ 66410 *et seq.*, and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to Touro for development of the Project, then and to that extent all rights and protections afforded Touro under the laws and ordinances applicable to vesting maps shall survive.

**Section 4.09. Touro's Right to Rebuild.** City agrees that Touro may renovate or rebuild portions of the Project at any time within the Term of this Agreement should it become necessary due to natural disaster, damage, casualty or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and NEPA.

**Section 4.10. Initiatives and Referenda.** If any City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which City Law would conflict with the Project Approvals, Applicable Law or this Agreement or reduce the development rights or assurances provided by this Agreement, such City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. 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 City shall apply to the Property or Project. Touro agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall cooperate with Touro and, at Touro's expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot, shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement or the Project Approvals.

**Section 4.11. Environmental Mitigation.** The Parties understand that the EIR and SEIR are intended to be used not only in connection with the Existing Project Approvals, but also in connection with the Subsequent Project Approvals needed for the Project. Consistent with the CEQA streamlining policies applicable to specific plans, City and Touro acknowledge City's obligation, in connection with Subsequent Project Approvals, not to require a supplemental or subsequent EIR, mitigated negative

declaration, or negative declaration, unless required by Public Resources Code section 21166, and CEQA section 15161 or 15162. Further, City shall rely on the exemption referenced in CEQA sections 15182 to the fullest extent permitted by law. To the extent supplemental or additional environmental review is required in connection with Subsequent Project Approvals, Touro acknowledges that City may require additional mitigation measures that were not foreseen at the time this Agreement was executed.

**Section 4.12. State and Federal Law.** As provided in section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability 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 by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California ("*Changes in the Law*"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Touro shall agree to such action as may be reasonably required. Nothing in this Agreement shall preclude Touro from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law.

**Section 4.13. American with Disabilities Act (ADA) Compliance.** Touro shall comply with the requirements of the ADA and all other requirements of applicable Federal and State laws with respect to the development of the Project.

**Section 4.14. Timing of Development.** The parties acknowledge that Touro cannot at this time predict when or the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Touro, such as market orientation and demand, interest rates, absorption, completion and other similar factors. In particular, and not in any limitation of any of the foregoing, since 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 consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Touro shall have the vested right to develop the Project in such order and at such rate and at such times as Touro deems appropriate in the exercise of its business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Agreement.

**Section 4.15. City Obligations.**

A. **City's Good Faith in Processing.** In consideration of Touro entering into this Agreement, and provided that Touro exercises due diligence and good faith and files full, accurate and complete applications with timely payment of all fees therefor, City agrees that it will accept, process and review, in good faith and in a timely

manner, all applications related to the Project filed by Touro or those with rights to acquire any portion of the Property consistent with the Project Approvals, in accordance with the terms of this Agreement and the Applicable Law. City agrees that the scope of its review of requests for Subsequent Project Approvals shall be exercised consistent with the terms of this Agreement and the Applicable Law.

B. Potential Reimbursements to Touro. Existing properties on Mare Island, previously released by the City or Federal Government for private development ("*Existing Properties*"), may be determined by City to benefit from Touro's dedication or construction of all or a portion of the Infrastructure Improvements. Further, in the event that additional portions of Mare Island ("*Additional Properties*") are sold or released by the Federal Government for private development after the Effective Date, Touro's dedications or construction of all or a portion of the Infrastructure Improvements may be determined by City to also directly benefit such Additional Properties, in whole or in part. In such instances, City, at Touro's expense, shall use reasonable efforts, consistent with applicable law and procedures, to identify such benefited Existing and Additional Properties and to cause the owners/developers of such benefited Existing and Additional Properties to reimburse to Touro, through City, their fair share of the costs incurred by Touro, based on a benefit formula approved by the City Council. Such benefit formula shall be based on ascertainable criteria, taking into account to the extent ascertainable, the proportionate benefit conferred on the Existing and Additional Properties. The reimbursement may potentially be accomplished through inclusion in a Benefit Assessment District or CFD described in Section 5.05 below. Consistent with applicable law and procedures, City, at Touro's expense, shall use reasonable efforts to collect, and establish a mechanism for future collection (irrespective of the term of this Agreement), any amounts reimbursable to Touro hereunder upon application to City by owners or developers of the Existing and Additional Properties for land use and development entitlements. Touro agrees and acknowledges that City's obligation is limited to reasonable efforts and is subject to applicable laws and procedures as herein provided, that Touro may not be reimbursed, in whole or in part, for the costs of such dedications, infrastructure or public facilities, and that City shall have no obligation to pay or reimburse Touro for any portion of Touro's costs therefor.

C. Relocation and Realignment of Public Roads. City shall cooperate with Touro, at no cost to City, to take steps reasonably necessary to relocate or realign existing Mare Island public roads so as to conform to locations approved by City in the course of issuing the Project Approvals.

D. Acquisition of Land Owned by Third Parties. In any instance where Touro is required to construct any Infrastructure Improvements or other off-site public improvements or facilities on land not owned by Touro, Touro, at its sole cost and expense, shall fund the process to acquire the real property interests necessary for the construction of such Infrastructure Improvements or other public improvements or facilities. If requested by Touro, where the affected property owner has rejected an offer by Touro based upon market value as determined by an appraisal prepared by a City approved appraiser in cooperation with City, and upon Touro's provision of adequate

funding, City shall promptly and timely negotiate and seek the purchase of the necessary real property interests to allow Touro to construct the Infrastructure Improvements or other public improvements or facilities as required by the Project Approvals. Under these circumstances, in accordance with the procedures established by law, City shall consider use of its power of eminent domain to acquire such real property interests. Touro shall pay all costs associated with such acquisition or condemnation proceedings. Nothing herein is intended to or shall prejudice or commit City regarding any findings and determinations required to be made in connection with adoption of a resolution of necessity. Nothing herein shall be deemed to create any entitlement by any third party to any compensation for any such property rights.

E. City Commitment to Grant or Cooperate to Cause Others to Grant Easements to Touro. City agrees to assist Touro and use good faith, diligent efforts to ensure, at no cost to City, that Touro is granted all easements and rights of way required to develop the Project at all times during the term of this Agreement, including but not limited to ingress/egress, utilities, demolition/construction, flood control, support, slope, and rights of way, whether from City, the United States, LMI, or other third parties.

F. Lease in Furtherance of Conveyance. To the extent any of the Infrastructure Improvements to be constructed as part of this Agreement are located or are to be located on property owned by the United States, then City shall, at no cost to City, assist Touro in securing the right and approval of the United States, pursuant to the terms of a Lease in Furtherance of Conveyance (LIFOC) or other appropriate document and applicable law, to construct those portions of the Infrastructure Improvements that are to be located on property owned by the United States.

G. Environmental Remediation of U.S. Government Property. To the extent that any remediation of Hazardous Substances or Materials (as defined in the Acquisition Agreement) is required upon property owned by the United States to enable the construction of the Infrastructure Improvements or any part thereof required by this Agreement, City shall cooperate with Touro at Touro's expense to cause such remediation to be paid for by the United States and performed on a timely basis so that the construction of the Project, including the Infrastructure Improvements, is not delayed.

H. Acceptance of Public Roads. City shall accept ownership of the public roads identified in the Project Approvals once completed by Touro in accordance with the Public Improvements Construction Agreement.

I. Maintenance of Public Roads and Public Water and Sewer Systems. City shall be responsible for maintaining and operating, either directly or by contract, the Mare Island public roads and the Mare Island Public Water and Sewer Systems in accordance with Applicable Law in the manner required to serve the Project.

Section 4.16. 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 Touro's sole cost and expense and in accordance with City



development standards and the requirements of the applicable utility companies and to the extent feasible. Notwithstanding the foregoing, Touro, with the approval of the City Manager, in his or her reasonable discretion, may install temporary above-ground utility installations to the extent necessary to avoid any existing Hazardous Materials located on or under the Property or on or under any other property upon which the Infrastructure Improvements are to be located. Such temporary above ground utility installations shall be replaced by Touro, at its expense, with new underground utilities promptly following completion of the Hazardous Materials remediation.

## ARTICLE 5. FEES AND INFRASTRUCTURE IMPROVEMENTS

### Section 5.01. Taxes, Assessments, Fees and Exactions.

A. Touro agrees to pay when due any existing, increased or modified fees, taxes, assessments, impact fees, and other monetary and non-monetary exactions, including Federal/State Compliance Fees, Other Local Agency Compliance Fees, Processing Fees, City Impact Fees, Consultant Fees, Architect Fees and other City fees as provided in this Section 5.01. With the exception of the foregoing fees and except as otherwise provided by this Agreement, City may not impose any new impact fees or other monetary or non-monetary exactions on the Project or the Property. For convenience of reference, the fees, taxes, assessments, impact fees in effect as of the Effective Date are identified on the attached Exhibit G. The parties acknowledge and agree that failure to include any applicable fee, tax, assessment, or impact fee within Exhibit G shall not affect the applicability of such fee, tax, assessment, or impact fee and the parties agree to supplement Exhibit G as necessary from time to time in an effort to maintain a comprehensive and complete list of such fees, taxes, assessments, and impact fees in effect as of the Effective Date.

B. City may charge and Touro agrees to pay any new, increased or modified taxes, assessments, impact fees or other monetary and non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of any Federal or State statute or regulation which is enacted or adopted after the Effective Date of this Agreement ("**Federal/State Compliance Fees**").

C. City may charge and Touro agrees to pay any new, increased or modified taxes, assessments, impact fees or other monetary and non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of other local governmental agencies ("**Other Local Agency Compliance Fees**").

D. City may charge and Touro agrees to pay all water connection fees ("**Water Fees**"), which are in force and effect on a City-wide basis at the time those Water Fees are payable at the rates then in effect.

E. City may charge and Touro agrees to pay all processing fees, including application and inspection and monitoring fees ("**Processing Fees**"), for land use approvals, grading and building permits, general plan maintenance fees, and other permits and entitlements, which are in force and effect on a City-wide basis 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.

F. City may charge and Touro agrees to pay all City impact fees ("**City Impact Fees**") which are in force and effect as of the Effective Date and any subsequent increases in the same, provided such increases are usually and uniformly applied on a City-wide basis to similar development projects and properties, including, without limitation, City-assessed park fees allocated to Greater Vallejo Recreation District, transportation impact mitigation fees, property development excise taxes, general plan update fees or other governmental fees such as VSFCO sewer fees. City represents and warrants that, as of the date of this Agreement City is not presently planning, considering or contemplating any increase in City Impact Fees, except as otherwise authorized by the City's fee schedule, resolutions or ordinances adopted as of the date of this Agreement.

G. If requested by Touro, City shall contract with one or more outside inspectors, engineers or consultants to perform all or any portion of the monitoring, inspection, testing and evaluation services to be performed in connection with processing applications, construction and development of the Project. To the extent one or more outside inspectors, engineers or consultants is engaged to perform or provide such services, Touro, prior to the date of commencement of such services, shall be required to enter into a reimbursement agreement in a form reasonably acceptable to the City Attorney, which provides, among other things, for Touro to pay to City, in advance, a cash deposit equal to the entire amount of the anticipated costs and fees of such inspectors, engineers or consultants ("**Consultant Fees**"), plus a City administration charge of ten percent (10%). The Consultant Fees, together with the associated administrative charge, shall be in addition to, and not in lieu of, the Processing Fees; provided, however, City agrees not to double charge Touro (through the imposition of both a Processing Fee and a Consultant Fee) for any individual monitoring, inspection, testing or evaluation service.

H. If requested by Touro, City shall engage one or more outside architectural or planning firms to review and evaluate Touro's architectural plans and drawings for the Project, to ensure that the Project complies with the architectural guidelines for Mare Island, and to advise City and the Planning Commission in connection with design review. City shall cooperate with Touro in establishing a scope of work and budget(s) for said architectural firm(s). City agrees that the scope of work to be undertaken by the firm(s) shall be reasonable in light of the size, type and complexity of the Project. To the extent one or more outside architectural or planning firms is engaged to perform or provide such services, Touro, prior to the date of commencement of such services, shall be required to enter into a reimbursement agreement in a form reasonably acceptable to the City Attorney, which provides, among other things, for

Touro to pay to City, in advance, a cash deposit equal to the entire amount of the anticipated costs and fees of such architectural or planning firms ("*Architect Fees*"), plus a City administration charge of ten percent (10%). In addition, Touro shall pay to City the actual cost of all City staff time incurred in connection with the review of Touro's architectural plans and drawings.

I. City shall not impose as either a Processing Fee or Consultant Fee any individual cost or charge which has already been paid by Touro pursuant to the ERN or by other reimbursement agreement.

Section 5.02. Revenue Neutral Project.

A. The Parties intend that the cost of providing City services to the Project, including police, fire, parks and streetscape, landscape and lighting maintenance, repair and replacement, will be fully recouped and/or funded from taxes, fees and CFD assessments. Touro acknowledges and agrees that City would not enter into this Agreement without the assurances from Touro that financing mechanisms will be established to ensure the full recovery and funding of costs incurred in providing City services for the Project.

Section 5.03. Community Facilities Districts for City Services.

A. The Property is currently subject to a community facilities district assessment, CFD 2002-1, created for the purpose of funding certain City services that benefit Mare Island. For informational purposes, the maximum annual assessment attributable to the Property for 2007 was \$413,865, and the actual assessment based on its unused status for 2007 was approximately \$92,428. From and after the Effective Date, Touro shall assume and pay directly, or reimburse City within thirty (30) days after City's written demand therefor, all CFD 2002-1 assessments attributable to the Property. If the Effective Date occurs on a date other than the first day of the property tax year, the CFD 2002-1 assessment for the first year shall be prorated between the Parties based upon a three hundred sixty-five-(365) day year. In the event (i) this Agreement and the Acquisition Agreement are terminated prior to conveyance of the Property to Touro, or (ii) City exercises City's right to repurchase as described in Section 405 of the Acquisition Agreement, then Touro's obligations to pay such CFD 2002-1 assessments attributable to the Property shall cease as of the effective date of such termination or repurchase, as the case may be. City shall have no obligation to refund or reimburse Touro for any such CFD 2002-1 assessments paid by Touro prior to the date of such termination.

B. Touro agrees that to fund provision of City services, City, at its sole option, may establish additional community facility district(s) ("*CFD(s)*") affecting the Property pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Section 53311 *et seq.*) ("*Mello-Roos Act*"). Touro shall cooperate and support its fair share assessment of any and all additional CFDs which provide funding for City services that benefit the Property solely, or the Property and other

properties on or off Mare Island. In the event City seeks to establish any future CFD(s) which would result in a total CFD special tax on the Property that is equal to or less than one hundred five percent (105%) of the then-existing CFD 2002-1 special tax on the Property, Touro (i) will execute all necessary petitions and ballots and waive all election waiting and protest periods at City's request; (ii) support City's adoption of local policies related to use of CFD financing; (iii) cooperate in the development of rate and method of apportionment or assessment formula; and (iv) consent to the formation of the CFD(s). In the event City desires to establish additional CFD(s) for services that would result in the imposition of a total CFD special tax on the Property in excess of the amount described in the preceding sentence, Touro's decision to (i) execute all necessary petitions and ballots and waive all election waiting and protesting periods at City's request; (ii) support City's adoption of local policies related to use of CFD financing; (iii) cooperate in the development of rate and method of apportionment or assessment formula; and (iv) consent to the formation of the CFD(s) will be in Touro's discretion. Touro shall not seek exemption from any CFD(s) contemplated hereunder. City costs expected to be incurred in forming and administering the additional CFD(s), if any, will be included as a CFD cost, and Touro shall be responsible for paying its pro rata share of any such formation and administration costs.

**Section 5.04. Infrastructure Improvements.** As a material inducement for City to enter into this Agreement, Touro has agreed to construct or cause the construction of those on and off-site public improvements, including the North Island Backbone Infrastructure Improvements and Ordinary Frontage Improvements (collectively, "***Infrastructure Improvements***"), described in Exhibit E within the times set forth in Exhibit D. Notwithstanding the schedule set forth in Exhibit D, Touro shall not be obligated to construct any of the Infrastructure Improvements unless and until Touro has closed Escrow (as defined in the Acquisition Agreement) and Transfer of the Property. The North Island Backbone Infrastructure Improvements are being over-sized since these improvements will accommodate and serve the Project as well as other portions of Mare Island as contemplated and assessed in the Specific Plan. To the extent any fee credits or offsets are applicable or available under the City Municipal Code or other applicable City rules or policies due to such over-sizing of the North Island Backbone Infrastructure Improvements, Touro shall be entitled to receive such fee credit or off-set. Subject to potential reimbursement through a Reimbursement Agreement or Benefit Assessment District as provided in Section 5.05, all costs of designing, constructing and installing the Infrastructure Improvements shall be borne by Touro at its expense. To ensure satisfactory and timely installation of the Infrastructure Improvements, including security for completion and payment of labor and materials and warranty period claims, Touro and City shall enter into a Public Improvements Construction Agreement in the form attached as Exhibit J to the Acquisition Agreement prior to or concurrent with the Closing Date (as defined in the Acquisition Agreement). In the event this Agreement and Acquisition Agreement are terminated prior to conveyance of the Property to Touro, then, following such termination Touro shall only be obligated to complete the construction and/or installation of those components of the Infrastructure Improvements, if any, that Touro has commenced construction or installation of prior to such termination date. Notwithstanding the foregoing, Touro's commencement of the Demolition Activities or

grading and compaction associated with such Demolition Activities shall not be deemed commencing construction or installation of the Infrastructure Improvements.

Section 5.05. Reimbursement Agreement/Benefit Assessment District/CFD.

A. Touro and City shall use good faith, diligent efforts to negotiate and approve a Reimbursement Agreement among Touro, City and LMI ("**Reimbursement Agreement**"), setting forth the respective obligations of LMI and Touro with respect to payment of the costs of the North Island Backbone Infrastructure Improvements and certain other Mare Island infrastructure improvements to be constructed and installed by Touro and LMI, with any over-sizing credits, reimbursements or off-sets received by Touro or LMI pursuant to the City Municipal Code or other applicable City rules or policies, if any, taken into account. City obligations under any such Reimbursement Agreement shall be limited to facilitating reimbursement of an appropriate portion of the infrastructure costs by other benefited property owners at the time such other benefited properties are developed.

B. In the event a Reimbursement Agreement is not executed, City, at no cost to City, shall use good faith, diligent efforts to form and adopt a benefit assessment district ("**Benefit Assessment District**") for the purpose of allocating the costs of North Island Backbone Infrastructure Improvements and certain other South Mare Island infrastructure improvements (collectively, the "**Applicable Infrastructure**") to be constructed and installed by Touro and Lennar Mare Island, LLC, a California corporation or its successors or assigns ("**LMI**") among benefiting properties on Mare Island, and for collecting assessments against such properties. Touro agrees that City may establish the Benefit Assessment District for such purpose pursuant to Chapter 14.36 of the City's Municipal Code. Touro shall cooperate and support its fair share assessment which will provide funding for infrastructure that benefits the Property. In connection with the establishment and implementation of any such Benefit Assessment District, Touro, following review and approval thereof in Touro's reasonable discretion, (i) will execute all necessary petitions and ballots and waive all election waiting and protest periods at City's request; (ii) support City's adoption of local policies related to use of Benefit Assessment District financing; (iii) cooperate in the development of rate and method of apportionment or assessment formula; and (iv) consent to the formation of the Benefit Assessment District. Touro shall not seek exemption from any Benefit Assessment District contemplated hereunder. The costs expected to be incurred in forming and administering the Benefit Assessment District shall be included as a Benefit Assessment District cost. City shall use good faith, diligent efforts to work with LMI and obtain LMI's cooperation in forming the Benefit Assessment District and supporting LMI's fair share assessment to the same extent as Touro is required to do so under this Agreement. For purposes of this Agreement, the term "fair share assessment" means the extent to which the Property, as opposed to other property on or off of Mare Island, benefits from or utilizes the Applicable Infrastructure. City agrees to consider potential extensions of the maximum 15-year time period for Benefit Assessments Districts as set forth in section 14.36.190 of the City's Municipal Code. Notwithstanding the foregoing, the City Council reserves full discretion with respect to findings to be made in connection

with any Benefit Assessment District formation and approval or disapproval of any proposed extension to the maximum 15-year time period for Benefit Assessment Districts.

C. In addition to or in lieu of the Benefit Assessment District, Touro may request that City establish an infrastructure financing CFD pursuant to the Mello-Roos Act, at no cost or expense to City, to finance all or a portion of the costs of designing and constructing the Infrastructure Improvements or any other improvement which may lawfully be financed under the Mello-Roos Act and other applicable law. If so requested, City will initiate and consider a proposed CFD formation provided, however, it is expressly acknowledged, understood and agreed by the parties that (i) City reserves full and complete discretion with respect to legally required findings that must be made in connection with formation of any such proposed infrastructure financing CFD, (ii) nothing in this Agreement is intended to or shall limit City's ability to adopt legally required findings with respect to formation of a proposed CFD, and (iii) nothing in this Agreement is intended to or shall prejudice or commit to City regarding the findings and determinations to be made with respect thereto. In the event that City is unwilling or unable to make the legally required findings in connection with the formation of any proposed infrastructure financing CFD for any reason, City shall not be liable for any resulting costs to Touro and Touro shall nonetheless be responsible for constructing all such Infrastructure Improvements.

D. In the event no Benefit Assessment District or infrastructure financing CFD is formed and a Reimbursement Agreement is not executed, Touro shall use good faith, diligent efforts to reach agreement with LMI to allocate and reimburse each other for their proportionate share of Mare Island infrastructure costs, including the North Island Backbone Infrastructure Costs. City shall cooperate in good faith with Touro in an effort to facilitate such an agreement between LMI and Touro.

E. In the event no Benefit Assessment District or infrastructure financing CFD is formed and a Reimbursement Agreement is not executed, Touro shall nonetheless be responsible for all costs of designing, constructing and installing the Infrastructure Improvements required by this Agreement and the Public Improvements Construction Agreement.

Section 5.06. Reuse Area 1A Obligations. From and after the Effective Date, Touro shall pay to City, at City's address as set forth in Section 13.05 below and to the attention of City's Mare Island Conversion Program Manager, the total sum of Two Thousand Five Hundred Dollars (\$2,500) ("Maintenance Fee") per month in cash or other immediately available funds without notice, demand, offset or deduction, in advance, on the first day of each calendar month. The Maintenance Fee shall be held and used by City for costs incurred by City in connection with the maintenance of Reuse Area 1A (excluding the Property). Upon execution of this Agreement, Touro shall pay to City the total sum of the first Maintenance Fee payment due. If the Effective Date falls on a date other than the first calendar day of a month, then the Maintenance Fee shall be prorated for the partial month on the basis of a thirty (30) day month. Upon the earlier to occur of

(i) the termination of this Agreement and the Acquisition Agreement prior to conveyance of the Property to Touro, (ii) the termination of the ERN, or (iii) City's exercise of its right to repurchase as described in Section 405 of the Acquisition Agreement, Touro's obligation to pay the Maintenance Fee shall cease as of the effective date of such termination. City shall have no obligation to refund or reimburse Touro for any Maintenance Fee paid by Touro prior to the date of such termination. Notwithstanding Touro's obligation to pay the Maintenance Fee, Touro shall have no liability or responsibility for any losses, costs, damages, expenses, claims or liability of any kind whatsoever, including without limitation damage to any property or injury to or death of any person, arising out of or related in any way to the performance of maintenance of Reuse Area 1A by any third party, City or any of City's contractors, subcontractors, employees or agents, except to the extent caused by the active negligence or willful misconduct of Touro or its affiliates or its and their members, shareholders, principals, partners, officers, agents, representatives, assigns, successors-in-interest, employees, consultants, contractors or subcontractors.

## **ARTICLE 6. DEVELOPMENT STANDARDS AND REQUIREMENTS**

Section 6.01. Compliance with State and Federal Law. Touro, at its sole cost and expense, shall comply with requirements of, and obtain all permits and approvals required by, local, State and Federal agencies having jurisdiction over the Project.

Section 6.02. Construction of the Project. Touro shall commence and complete the Demolition Activities and construction and installation of the Infrastructure Improvements within the time set forth in the Project Infrastructure and Demolition Schedule attached hereto as Exhibit D and shall commence construction of the Project within the time set forth in the Acquisition Agreement Schedule of Performance. Notwithstanding the schedule set forth in Exhibit D, Touro shall not be obligated to construct any of the Infrastructure Improvements unless and until Touro has closed Escrow (as defined in the Acquisition Agreement) and Transfer of the Property. For purposes of this Section 6.02, the term "commence construction" means commencement of construction of the Project building foundation or the Infrastructure Improvements, as applicable. Touro shall construct the Project in accordance with the Project Scope of Work attached to the Acquisition Agreement as "Exhibit C." City and Touro shall have regular meetings during the term of this 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.

Section 6.03. Intentionally Omitted.

Section 6.04. Prevailing Wage Requirements.

A. Touro acknowledges and agrees that by virtue of the terms governing the transfer of the Property as set forth in the Acquisition Agreement, development of the Project, including the Infrastructure Improvements will constitute

construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds under California Labor Code Section 1720(a) and (b)(3). Touro shall comply and shall ensure that its contractors and subcontractors comply with all California Labor Code requirements, including implementing regulations of the Department of Industrial Relations, applicable to public works and payment of prevailing wages, as well as all applicable Federal prevailing wage laws, including the Davis-Bacon Act of 1931, as amended, and implementing regulations (collectively, "*Prevailing Wage Laws*") in connection with construction and development of the Project. Without limiting the generality of the foregoing, Touro shall (i) require its contractors and subcontractors to submit certified copies of payroll records to Touro; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to City and its designees for inspection and copying during regular business hours at the Property or at another location within the City of Vallejo.

B. Touro shall defend (with counsel reasonably acceptable to the City), indemnify and hold harmless City and its officers, employees, volunteers, agents and representatives from and against any and all present and future Claims, arising out of or in any way connected with Touro's obligation to comply with all Prevailing Wage Laws in connection with the Demolition Activities and construction of the Project and the Infrastructure Improvements, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781.

C. Touro hereby waives, releases and discharges forever City and its employees, officers, volunteers, agents and representatives, from any and all present and future Claims arising out of or in any way connected with Touro's obligation to comply and to cause its contractors and subcontractors to comply with all Prevailing Wage Laws in connection with construction and development of the Project.

Section 6.05. Leadership in Energy and Environmental Design. The Leadership in Energy and Environmental Design ("*LEED*") Green Building Rating System is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings. Touro shall use commercially reasonable efforts to design the Project in a manner to meet and achieve LEED "platinum" certification. Touro shall submit a complete application for LEED certification of the Project within sixty (60) days following completion of construction and provide copies of any and all LEED certifications to City within ten (10) business days following receipt thereof. Notwithstanding the foregoing, if Touro utilizes commercially reasonable efforts but is unable to design the Project to meet LEED "platinum" certification or otherwise fails to receive LEED platinum certification, Touro shall not be in Default under this Agreement.

Section 6.06. City of Vallejo Business License. Touro, at its expense, shall obtain and maintain a business license issued by the City of Vallejo during the Term.

Section 6.07. Local Employment and Contracting. Touro agrees that it will use good faith efforts to hire qualified Vallejo residents or former Mare Island employees for



new positions created by Touro in its hiring of employees related to the development of the Project. Touro shall also require its independent third party contractors to use good faith efforts to hire qualified Vallejo residents or former Mare Island employees for new positions created by such contractors related to the development of the Project, provided that any failure by Touro's contractors shall not constitute a default by Touro under this Agreement. Touro shall, by December 31 of each year, submit to the City a list of the names and city of residence of its employees and officers involved in Project construction, and shall periodically provide information to the City regarding its work force. Touro agrees to use good faith efforts to contract with qualified Vallejo businesses for services and/or products, as appropriate, consistent with the goals of the Reuse Plan and Specific Plan. The City acknowledges that Touro and its third party contractors have the ultimate right to choose their employees and contractors. For new positions, good faith efforts may include, but not be restricted to, providing job announcements to the City, Solano County Workforce Investment Board, Napa-Solano Building Trades Council and other such local organizations.

Section 6.08. Sale Tax Point of Sale Designation. To the extent that sales taxes are to be paid on such items, Touro shall request that all persons and entities providing proton beam equipment, bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to designate City as the sole point-of-sale for purposes of computing sales taxes due under the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code sections 7200 *et seq.* and implementing regulations) on the sale of such proton beam equipment, bulk construction and building materials and components. Notwithstanding the foregoing, the failure or refusal of any such person or entity to designate the City as the sole point-of-sale for purposes of computing sales taxes shall not constitute a Touro Default under this Agreement.

Section 6.09. Periodic Review.

A. The annual review date for this Agreement shall be conducted by the City's development services director ("**Development Services Director**") and initiated during the month of January of each year of the Term of this Agreement, commencing with January, 2009 in accordance with Government Code section 65865.1 and Chapter 17.20 of the Vallejo Municipal Code. Touro shall provide all documentation necessary to effectuate an annual review. In the event the Development Services Director requests any documentation from Touro in furtherance of an annual review, Touro shall provide such documentation within ten (10) days of Touro's receipt of such request, unless otherwise mutually agreed upon by City and Touro.

B. The annual review shall be conducted as provided herein:

(1) The Development Services Director shall provide Touro with notice of the annual review no less than twenty (20) days prior to the Development Services Director's anticipated commencement date of the annual review. If the

Development Services Director finds good faith compliance by Touro with the terms of this Agreement, the Director shall so notify Touro and the Planning Commission in writing and the review for that period shall be concluded. If the Director is not satisfied that Touro is performing in accordance with the material terms and conditions of this Agreement, or if the Director has any reasonable doubts concerning Touro's performance, the Director shall first meet and confer with Touro to discuss the matter and attempt resolution of the dissatisfaction or doubts that the Director may have. If, after meeting and conferring with Touro, the Director still has reasonable doubts concerning Touro's performance, the Director shall refer the matter to the Planning Commission for a decision and notify Touro in writing at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

(2) The Planning Commission shall conduct a hearing at which Touro must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. The findings of the Planning Commission on whether Touro has complied with this 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, Touro has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If the Planning Commission determines that, based upon substantial evidence, Touro has not complied in good faith with the terms and conditions of this Agreement, the Planning Commission shall forward its report and recommendation to the City Council.

(3) The City Council shall notify Touro in writing of its intention to conduct a hearing on whether Touro has complied in good faith with the terms and conditions of this Agreement and whether the Agreement should be modified or terminated. The notice shall include 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 Touro of the nature of the proceeding. Touro shall be given an opportunity to submit evidence and to be heard at the hearing. If the City Council determines that Touro has complied in good faith with the terms and conditions of this 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 Touro has complied in good faith with the terms and conditions of this Agreement, the City Council may continue the hearing and shall notify Touro of the City's intent to meet and confer with Touro 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 Touro's good faith compliance with the terms and conditions of the Agreement and to take those actions it deems appropriate, including but not limited to, modification or termination of this Agreement, in accordance with California Government Code section 65865.1 and Vallejo Municipal Code Chapter 17.22.

C. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor

shall Touro have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

D. If, after an annual review, City finds Touro has complied in good faith with this Agreement, City shall promptly following Touro's request issue to Touro a certificate of compliance certifying that Touro has so complied through the period of the applicable annual review.

## ARTICLE 7. MORTGAGEE PROTECTION

Section 7.01. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the 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 Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("*Mortgagee*"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Section 7.02. Mortgagee Not Obligated. Notwithstanding the provisions of Section 7.01 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

Section 7.03. Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any notice of default given Touro hereunder and specifying the address for service thereof, then City agrees to use its good-faith, diligent efforts to deliver to such Mortgagee, concurrently with service thereon to Touro, any notice given to Touro with respect to any claim by City that Touro has committed an event of default, and if City makes a determination of noncompliance hereunder, City shall likewise use its good faith, diligent efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Touro. Each Mortgagee shall have the right during the same period available to Touro 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. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's notice.

Section 7.04. No Supersedure. Nothing in this Article 7 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 Agreement, nor shall any provision of this Article 7 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 7.03.

## **ARTICLE 8. AMENDMENT OF AGREEMENT AND EXISTING PROJECT APPROVALS**

Section 8.01. Amendment of Agreement By Mutual Consent. This 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 Vallejo Municipal Code Chapter 17.10. Extension of the Term of this Agreement pursuant to Section 3.02 or Section 11.06 shall not require an amendment to this Agreement.

Section 8.02. Insubstantial Amendments to 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 Agreement which, in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Property, (iii) provisions for 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, (vi) the scope or quality of the Infrastructure Improvements, or (vii) monetary contributions by Touro, 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. The City Manager shall have the authority to execute an Insubstantial Amendment or, in his or her discretion, seek approval of an Insubstantial Amendment by City resolution.

Section 8.03. Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both parties or successors.

Section 8.04. Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed at the date of execution of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this 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 Agreement shall not be affected by same unless the parties mutually agree in writing to amend this Agreement to permit such applicability.

## ARTICLE 9. COOPERATION AND IMPLEMENTATION

Section 9.01. Subsequent Project Approvals. Touro and City acknowledge and agree that Touro intends to submit applications for Subsequent Project Approvals, including both Subsequent Ministerial Approvals and Subsequent Discretionary Approvals. In connection with any Subsequent Project Approval, the City shall exercise its discretion in accordance with Applicable Law, the Project Approvals and the terms of this Agreement, including the reservations of authority set forth in Section 4.04. Touro acknowledges that City's approval of and entering into this Agreement does not constitute City's approval of Touro's applications for Subsequent Project Approvals.

A. 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 applications for road construction permits or authorizations; grading and excavation permits; demolition permits; building permits, including electrical, plumbing, mechanical, Title 24 Electrical, and Title 24 Handicap permits or approvals; certificates of occupancy; encroachment permits; and other similar permits required for the development and operation of the Project.

B. All other Subsequent Project Approvals, including amendments of the Project Approvals; site development plan approvals, improvement agreements, architectural review permits, use permits, lot line adjustments, subdivision or parcel maps, preliminary and final development plans, rezonings and 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*").

### Section 9.02. Processing Applications for Subsequent Project Approvals.

A. Touro acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Touro submits complete applications on a timely basis. Touro shall use diligent, good faith efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Touro's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Touro and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

B. Upon submission by Touro of all appropriate applications and processing fees for any pending Subsequent Project Approval, City shall, to the full extent allowed by law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Touro's currently pending Subsequent Project Approval applications including: (i) providing at Touro's expense and subject to Touro's request and prior approval,

reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Project Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

C. With the Existing Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Applications for Subsequent Ministerial Approvals that are consistent with this Agreement and the Existing Project Approvals shall be processed and considered in a manner consistent with the vested rights granted by this Agreement and shall be deemed to be tools to implement those final policy decisions, and shall be approved by City so long as they are consistent with this Agreement and the Existing Project Approvals.

D. Nothing herein shall limit the ability of City to require the necessary reports, analysis or studies to assist in determining that the requested Subsequent Ministerial Approval is consistent with this Agreement and the Existing Project Approvals. If the City reasonably determines that an application for a Subsequent Ministerial Approval is not consistent with this Agreement or the Existing 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. Touro shall then either modify the application to conform to this Agreement and the Existing Project Approvals, as the case may be, or the City shall process the application as an application for a Subsequent Discretionary Approval.

Section 9.03. Other Agency Subsequent Project Approvals; Authority of City.

A. City shall cooperate with Touro, to the extent appropriate and as permitted by law, in Touro's efforts to obtain, as may be required, Other Agency Subsequent Project Approvals.

B. Notwithstanding the issuance to Touro of Other Agency Subsequent Project Approvals, Touro agrees that City shall have the right to review, modify, approve and/or reject any and all submissions subject to the Other Agency Subsequent Project Approvals which, but for the authority of the other governmental or quasi-governmental entities issuing the Other Agency Subsequent Project Approvals, would otherwise require City approval. By way of example, the Office of Statewide Health Planning and Development ("**OSHPD**") regulates the State of California's healthcare infrastructure, including the safety of buildings used in providing healthcare. If it is determined that the Project is subject to compliance with guidelines promulgated by OSHPD, Touro, prior to submitting any materials or applications to OSHPD, shall provide such materials and applications to City for review and approval. Touro agrees that City may review, modify, approve and/or reject any such materials or applications to ensure consistency with this Agreement and the Project Approvals and Touro shall

incorporate any and all changes required by City prior to submitting such materials and applications to OSHPD for review and/or approval.

**Section 9.04. Vallejo Sanitation and Flood Control District.** VSFCD provides sanitary sewer and flood control services for Mare Island. Touro, at its sole expense, shall work cooperatively with VSFCD to provide sanitary and flood control services needed in whole or in part to serve the Project or to mitigate the impacts thereof and to pay its fair share of the costs of such improvements.

**Section 9.05. Utilities.** Island Energy is a public-private utility company providing electricity and natural gas services for Mare Island. Touro shall, at its sole expense, work with Island Energy to provide all electricity and natural gas utilities needed to serve the Project.

**Section 9.06. Implementation of Necessary Mitigation Measures.** The City has adopted certain mitigation measures and approved a MMRP in connection with the Mitigated Negative Declaration. Touro shall, at its sole cost and expense, comply with all MMRP requirements applicable to the Project, the Demolition Activities and Infrastructure Improvements.

**Section 9.07. Cooperation in the Event of Legal Challenge.** City and Touro, at Touro's sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Existing Project Approvals or any Subsequent Project Approvals and City shall, upon request of Touro, appear in the action and defend its decision, except that City shall not be required to be an advocate for Touro. To the extent that Touro determines to contest or defend such litigation challenges, Touro shall reimburse City, within ten (10) 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 Touro's counsel; or (b) retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget, and present such litigation budget to Touro prior to incurring obligations to pay legal fees in excess of Thirty Thousand Dollars (\$30,000). If Touro defends any such legal challenge, Touro shall indemnify, defend, and hold harmless City and its officials and employees from and against any Claims assessed or awarded against City by way of judgment, settlement, or stipulation. Nothing herein shall authorize Touro to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement, any Existing Project Approvals or any Subsequent Project Approvals, 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.

**Section 9.08. Acknowledgement of Principal Developer.** Touro acknowledges that, pursuant to section 8.3 of that certain Acquisition Agreement entered into between City and LMI, dated December 21, 1999, City has designated LMI as the principal

developer of Mare Island, and that as principal developer, LMI, in cooperation with City, has been tasked with "coordinating all aspects of the development, operation and maintenance of Mare Island on an island-wide basis; provided that such coordination shall not include the right to participate in the negotiation of agreements between City and any other party." Touro agrees to coordinate with City to keep LMI reasonably informed of the status and nature of the development of the Project in a manner consistent with LMI's rights as principal developer.

## ARTICLE 10. ASSIGNMENT, TRANSFER AND NOTICE

### Section 10.01. Assignment.

A. Because of the necessity to coordinate development of the entirety of the Property pursuant to the Specific Plan, particularly with respect to the provision of on- and off-site public improvements and public services, certain restrictions on the right of Touro to assign or transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to ensure the achievement of the goals, objectives and public benefits of the Specific Plan and this Agreement. Touro agrees to and accepts the restrictions set forth in this Section 10.01 as reasonable and as a material inducement to City to enter into this Agreement.

B. Notwithstanding any other provision of this Agreement to the contrary, City approval of a transfer or assignment of this Agreement or any interest therein shall not be required in connection with: (i) any transfer or assignment of this Agreement or any interest therein to an entity or entities in which Touro, Touro University or Touro's Managing Member retains a beneficial economic interest and in which Touro, Touro University or Touro's Managing Member retains effective management and control of the transferee entity or entities, subject only to major events requiring the consent or approval of the other owners of such entity ("*Affiliate of Touro*") and in connection with which such Affiliate of Touro assumes the rights and obligations of Touro under this Agreement pursuant to an assignment and assumption agreement in a form reasonable acceptable to City's legal counsel; (ii) any assignment for financing purposes (subject to Touro providing copies of all relevant loan documentation to City prior to loan closing), including the grant of a deed of trust, to secure the funds necessary for construction and permanent financing of the Project; (iii) a transfer which combined with any and all previous or simultaneous transfers represents less than fifty percent (50%) of the membership, equity or beneficial interest of Touro, provided such transfer does not cause a material change in the rights to manage and control Touro; or (iv) a transfer of an ownership interest in the Project to the University of California, San Francisco, or such other entity or entities managing and operating the Project which results in the transferee acquiring an ownership interest in the Project, provided such transfer does not include a change in the right to manage or control Touro. Touro shall give at least thirty (30) days prior written notice to City of any proposed assignment or transfer described in this Section 10.01.B. In addition, City shall be entitled to review such documentation as may be reasonably required by the City Manager or his/her designee to assess the nature and scope of such proposed assignment or transfer, but such



review shall in no event be longer than twenty (20) days following receipt of the requested information.

C. Other than as set forth in subsection 10.01.B. above, until City issues the Certificate of Completion (as such term is defined in the Acquisition Agreement), Touro may not sell, transfer, ground lease or assign the Property in whole or in part to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "*Assignee*") without the prior written consent of City. City's consent shall not be unreasonably withheld, conditioned or delayed; provided, however, City shall be under no obligation to consent to any proposed assignment if Touro is in Default of this Agreement or the Acquisition Agreement, or has received notice of breach under Section 11.01 below and is not diligently curing any such breach. Touro shall give notice to City of Touro's request for such consent hereunder. Touro's notice shall include (i) information concerning the proposed Assignee, including the Assignee's bonding capacity and specific development experience, financial capabilities and knowledge concerning the Project, and (ii) a certification from Touro that Touro has provided copies of all Project Approvals to the proposed Assignee. City shall have twenty (20) days following receipt of such notice to request additional information regarding the proposed assignment and the Assignee's experience and financial capacity as is reasonably necessary to evaluate the proposed assignment and Assignee. City shall have until the later of thirty (30) calendar days after Touro gives its initial request or ten (10) days after receipt of all additional requested information, if any, to review and either approve or reject the proposed assignment and Assignee. City may refuse to give its consent if, in light of the proposed Assignee's reputation, experience 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. The parties agree that it shall not be unreasonable for City to disapprove a proposed assignment and Assignee based on: (i) Assignee's insufficient understanding of the Project Approvals and Transaction Documents; (ii) Assignee having bonding capacity less than that of Touro; (iii) Assignee having insufficient financial capacity to complete the Project and, to the extent not already complete, the Demolition Activities and Infrastructure Improvements; and/or (iv) Assignee lacking the development qualifications and experience to reasonably ensure successful completion of the Project. If City rejects the proposed assignment and Assignee, City shall provide notice of such rejection within the time period set forth above, and in its notice of rejection, City shall detail all reasons supporting rejection of the proposed assignment and Assignee based on the standards set forth in this Section 10.01.C.

D. Any such Assignee shall succeed to the rights, duties and obligations of Touro only with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned, and Touro shall continue to be obligated under this Agreement and the Acquisition Agreement with respect to all portions of the Property retained by Touro, and with respect to the dedication and installation of all Infrastructure Improvements to be provided by Touro, pursuant to the Project Approvals and this Agreement.

E. The sale, transfer, lease or assignment of any right or interest under this Agreement shall be made only together with the sale, transfer, ground lease or assignment of all or a part of the Property and only with a concurrent assignment and assumption of Touro's rights and obligations under the Acquisition Agreement. Prior to entering into any agreement for such sale, transfer, ground lease or assignment, (i) Touro shall notify City in writing of the proposed sale, transfer or ground lease; and (ii) Touro and Assignee shall provide a written assignment and assumption agreement in form reasonably acceptable to the City Attorney pursuant to which Assignee shall assume and succeed to the rights, duties and obligations of Touro with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned.

F. Subject to City's written consent as provided in subsection Section 10.01.C., City, upon request of Touro or Assignee, and following compliance with the notification provisions above, shall provide Assignee with a certificate of compliance, stating that this Agreement remains valid and in full force and effect and is binding upon City, Touro and the Assignee as of the last annual review pursuant to the provisions of Section 6.09, except that if City knows of any non-compliance, City shall not be required to issue a certificate of compliance.

Section 10.02. Conditional Release of Transferring Party. Notwithstanding any sale, transfer, lease or assignment of all or a portion of the Property, including to any affiliated party, Touro shall continue to be obligated under this Agreement as to all or the portion of the Property so transferred unless City is reasonably satisfied that the Assignee is fully able to comply with Touro's obligations under this Agreement (both financially and otherwise) and Touro is given a release in writing. Touro shall provide to City all information reasonably necessary for City to determine the financial and other capabilities of Assignee. Provided Touro satisfies the above condition and all of the following conditions, City shall, without delay, execute and provide a full release of all of Touro's obligations under this Agreement:

A. A showing by Touro that Touro no longer has a legal or equitable interest in the portion of the Property for which a release is requested.

B. Touro is not then in Default under this Agreement and has received no notice of breach pursuant to Section 11.01.

C. Touro has provided City with notice and the fully executed assignment and assumption agreement.

D. Assignee provides City with security equivalent to any security previously provided by Touro to secure performance of its obligations hereunder, including under the Public Improvements Construction Agreement.

## ARTICLE 11. DEFAULT; REMEDIES; TERMINATION

**Section 11.01. Breach; Default.** Subject to extensions of time under Section 11.06 or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Agreement shall constitute a breach of this Agreement. In the event of alleged breach of this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have ten (10) days to cure the breach. If the breach is of a type that cannot be cured within thirty (30) days, the breaching Party shall not be in Default (defined below) provided the breaching Party (i) commences to cure the breach within such 30-day period, (ii) notifies the non-breaching Party within the initial 30-day period of the time it will take to cure such breach which shall be a reasonable period under the circumstances, and (iii) at all times diligently and continuously prosecutes such cure to completion. If the breaching Party has not cured the breach or default within the time period specified above, such Party shall be in default ("*Default*"), and the non-breaching Party, at its option, may terminate the Agreement, institute legal proceedings pursuant to this Agreement and shall have such remedies as are set forth in Section 11.05 below.

**Section 11.02. Termination of Acquisition Agreement.** Upon any termination of the Acquisition Agreement as provided in clauses (i) through (iv) of Section 404 of the Acquisition Agreement, this Agreement and other Transaction Documents shall also automatically terminate and be of no further force or effect and, except as otherwise provided in the Transaction Documents with respect to those obligations which survive termination thereof, Touro shall have no obligation to perform or fund the performance of the Demolition Activities or the construction of the Infrastructure Improvements or the Project.

**Section 11.03. Acquisition Agreement and/or Public Improvements Construction Agreement Default.** City and Touro acknowledge and agree that a Default hereunder shall also constitute a default under the Acquisition Agreement and Public Improvements Construction Agreement and that, upon such default, the non-defaulting party shall have all remedies available to it under the terms of the Acquisition Agreement and Public Improvements Construction Agreement, including the right to terminate the Acquisition Agreement. City and Touro further acknowledge and agree that a default under the Acquisition Agreement and Public Improvements Construction Agreement following notice and expiration of applicable cure periods shall constitute a Default under this Agreement, and that, upon such Default, the non-defaulting party shall have all remedies available to it under the terms of this Agreement, including the right, without further notice or opportunity to cure, to terminate this Agreement

**Section 11.04. Withholding of Permits.** In the event of a Default by Touro, City shall have the right to refuse to issue any Subsequent Project Approvals, permits or other approvals to which Touro would otherwise have been entitled pursuant to this

Agreement. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

Section 11.05. Remedies.

A. In the event of a Default by City or Touro, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868 and the Vallejo Municipal Code and regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and the Vallejo Municipal Code and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, either Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 11.08 hereof.

B. City and Touro agree that in the event of Default by City, the Parties intend that the primary remedy for Touro shall be specific performance of this Agreement. A claim by Touro for actual monetary damages against City may only be considered if specific performance is not granted by the Court. In no event shall Touro or City be entitled to any consequential punitive or special damages. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Touro in the future, and if Touro then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Touro to satisfy such condition.

C. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement except as limited by subSection 11.05.B. above. Any such legal action shall be brought in the Superior Court for Solano County, California.

Section 11.06. Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of terrorism; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other Party; or acts or failures to act of the Navy or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of two (2) years), if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the

cause. The Parties agree that the commencement of any litigation concerning this Agreement, the Ordinance approving this Agreement or any of the Existing Project Approvals shall constitute cause for an extension of time for performance of obligations under this Agreement up to a maximum of two (2) years, and that the Initial Term of this Agreement shall be automatically extended for the period such litigation is pending (subject, however, to the 2 year maximum extension). Touro acknowledges that adverse changes in economic conditions, either of Touro specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing or other lack of funding to complete the work of on-site and off-site improvements shall not constitute grounds of enforced delay pursuant to this Section 11.06. Touro expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

Section 11.07. Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Touro shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 11.07 shall in any way be interpreted as requiring that Touro and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Touro unless expressly agreed to by the parties to such meetings.

Section 11.08. Surviving Provisions. In the event this Agreement is terminated, neither party shall have any further rights or obligations hereunder, except for those obligations of Touro set forth in Section 4.15.B. (Potential Reimbursements to Touro), Section 5.02 (Revenue Neutral Project), Section 5.03 (Community Facilities Districts), Section 6.04 (Prevailing Wage Requirements), Section 9.07 (Cooperation in the Event of Legal Challenge), Section 12.01 (Indemnity and Hold Harmless), and those obligations of City set forth in Sections Section 4.15.A. (City's Good Faith in Processing), Section 4.15.B. (Potential Reimbursements from Touro), Section 4.15.C. (Relocation and Realignment of Public Roads), Section 4.15.D. (Acquisition of Land Owned by Third Parties), Section 4.15.E (City Commitment to Grant or Cooperate to Cause Others to Grant Easements to Touro), Section 4.15.F (Lease in Furtherance of Conveyance), Section 4.15.G (Environmental Remediation of U.S. Government Property), Section 4.15.H (Acceptance of Public Roads), Section 4.15.I. (Maintenance of Public Roads), Section 5.05.A., Section 5.05.B, Section 5.05.C. and Section 5.05.D.

## **ARTICLE 12. INDEMNITY AND INSURANCE**

Section 12.01. Indemnity and Hold Harmless. Touro shall indemnify and hold City and its elected and appointed officials, officers, agents, employees, contractors and representatives (collectively, "*City Parties*") harmless from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development and construction of the Project by or on behalf of Touro, and/or from any acts or omissions of Touro under this Agreement, whether such acts or omissions were by Touro or any of Touro's contractors,

subcontractors, agents or employees, except to the extent such Claims arise from the active negligence or willful misconduct of City or City Parties, and excepting suits or actions brought by Touro for City's Default under this Agreement.

Section 12.02. Insurance Requirements.

A. Touro shall procure and maintain, or cause its contractor(s) to procure and maintain, for the duration of this Agreement insurance policies set forth in subsection B. below. Such insurance shall not be construed to relieve Touro or its contractor(s) of any liability in excess of such coverages.

B. The required insurance coverages shall include:

(1) Commercial General Liability insurance at least as broad as Insurance Services Office Commercial General Liability form CG 0001 ("occurrence" form).

(2) Automobile liability insurance at least as broad as Insurance Services Office form number CA 0001 (Ed. 12/92) covering Automobile Liability, code 1 (any auto).

(3) Workers' compensation insurance as required by the State of California and employer's liability insurance.

C. The limits of the required insurance shall be no less than:

(1) General Liability: \$5,000,000 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 Agreement 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) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

D. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and City Parties; or Touro shall cause its contractor to provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

(1) Each policy shall include City and City Parties as additional insureds with respect to the liability, including defense costs, arising out of (a) work or operations by or on behalf of Touro or its contractor(s) including materials, parts or equipment furnished in connection with such work or operations, and (b) automobiles owned, leased, hired or borrowed by or on behalf of Touro or its contractor(s). The coverage shall contain no special limitations on the scope of protection afforded to the City and City Parties.

(2) For any claims related to this Agreement, the insurance coverage shall be primary insurance as respects the City and City Parties. Any insurance, self-insurance or joint self-insurance maintained by the City and City Parties shall be excess of the insurance required hereunder 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 and City Parties.

(4) The insurance required to be maintained by Touro or its contractor(s) hereunder shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this Section 12.02 shall be endorsed to state that coverage shall not be cancelled by any party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City or ten (10) days' prior written notice by certified mail, return receipt requested for the non-payment of premium.

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

G. Touro shall furnish City with an original certificate of insurance and amendatory endorsements effecting coverage required by this Section 12.02. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements stated in this Section. The certificate of insurance and all endorsements must be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are required to be received and approved by the City before any work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting coverage required by these specifications at any time. All insurance documents are to be sent to:

City of Vallejo  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: Risk Manager  
Phone: (707) 648-4485

Fax:

With a copy to:

City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: Economic Development Program Manager  
Phone: (707) 649-5452  
Fax: (707) 648-4499

H. Touro shall include or cause its contractor to include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

### ARTICLE 13. MISCELLANEOUS PROVISIONS

#### Section 13.01. Incorporation of Recitals, Exhibits and Introductory Paragraph.

The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 13.02. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, the party adversely affected may (in its sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 13.03. Construction. Each reference in this Agreement to this Agreement or any of the Existing Project Approvals or Subsequent Ministerial or Discretionary Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Ministerial or Discretionary Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for both City and Touro, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "shall," "will," or "agrees" are mandatory, and "may" is



permissive; (iv) "or" is not exclusive; (v) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation," and (vi) "days" means calendar days unless specifically provided otherwise.

**Section 13.04. Covenants Running with the Land.** All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Property or Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Property and is binding upon Touro and each successor or assign of Touro during its development of such Property or portion thereof.

**Section 13.05. Notices.** Any notice or communication required hereunder between City or Touro must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. 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. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

<b>CITY:</b>	City of Vallejo P.O. Box 3068 555 Santa Clara Street Vallejo, CA 94590 Attn: Economic Development Program Manager Phone: (707) 649-5452 Fax: (707) 648-4499
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With copies to: City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: City Attorney  
Phone: (707) 648-4456  
Fax: (707) 648-4687

City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: City Manager  
Phone: (707) 648-4576  
Fax: (707) 648-4426

And a copy to: Gerald J. Ramiza, Esq.  
McDonough Holland & Allen PC  
1901 Harrison Street, 9th Floor  
Oakland, CA 94612-3501  
Phone: (510) 273-8780  
Fax: (510) 839-9104

TOURO: Touro Mare Island, LLC  
2121 Palomar Airport Road, Suite 206  
Carlsbad, CA 92011  
Attn: Bruce Lang, CEO  
Phone: (760) 431-8005

With copies to: Touro University – California  
1310 Johnson Lane  
Vallejo, CA 94592  
Attn: Richard A. Hassel,  
Vice President, Administration  
Phone: (707) 638-5200  
Fax: (707) 638-5255

And a copy to: Nicholas Roscha, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, CA 94520  
Phone: (925) 602-1400  
Fax: (925) 825-0143

and: Franklyn H. Snitow, Esq.  
Snitow Kanfer Holtzer & Millus, LLP  
575 Lexington Avenue, 14<sup>th</sup> Floor  
New York, NY 10022  
Phone: (212) 317-8500  
Fax: (212) 317-1308

Section 13.06. Entire Agreement, Counterparts and Exhibits. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement, together with the attached Exhibits, constitutes the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof.

Section 13.07. Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Solano.

Section 13.08. No Joint Venture or Partnership. It is specifically understood and agreed to by and between the parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Project Approvals or Subsequent Project Approvals; (iii) Touro shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Touro under this Agreement, the Existing Project Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Touro hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Touro and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Touro.

Section 13.09. Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Touro.

Section 13.10. California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Touro and City as of the day and year first above written.

[SIGNATURES ON FOLLOWING PAGE]

**CITY:**

City of Vallejo, a municipal corporation

By: \_\_\_\_\_  
Joseph M. Tanner, City Manager

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Frederick G. Soley, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Mary Ellsworth, City Clerk

**APPROVED AS TO INSURANCE  
REQUIREMENTS**

By: \_\_\_\_\_  
Harry B. Maurer, Risk Manager

**TOURO:**

Touro Mare Island, LLC, a California limited liability company

By: Touro College, a New York non-profit education corporation

Its: Managing Member

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

Print Name: \_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

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

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

**EXHIBIT A**

Map of Property

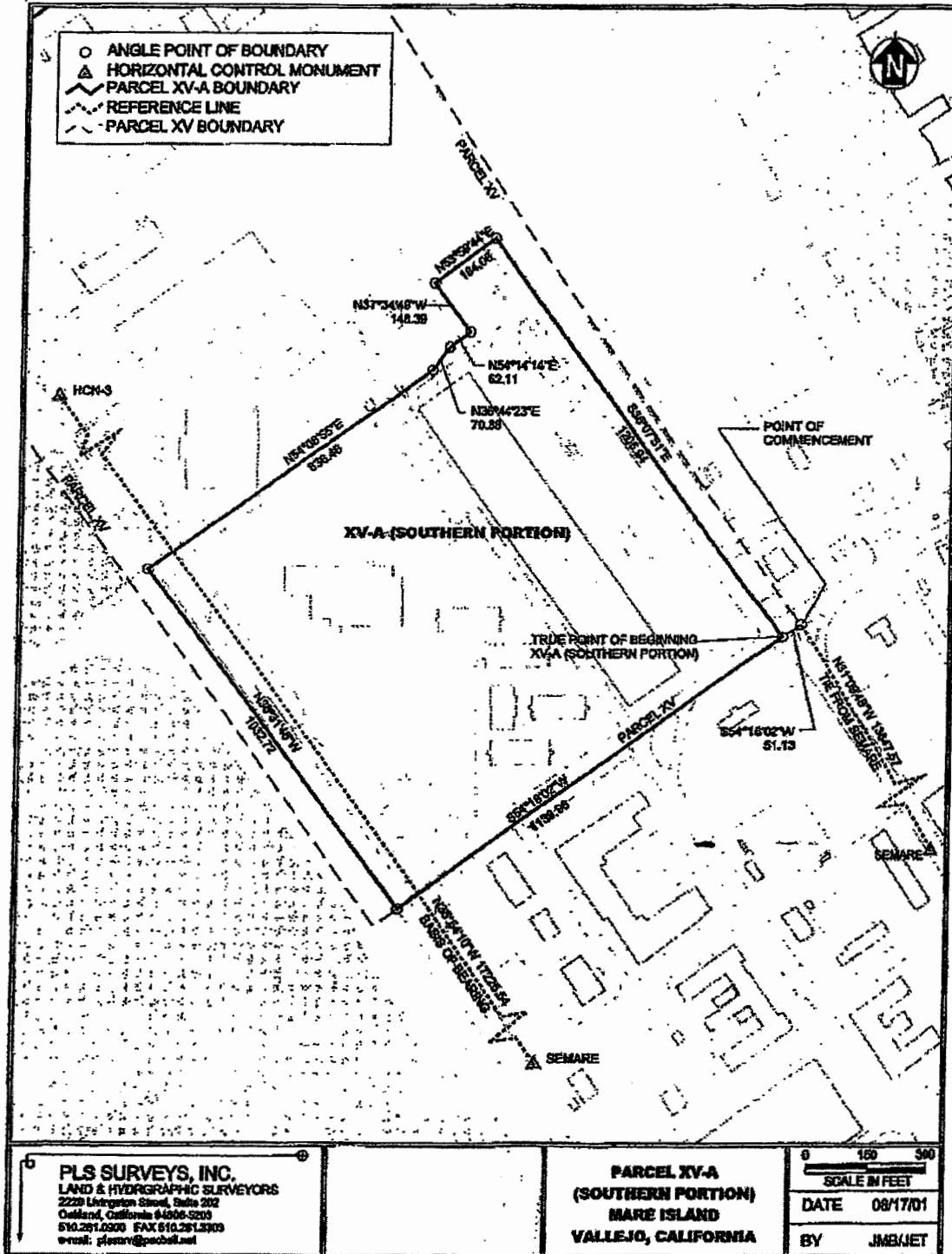


Exhibit A

1035907v11B 05137/0079

**EXHIBIT B**

Legal Description of Property

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

ALL THAT PROPERTY AS SHOWN AS "PARCEL TWO:XV-A (SOUTHERN PORTION)" IN THAT CERTAIN QUITCLAIM DEED FROM THE UNITED STATES OF AMERICA TO THE CITY OF VALLEJO, RECORDED ON OCTOBER 17, 2001, RECORDER'S SERIES NO. 2001-120695, AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"A PARCEL OF LAND, BEING A PORTION OF THE "RECORD OF SURVEY SHOWING PARCEL XV FOR ECONOMIC DEVELOPMENT CONVEYANCE FOR BENEFIT OF THE CITY OF VALLEJO" DATED JULY 6, 2001, AND RECORDED ON SEPTEMBER 24, 2001, RECORDERS SERIES NO. 2001-109704, IN BOOK 24 OF SURVEYS PAGES 60 AND 61, SOLANO COUNTY RECORDS, REFERRED TO AS "PARCEL XV", DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATE ON THE FORMER MARE ISLAND NAVAL SHIPYARD, CITY OF VALLEJO, COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING A PORTION OF THE LAND SHOWN WITHIN THE BOUNDARY OF THAT PARCEL SHOWN AND SO DELINATED ON THE MAP FILED FOR RECORD ON NOVEMBER 14, 1996 IN BOOK 21 OF LAND SURVEY MAPS, AT PAGES 94 TO 98 INCLUSIVE, COUNTY OF SOLANO OFFICIAL RECORDS, SAID MAP TITLED "RECORD OF SURVEY FOR LANDS OWNED BY THE UNITED STATES OF AMERICA PER THE 1938 UNITED STATES SUPREME COURT DECISION "UNITED STATES VERSUS O'DONNELL 303 U.S. 501"" AND FURTHER DESCRIBED AS "RETRACEMENT OF TRACT 38 OF THE JOY SURVEY TITLED "FRACTIONAL TOWNSHIP 3 NORTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, CALIFORNIA" APPROVED BY THE U.S. SURVEY GENERAL'S OFFICE OCTOBER 24, 1923, ACCEPTED NOVEMBER 8, 1923 AND FILED WITH THE BUREAU OF LAND MANAGEMENT", SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LYING N31°09'48"W, 13,647.57 FEET FROM A STANDARD USC&GS BRASS DISC STAMPED "MARE ID SE 1852 1932" LOCATED ON THE HIGHEST AND MOST EASTERLY OF THE TWO PEAKS ON MARE ISLAND AND REFERRED TO AS "SEMARE" WITH NAD 83 ZONE II COORDINATES OF N1789849.0637, E6488254.0248, AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN BOOK 24 R.S. AT PAGES 12 THROUGH 13 INCLUSIVE, SOLANO COUNTY RECORDS, FROM WHICH A 2 1/2" ALUMINUM DISK STAMPED "MARE ISLAND CONTROL POINT, MCGILLMARTINSELF, INC. ORINDA, CA., 3" AND REFERRED TO AS "HCN3" ON SAID MAP BEARS N35°54'10"W, 17,225.54 FEET; SAID POINT OF COMMENCEMENT ALSO BEING THE EASTERMOST POINT OF SAID "PARCEL XV"; THENCE FROM SAID POINT OF COMMENCEMENT ALONG THE SOUTHERN LINE OF SAID "PARCEL XV" S54°18'02"W, 51.13 FEET TO THE TRUE POINT OF BEGINNING;

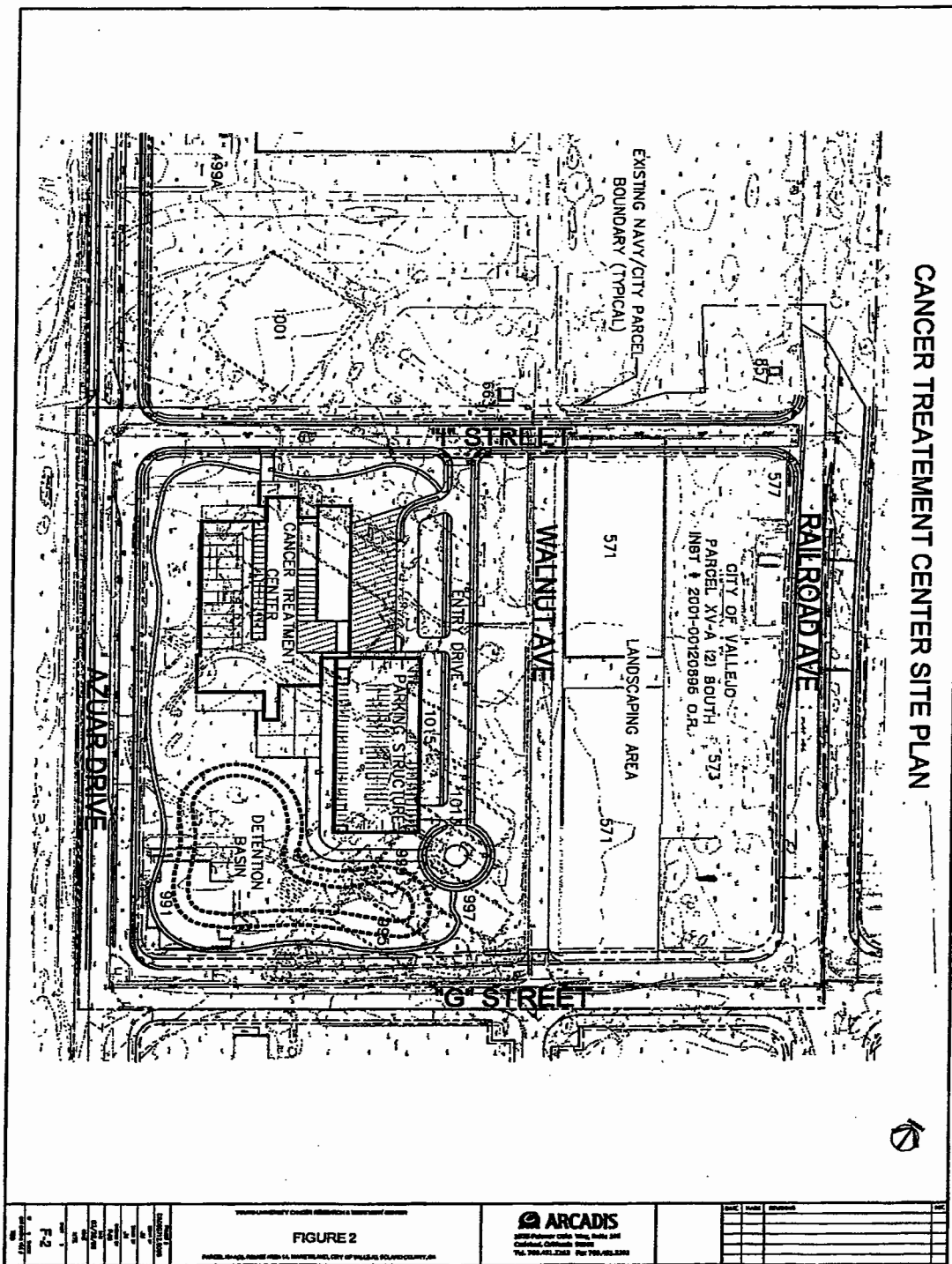
Exhibit B

1035907v11B 05137/0079

- 1) THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUING ALONG SAID SOUTHERN LINE S54°18'02"W, 1,138.98 FEET;
- 2) THENCE LEAVING SAID SOUTHERN LINE N36°31'46"W, 1,032.72 FEET;
- 3) THENCE N54°06'55"E, 836.46 FEET;
- 4) THENCE N36°44'23"E, 70.38 FEET;
- 5) THENCE N54°14'14"E, 62.11 FEET;
- 6) THENCE N37°34'49"W, 148.39 FEET;
- 7) THENCE N53°59'44"E, 184.06 FEET;
- 8) THENCE S36°07'51"E, 1,205.94 FEET TO THE TRUE POINT OF BEGINNING

**EXHIBIT C**

**Project Site Plan**



CANCER TREATMENT CENTER SITE PLAN

<p>FIGURE 2</p>		<p><b>ARCADIS</b>                  2000 Parkway Center, Suite 100                  Concord, CA 94520                  TEL: 707.421.2200 FAX: 707.421.2202</p>	<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>REVISION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	REVISION									
NO.	DATE			REVISION											
<p>DATE: 01/11/07</p> <p>SCALE: AS SHOWN</p> <p>PROJECT: CANCER TREATMENT CENTER</p> <p>CLIENT: CITY OF VALLEJO</p>		<p>DATE: 01/11/07</p> <p>SCALE: AS SHOWN</p> <p>PROJECT: CANCER TREATMENT CENTER</p> <p>CLIENT: CITY OF VALLEJO</p>													



## EXHIBIT D

### Project Infrastructure and Demolition Schedule

Touro Cancer Treatment Research Facility

Project 1  
Parcel XIV-(A)2

ARCADIS, 2008

Project 1				
Line Item	Construction Start	Duration	Construction End	Comments
Azuar Drive Full Width Improvements including underground utilities	First Quarter, 2009	11 months	4th Quarter, 2009	Does not include potential IR-17 Workplan remediation
Hwy 37 Interchange Improvements	3rd Quarter, 2009	10 months	2nd Quarter, 2010	Includes City and Caltrans inspections, etc.
Railroad Avenue Permanent Improvements ('G' Street to 'I' Street only)	3rd Quarter, 2009	3 months	3rd Quarter, 2009	
'I' Street Full Width Improvements	4th Quarter, 2009	4 months	1st Quarter, 2010	
'G' Street Improvements	First Quarter, 2010	4 months	2nd Quarter, 2010	
Interim Railroad Improvements (Two Way Traffic)	First Quarter, 2010	4 months	2nd Quarter, 2010	

Notes: 1) 'Private' Improvements for each Parcel are not included in this schedule. These include storm drain, sewer, water and dry utilities (gas, electric, cable TV, data comm.) laterals to the property line. 2) 'Onsite' Improvements are packaged with the Building construction package, separately. Demolition is not included, 3) Walnut Avenue will be closed only after Interim Railroad Avenue improvements have been completed.

Project 1 Infrastructure Construction Schedule 5 20 08.xlsx

5/20/2008

Exhibit D

1035907v11B 05137/0079

**Project 1 Demolition Schedule**  
**Touro University Proposed Cancer Research Center - North Mare Island**  
 Prepared by Arcadis-US, Inc.  
 May 14, 2008

<b>Project 1 Demolition Activity</b>	<b>Start Date</b>	<b>End Date</b>
<b>Contract Negotiation &amp; Mobilization</b>	7/15/2008	8/22/2008
<b>Project 1 Demolition</b>	8/23/2008	8/15/2009
<b>Project 1 Onsite Demolition</b>		
Project 1 West of Walnut Ave. (Includes Buildings 897, 1013, 1015)	8/23/2008	12/15/2008
Survey Pile Caps (Pre & Post Cut)	1/15/2009	6/15/2009
Remainder of the Project 1 On-Site Buildings (Includes Buildings 571, 573, 991, 995, 997, 999)	1/15/2009	6/15/2009
Walnut Ave within Project 1 Parcel A Demolition	1/15/2009	6/15/2009
<b>Project 1 Offsite Demolition</b>		
Prepare Staging/Recycling Area, east of existing Azuar Ave.	1/15/2009	6/15/2009
Azuar Avenue Demolition (Includes Building 617 & 621, 955, 1017, & 1025)	1/15/2009	6/15/2009
Railroad Ave, "I" St Demolition	1/15/2009	6/15/2009
Highway 37 Interchange Improvements Demolition (Includes Buildings 755, 959, & 989)	1/15/2009	6/15/2009

*Dates for individual building demolition are undetermined at this time. Timing for individual building demolition will be predicated by contractor submittals & construction scheduling.*

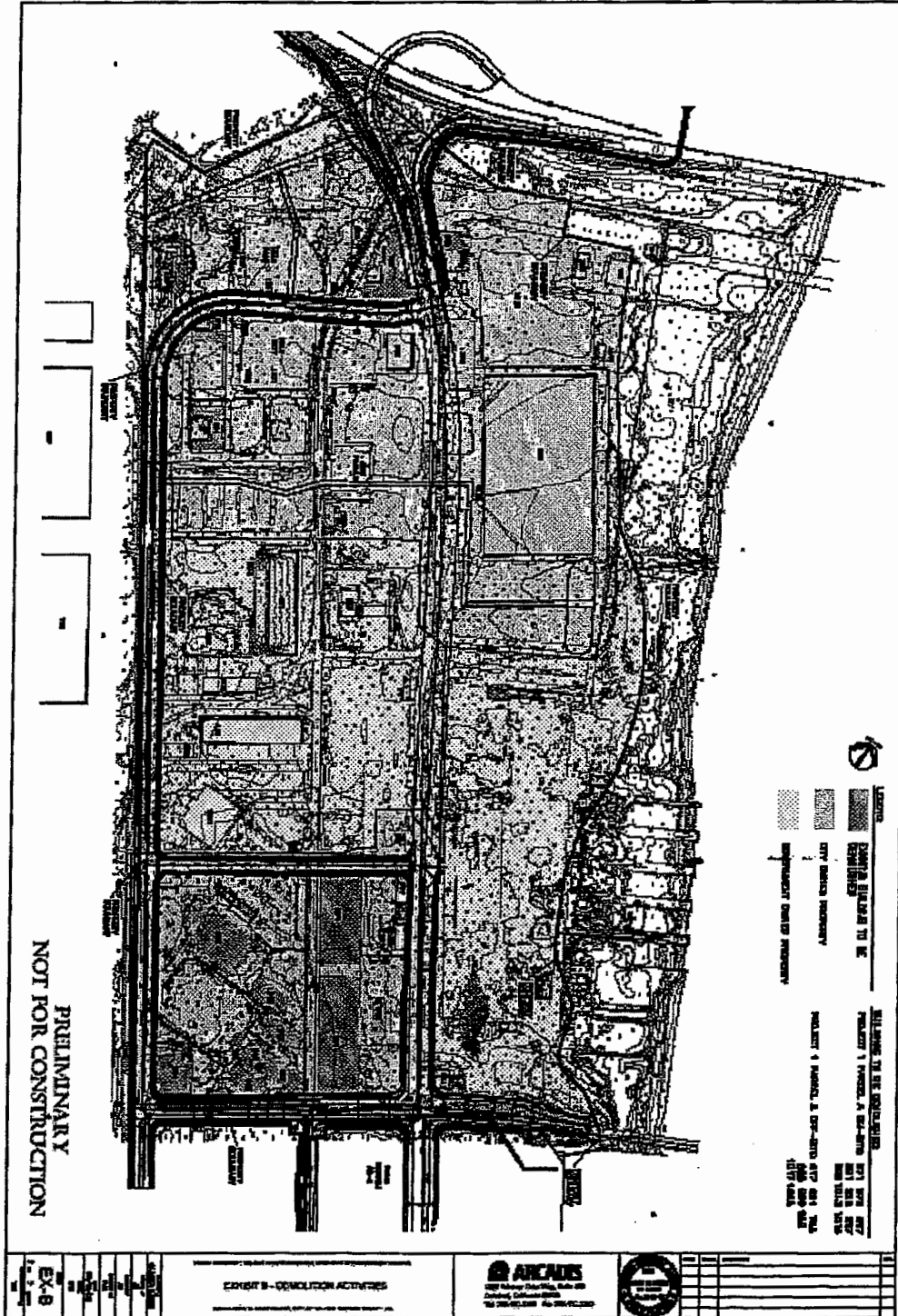
**EXHIBIT E**

**Infrastructure Improvements**

	<b>North Island Backbone Infrastructure Improvements (Preliminary Cost Estimate)</b>	<b>Ordinary Frontage Improvements (Preliminary Cost Estimate)</b>
Azuar Avenue North of G Street to intersection of Railroad Avenue	\$9,295,514	\$833,701
Railroad Avenue - Parcel XV- A(2) Improvements	\$4,135,729	\$165,572
Existing Railroad Avenue - Interim Improvements	\$233,323	
I Street - Intersection with Railroad Avenue to intersection with Azuar Avenue	\$1,736,707	\$242,114
Offsite Storm Drain to Mare Island Strait	\$743,457	
Route 37 Interchange Improvements	\$4,500,000	
Project 1 Parcel A - G Street R.O.W. Improvements		\$137,322
	\$20,644,730	\$1,378,709

**EXHIBIT F**

Demolition Work



PRELIMINARY  
NOT FOR CONSTRUCTION

Exhibit F

**EXHIBIT G**

List of Taxes, Assessments, Fees and Exactions

**CITY OF VALLEJO**

**Fiscal Year 2007-2008**

**Fee Schedule**

APPROVED BY:   
Robert V. Stout  
Finance Director

**Effective September 1, 2007**

**City of Vallejo Fee Schedule  
Table of Contents  
Effective September 1, 2007**

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Mechanical Permits	18
Plumbing Permits	20
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- Attachments 1 to 6:**  
Attachment 1 - Fire Facilities Impact Mitigation Fee Map of Area  
Attachment 2 - Northgate Area Fee District 94-1 Map of Area  
Attachment 3 - Northgate Area Benefit District 93-1 Map of Area  
Attachment 4 - State "SMIP" Fee Code Section and Fee  
Attachment 5 - Building Permit Valuation Table  
Attachment 6 - Sky Valley Improvement Benefit District 95-1 Map of Area

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification	Fee	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments
Administrative	1388	Records Research				
	2529	Returned Check Fee			\$37.00	current hourly staff rate
		Copies of Public Records				
	2584	Copy of copier, electronic, thermal, Xerox, etc.	per page/1st 10		0.40	
	2585	Copy of copier, electronic, thermal, Xerox, etc.	Each additional pg		0.20	
	2586	Copy of aerial, Maps and drawings	1st print		3.20	
	2587	Copy of aerial, Maps and drawings	Each additional print		1.80	
	2588	Print from microfilm	1st print		8.50	
	2589	Print from microfilm	Each additional print		1.00	
	2590	Extract of document & certification	per page		9.80	
	2591	Certifying existing documents	per document		8.50	
	2592	Set up for lasering & monitoring of tapes (deposit required)	per hr		1.00	1 hr minimum
	2593	Copies of audio tapes	each tape		10.00	
	2594	Active record searches	per hour			Fee based on current actual hourly rates
	2595	Search for inactive records in storage (deposit required)	per hr			1/2 hr minimum-Fee based on current actual hourly rates
	2596	Preparing verbal transcription from tapes (deposit required)	per hr			1/2 hr minimum-Fee based on current actual hourly rates
	2597	Documents in stock & printed	each page		0.20	
	2598	Documents in stock & printed	1st 10 pgs & each additional page with binder		0.10	
	2599	Vallejo Municipal Code				Fee based on current retail sales prices & subject to change without notice.

FY 2007-2008 City of Vallejo - Fee Schedule

Department	Classification	Fees	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Administrative</b>						
2600	Administrative Manual		with binder			Fee based on current retail sales prices & subject to change without notice.
2601	Uniform Codes: Building		Per Code			Fee based on current retail sales prices & subject to change without notice.
2602	Uniform Codes: Electrical		Per Code			Fee based on current retail sales prices & subject to change without notice.
2603	Uniform Codes: Fire Prevention		Per Code			Fee based on current retail sales prices & subject to change without notice.
2604	Uniform Codes: Housing		Per Code			Fee based on current retail sales prices & subject to change without notice.
2605	Uniform Codes: Mechanical		Per Code			Fee based on current retail sales prices & subject to change without notice.
2606	Uniform Codes: Plumbing		Per Code			Fee based on current retail sales prices & subject to change without notice.
2607	Video Tapes				25.00	
2608	Standard Specifications		per set		64.00	
2608	Police Accident Reports & Photographs		per report		10.00	
2610	Police Accident Reports & Photographs		Each additional		2.10	
2611	Police Accident Reports & Photographs		Per photograph		2.10	
2612	Police Accident Reports & Photographs		Each additional		1.00	



FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification	Fee	Unit	Type	FY 2007-2008 Fee	Base for Fee/Comments
<b>Administrative</b>						
	2813	Budget/Annual Financial Reports(CAFR)	per copy		28.00	
	2814	Special reports prepared by consultants	per report			Actual cost of reproducing copy of report or release, plus 10% for handling
	2815	Computer Data-Use of equipment & personnel	per hour		18.00	
	2818	Copies of Compact Disc (CD)	each CD		0.50	

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification Fee	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Fire Department</b>					
<b>Base Inspection Fees by Occupancy Type</b>					
2524	Pre-inspection of residential facilities; Residential Care Facilities 25 or less			54.00	
2525	Pre-inspection of residential facilities; Residential Care Facilities 26 or more			112.00	
2526	New or relocated business inspections			141.00	
2527	Clinics requiring licensing clearance			141.00	
2528	Residential Facilities (licensed); R-2.1 RF & RCFE more than 6 non-emb.			141.00	
2529	Residential Facilities (licensed); R-2.1A RF & RCFE 6 or less non-emb.				
2530	Residential Facilities (licensed); R-2.2 RF & RCFE more than 6 amb.			141.00	
2532	Residential Occupancies (non-licensed); Hotels, motels, apartment houses.			243.00	
2533	Residential Occupancies (non-licensed); Congregate residences (over 10 persons)			141.00	
2534	Family Day Care (7-12)				
2547	2A Nursing & Children Home, 6 or less (ambulatory)			141.00	

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification	Fee	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments	
Fire Department	2648	1-3 Jails & Mental Hospitals: 100 or more inmates			352.00		
	2649	1-3 Jails & Mental Hospitals: 21-99 inmates			243.00		
	2650	1-3 Jails & Mental Hospitals: 1-20 inmates			141.00		
	2661	High-rise Certification			141.00		
	2662	Compliance follow-up in business establishments			107.00 per hour		
	<b>Institutional Occupancies</b>						
	2640	1-1 Nursery, Hospital or Nursing Home (non-emb): 100 or more patients			495.00		
	2641	1-1 Nursery, Hospital or Nursing Home (non-emb): 21-99 patients			352.00		
	2642	1-1 Nursery, Hospital or Nursing Home (non-emb): 7-20 patients			243.00		
	2643	1-1 Nursery, full-time care of children under 6 years of age			352.00		
	2644	1-2 Nursing & Children Homes (ambulatory): 100 or more persons			352.00		
	2645	1-2 Nursing & Children Homes (ambulatory): 21-99 persons			243.00		
	2646	1-2 Nursing & Children Homes (ambulatory): 7-20 persons			141.00		
	<b>Duplication Services</b>						
	2669	Copies of incident reports			10.00 each		
	2670	Copies of documents (business sizes)			0.20 per page		
	2671	Copies of photographs			2.10		

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification	Fee	Unit	Type	FY 2007-2008 Fee	Bank for Fee/Comments
<b>Fire Department</b>						
<b>Fire Safety Inspections</b>						
2453	Various	141.00			141.00	Per hour Actual Costs
2454	Stand By	141.00			141.00	
2455	Aircraft Products	141.00			141.00	
2457	Aircraft refueling vehicles	141.00			141.00	
2458	Aircraft repair hangers	141.00			141.00	
2459	Automobile wrecking yard	141.00			141.00	
2460	Bowling pin or alley refinishing	352.00			352.00	
2461	Building Plan Review	141.00			141.00	
2462	Candies and open flame in assembly areas	141.00			141.00	
2463	Cornbobs & Fairs	141.00			141.00	
2464	Cellulose nitrate film	141.00			141.00	
2465	Cellulose nitrate storage	141.00			141.00	
2466	Combustible floor storage	141.00			141.00	
2467	Combustible material storage	141.00			141.00	
2468	Compressed gases Cylinders	141.00			141.00	
2469	Dry cleaning plants	141.00			141.00	
2470	Dust-producing operations	141.00			141.00	
2471	Explosives or blasting agents	141.00			141.00	
2471	Fire hydrants & water control valves	141.00			141.00	
2472	Fireworks display, public	141.00			141.00	
2473	Flammable or combustible liquid tanks (above ground): Annual permit to store	141.00			141.00	
2474	Flammable or combustible liquid tanks (above ground): Permit to install	141.00			141.00	
2498	Fumigation or thermal insecticide fogging	16.00			16.00	
2487	Garages, repair	141.00			141.00	

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID	Classification	Fee	Unit	Type	FY 2007-2008 Fee	Basils for FeeComments
<b>Fire Department</b>							
	2488	Hazardous materials and production materials				141.00	
	2489	High-piled combustible storage				141.00	
	2492	Junk Yards				141.00	
	2494	Liquid or gas fueled equipment (in assembly buildings)				141.00	
	2495	LPG Dispensing				249.00	
	2496	Lumber Yards				199.00	
	2497	Magnesium working				141.00	
	2498	Mail, covered: Temporary kiosks, etc.				141.00	
	2499	Mail, covered: As Assembly				141.00	
	2500	Mail, covered: Open flame or flame-producing device				141.00	
	2501	Mail, covered: Display liquid or gas fueled equipment				141.00	
	2502	Matches				141.00	
	2503	Nitrals film (see cellulose nitrals film)				141.00	
	2504	Occupant load increase				101.00	
	2505	Open Burning				141.00	
	2506	Organic Coatings				141.00	
	2507	Ovens, Industrial baking or drying				141.00	
	2508	Parade floats				141.00	
	2509	Places of Assembly: A-1				141.00	
	2510	Places of Assembly: A-2 & A-2.1				141.00	
	2511	Places of Assembly: A-3				141.00	
	2512	Places of Assembly: A-4				141.00	
	2513	Pyrotechnic special effects materials				141.00	
	2514	Radioactive materials				141.00	

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID	Classification	Fee	Unit	Type	FY 2007-2008 Fee	Bank for Fee/Comments
<b>Fire Department</b>							
	2516	Refrigeration Equipment				141.00	
	2518	Repair of Automatic Fire Sprinkler System				88.00	
	2517	Spraying or Dipping				141.00	
	2518	Tents and Air-Supported Structures				141.00	
	2519	Tire Recapping				141.00	
	2520	Tire Storage				141.00	
	2521	Waste Material Handling Plant				141.00	
	2522	Welding & Cutting Operations				141.00	
	2523	Leak or Discontinuation of permit <b>Flammable or combustible liquid tanks (underground)</b>				64.00	
	2476	Annual permit to store, 1-3 tanks				243.00	
	2476	New tank installation, 1-3 tanks				1,108.00	
	2477	New tank installation, 1-3 tanks: 14-day extension				64.00	
	2478	New tank installation, 1-3 tanks: State of California Surcharge (per tank)				60.00	
	2479	Abandonment of removal, 1-3 tanks				677.00	
	2480	Abandonment of removal, 1-3 tanks: 14-day extension				64.00	
	2481	Temporary Closure, 1-3 tanks				352.00	
	2482	Modifications or Repairs, 1-3 tanks				146.00	
	2483	Modifications or Repairs, 1-3 tanks: 14-day extension				64.00	
	2484	Precision tank testing (per tank)				42.00	
	2485	<b>Permits Required Under Article 4, Unified Fire Code</b> Fuel Ripening				142.00	

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification	Fee	Unit	Type	FY 2007-2008 Fee	Basils for Fee/Comments
<b>Fire Department</b>						
<b>Plan Review Fees</b>						
2553	Automatic fire extinguishing systems (no-sprinkler types)				500.00	
2554	Fire alarm systems				500.00	
2555	Fire detection systems				141.00	
2556	Installation of liquid petroleum gas tanks				141.00	
2557	Installation of medical gas systems				243.00	
2558	Installation of spray booths				243.00	
2559	Site plan review				141.00	
2560	Fire alarms in R2,2A & R2,1A				141.00	
2561	New building plan review for Fire Code provisions compliance				352.00	
2562	Fire flow calculations					Hourly rate plus \$50/standing
2563	Monitoring equipment for sprinkler/alarm systems				141.00	
2564	Residential tenant improvements				83.00	
2565	Underground fire service installation (for applications other than single-family dwellings)				141.00	
2566	Automatic Fire Sprinkler Systems				500.00	
2567	Uniform Fire Code plan reviews for current hourly rate outside agencies					Current hourly rate for outside agencies
<b>Private Education Facilities</b>						
2535	Private Education Facilities: Private School (K-12) 50 or more students				243.00	
2536	Private Education Facilities: Private School (K-12) 1-49 students				141.00	
2537	Private Education Facilities: Private Day Care 50 or more children				141.00	

FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification Fee	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments
Fire Department	2538	Private Education Facilities: Private Day Care 13-49 children		141.00	
	2539	Private Education Facilities: Private Day Care 1-12 children		141.00	
	2568	Special Inspections and/or Standby If inspections are requested to be on holidays, weekends, or after the normal working hours of the Fire Prevention Division (7:30am-6pm), a hourly rate of \$157 and an Admin Fee of \$28 will be charged for each hour, or fraction thereof.			\$161 per hour + \$27 administrative fee
	2572	Special Services Personnel	per hr		Per Hour of Actual Cost
	2573	Apparatus (per unit)	per hr	26.00	per hr
	2575	Emergency Medical Services (non-resident)	per hr	406.00	
	2576	Rescue/Escortation		846.00	
	2577	Property Protection		670.00	
	2578	Control of Structural Burn Fee		4,810.00	
	2579	Controlled Burn of Grass Areas (minimum charge per square ft)	Per Square Foot	0.06	
2581	Cost recovery for malicious or negligent false alarms (per occurrence)		453.00		
2582	Cost recovery for responses to illegal or negligent fires (per occurrence)		453.00		
2583	Cost recovery for responses and mitigation efforts involving hazardous materials releases.			per fee schedule	
2586	Negligent False Alarms		453.00		In new construction, the third and all subsequent alarms are considered negligent Proposed Fee remains the same

05/02/2007

Effective September 1, 2007



FY 2007-2008 City of Vallejo - Fee Schedule

Department	ID Classification	Fee	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments	
Police Department	2616	Concealed Weapon renewal (2 years)			133.00		
	2617	Concealed Weapon permit (4 years)			295.00		
	<b>Record Services</b>						
	2618	Reports			10.00		
	2619	Background Checks			21.00		
	2620	Impounded Vehicles			98.00		
	2621	Veto Impounds			169.00		
	2622	Repossessed Vehicles			3.20		
	2623	Bicycle License			6.50		
	2628	Dance/Sound/ABC Review			26.00		

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Building Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Building</b>	\$1-\$500 -	\$90	
	\$501-\$3,800 -	\$90 for the first \$500 plus \$7.88 for each additional \$100.00, or a fraction thereof, to and including \$3,800	See Building Valuation Table, Attachment 5
	\$3,801-\$44,000 -	\$350 for the first \$3,800 plus \$6.71 for each additional \$1,000, or fraction thereof, to and including \$44,000	See Building Valuation Table, Attachment 5
	\$44,001-\$236,000 -	\$700 for the first \$44,000 plus \$6.07 for each additional \$1,000, or fraction thereof, to and including \$236,000	See Building Valuation Table, Attachment 5
	\$236,001-\$480,000 -	\$2,250 for the first \$236,000 plus \$7.85 for each additional \$1,000, or fraction thereof, to and including \$480,000	See Building Valuation Table, Attachment 5
	\$480,001-\$1,200,000 -	\$4,165 for the first \$480,000 plus \$6.02 for each additional \$1,000, or fraction thereof, to and including \$1,200,000	See Building Valuation Table, Attachment 5
	\$1,200,001 and up -	\$8,600 for the first \$1,200,000 plus \$3.65 for each additional \$1,000, or fraction thereof	See Building Valuation Table, Attachment 5
	Plan check	70% of building permit fee	
	Title 24	85% of building permit fee	
	Electrical Permit	20% of building permit fee	
	Mechanical Permit	25% of building permit fee	
	Plumbing Permit	30% of building permit fee	
	Technology Surcharge	8% of building permit fee	

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Effective September 1, 2007

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Building Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basils for Fee/Comments
<b>Building</b>			
<b>Additional Surcharges: Add-In To Above Fees:</b>			
1501	Construction & Demolition Debris Fee	\$370	This Fee has not been included in the Fee amounts above, add it in.
2700	General Plan Update Fee	7%	
2701	Permit Streamlining Fee	3%	This Fee has not been included in the Fee amounts above, add it in.
2702	State "SMIP" Fee (Strong Motion Instrumentation Program* Fee)	See Attachment 4	California Public Resource Code Section 2700 to 2706.1 Code Section 2706 Lists Fee Amount Calculation
2703	Building Permit Valuation Table	See Attachment 5	Table for Determining Building Valuation
2704	Inspections outside normal business hours (minimum charge—two hours) - \$129 per hour*		
2705	Re-inspection fees assessed under provisions of Section 305.8 - \$129 per hour* Inspections for which no fee is specifically indicated - (Minimum charge—one-half hour) \$129 per hour*		
2706	Additional plan review required by changes, additions or revisions to plans (minimum charge—one-half hour) - \$129 per hour*		
2707	Code Enforcement cases may be billed to violator at \$129 per hour*		
2708	For use of outside consultants for checking plans and inspections, or both - Actual Costs*		

1. Or the hourly cost to the jurisdiction, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

2. Actual costs include administrative and overhead costs.

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Electrical Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Electrical</b>	\$1—\$500 -	\$90	
	\$501—\$3,800 -	\$80 for the first \$500 plus \$7.88 for each additional \$100.00, or a fraction thereof, to and including \$3,800	
	\$3,801—\$44,000 -	\$350 for the first \$3,800 plus \$8.71 for each additional \$1,000, or fraction thereof, to and including \$44,000	
	\$44,001—\$236,000 -	\$700 for the first \$44,000 plus \$8.07 for each additional \$1,000, or fraction thereof, to and including \$236,000	
	\$236,001—\$480,000 -	\$2,250 for the first \$236,000 plus \$7.85 for each additional \$1,000, or fraction thereof, to and including \$480,000	
	\$480,001—\$1,200,000 -	\$4,165 for the first \$480,000 plus \$6.02 for each additional \$1,000, or fraction thereof, to and including \$1,200,000	
	\$1,200,001 and up -	\$8,500 for the first \$1,200,000 plus \$3.65 for each additional \$1,000, or fraction thereof	
	Plan check		70% of electrical permit fee
	Title 24		65% of electrical permit fee
	Technology Surcharge		8% of electrical permit fee

**FY 2007-2008 City of Vallejo - Fee Schedule**

**Electrical Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Electrical</b>			
<b>Additional Surcharges: Add-In To Above Fees:</b>			
1501	Construction & Demolition Debris Fee	\$370	This Fee has not been included in the Fee amounts above, add it in.
2800	General Plan Update Fee	7%	
2801	Permit Streamlining Fee	3%	This Fee has not been included in the Fee amounts above, add it in.
2802	Inspections outside normal business hours (minimum charge—two hours) - \$129 per hour <sup>1</sup>		
2803	Re-inspection fees assessed under provisions of Section 305.6 - \$129 per hour <sup>1</sup> Inspections for which no fee is specifically indicated - (Minimum charge—one-half hour) \$129 per hour <sup>1</sup>		
2804	Additional plan review required by changes, additions or revisions to plans (minimum charge—one-half hour) - \$129 per hour <sup>1</sup>		
2805	Code Enforcement cases may be billed to violator at \$129 per hour <sup>1</sup>		
2806	For use of outside consultants for checking plans and inspections, or both - Actual Costs <sup>2</sup>		

<sup>1</sup> Or the hourly cost to the jurisdiction, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

<sup>2</sup> Actual costs include administrative and overhead costs.

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Mechanical Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Mechanical</b>			
	\$1—\$500 -	\$90	\$90 for the first \$500 plus \$7.88 for each additional \$100.00, or a fraction thereof, to and including \$3,800
	\$501—\$3,800 -		
	\$3,801—\$44,000 -		\$350 for the first \$3,800 plus \$8.71 for each additional \$1,000, or fraction thereof, to and including \$44,000
	\$44,001—\$236,000 -		\$7.00 for the first \$44,000 plus \$8.07 for each additional \$1,000, or fraction thereof, to and including \$236,000
	\$236,001—\$480,000 -		\$2,250 for the first \$236,000 plus \$7.85 for each additional \$1,000, or fraction thereof, to and including \$480,000
	\$480,001—\$1,200,000 -		\$4,165 for the first \$480,000 plus \$6.02 for each additional \$1,000, or fraction thereof, to and including \$1,200,000
	\$1,200,001 and up -		\$8,500 for the first \$1,200,000 plus \$3.65 for each additional \$1,000, or fraction thereof
	Plan check!		70% of mechanical permit fee
	Title 24		65% of mechanical permit fee
	Technology Surcharge		8% of mechanical permit fee

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Effective September 1, 2007

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Mechanical Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basis for Fees/Comments
<b>Mechanical</b>			
<b>Additional Surcharges: Add-in To Above Fees:</b>			
1501	Construction & Demolition Debris Fee	\$370	This Fee has not been included in the Fee amounts above, add it in.
2900	General Plan Update Fee	7%	
2901	Permit Streamlining Fee	3%	This Fee has not been included in the Fee amounts above, add it in.
2902	Inspections outside normal business hours (minimum charge—two hours) - \$129 per hour <sup>1</sup>		
2903	Re-inspection fees assessed under provisions of Section 305.8 - \$129 per hour <sup>1</sup> Inspections for which no fee is specifically indicated - (Minimum charge—one-half hour) \$129 per hour <sup>1</sup>		
2904	Additional plan review required by changes, additions or revisions to plans (minimum charge—one-half hour) - \$129 per hour <sup>1</sup>		
2905	Code Enforcement cases may be billed to violator at \$129 per hour <sup>1</sup>		
2906	For use of outside consultants for checking plans and inspections, or both - Actual Costs <sup>2</sup>		

<sup>1</sup> Or the hourly cost to the jurisdiction, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

<sup>2</sup> Actual costs include administrative and overhead costs.

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Plumbing Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Plumbing</b>			
	\$1—\$500 -	\$90	\$90 for the first \$500 plus \$7.88 for each additional \$100,00, or a fraction thereof, to and including \$3,800
	\$501—\$3,800 -		
	\$3,801—\$44,000 -		\$350 for the first \$3,800 plus \$8.71 for each additional \$1,000, or fraction thereof, to and including \$44,000
	\$44,001—\$236,000 -		\$700 for the first \$44,000 plus \$8.07 for each additional \$1,000, or fraction thereof, to and including \$236,000
	\$236,001—\$480,000 -		\$2,250 for the first \$236,000 plus \$7.85 for each additional \$1,000, or fraction thereof, to and including \$480,000
	\$480,001—\$1,200,000 -		\$4,165 for the first \$480,000 plus \$6.02 for each additional \$1,000, or fraction thereof, to and including \$1,200,000
	\$1,200,001 and up -		\$8,500 for the first \$1,200,000 plus \$3.65 for each additional \$1,000, or fraction thereof
	Plan check		70% of plumbing permit fee
	Title 24		65% of plumbing permit fee
	Technology Surcharge		8% of plumbing permit fee

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**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Plumbing Permit Fees (2 Pages)**

ID	Valuation Range	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Plumbing</b>			
<b>Additional Surcharges: Add-in To Above Fees:</b>			
1501	Construction & Demolition Debris Fee	\$370	This Fee has not been included in the Fee amounts above, add it in.
2900	General Plan Update Fee	7%	
2901	Permit Streamlining Fee	3%	This Fee has not been included in the Fee amounts above, add it in.
2902	Inspections outside normal business hours (minimum charge—two hours) - \$129 per hour <sup>1</sup>		
2903	Re-inspection fees assessed under provisions of Section 305.8 - \$128 per hour <sup>1</sup> Inspections for which no fee is specifically indicated - (Minimum charge—one-half hour) \$129 per hour <sup>1</sup>		
2904	Additional plan review required by changes, additions or revisions to plans (minimum charge—one-half hour) - \$129 per hour <sup>1</sup>		
2905	Code Enforcement cases may be billed to violator at \$129 per hour <sup>1</sup>		
2906	For use of outside consultants for checking plans and inspections, or both - Actual Costs <sup>2</sup>		

<sup>1</sup> Or the hourly cost to the jurisdiction, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

<sup>2</sup> Actual costs include administrative and overhead costs.

FY 2007-2008 City of Vallejo - Fee Schedule

Fee	Type	FY 2007-2008 General Plan Fee Only	FY 2007-2008 General Plan 7% Fee	FY 2007-2008 Permit Streamlining 3% Fee	FY 2007-2008 Total Fee	Notes for Fee/Comments
<b>Planning Division</b> See below for Separate List of More Island Project Fees						
Administrative Permit		\$470	\$33	\$14	\$517	
Annexations						
Appeal to Commission		440	31	13	484	Fee based on current actual hourly rates, times actual time to process. Plus State & County Fees.
Appeal to Council		440	31	13	484	Plus Public Notice List Fee
CEQA - Environmental Impact Report						Plus Public Notice List Fee
CEQA - Mitigated Negative Declaration		6,630	464	189	7,293	Consultant contract plus 34% of contract
CEQA - Negative Declaration		4,880	342	146	5,368	
Certificate of Appropriateness	All Other	450	32	14	495	
Certificate of Appropriateness	>100 Square Feet	1,680	118	50	1,848	
Certificate of Appropriateness	Demolitions	2,380	167	72	2,629	
Certificate of Compliance		1,350	95	41	1,485	
Certificate of Conformity		1,470	103	44	1,617	
Development Agreement						
Development Agreement	Amendments					Fee based on current actual hourly rates, times actual time to process
Development Agreement	Review					Fee based on current actual hourly rates, times actual time to process
Development Agreement	Review	10,950	767	329	12,045	Fee based on current actual hourly rates, times actual time to process
General Plan Amendment		1,750	123	53	1,925	
Lot Line Adjustment		1,300	91	39	1,430	
Minor Exception		1,400	98	42	1,540	
Minor Use Permit	General	1,420	99	43	1,562	
Minor Use Permit	Day Care	397	28	12	437	
Parcel Map	Second Unit Review	2,340	164	70	2,574	
Parcel Map Amendment		1,320	92	40	1,452	
Parcel Map Extension		860	60	28	946	
Parcel Map Time Extension		860	60	28	946	
Planned Development	Amendment	25%				25% of applicable plan fee
Planned Development	Unit Plan (Modal Home)	2,010	141	60	2,211	
Planned Development	Unit Plan (Staff)	4,020	281	121	4,422	

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FY 2007-2008 City of Vallejo - Fee Schedule

Fee	Type	FY 2007-2008 Fee Only	FY 2007-2008 General Plan 7% Fee	FY 2007-2008 Permit Screening 3% Fee	FY 2007-2008 Total Fee	Notes
<b>Planning Division</b>						
<i>See below for Separate List of More Island Project Fees</i>						
Planned Development	Unit Plan (Single family)	4,300	301	129	4,730	
Planned Development	Unit Plan (Commission)	8,490	594	255	9,339	
Planned Development	Unit Plan (Council)	23,830	1,668	715	26,213	
Planned Development	Master Plan (5+ acres or .5 FAR)	28,120	1,968	844	30,932	
Planned Development	Master/Unit Plans (5+ acres or .5 FAR)	34,510	2,416	1,035	37,961	
Public Convenience or Necessity		2,970	208	89	3,267	
Public Notice Lists (200 feet)		190	13	6	209	
Public Notice Lists (500 feet)		530	37	16	583	
Rezoning, Prezoning, Code Text Amendment		10,370	728	311	11,407	
Sign Master Plan/Program		550	39	17	605	
Sign Permits	Painted, Face Changes	180	13	5	198	
Site Development	All Others	280	20	8	308	
Site Development	Extension	650	46	20	715	
Site Development	Model Home	2,160	151	65	2,376	
Site Development	Existing single-family	2,860	200	86	3,146	
Site Development	New single-family	3,080	216	93	3,389	
Site Development	Other existing uses	3,260	228	98	3,586	
Site Development	Existing single family (View District)	4,090	288	123	4,499	
Site Development	Other new uses (0-5,000 SF)	4,270	289	128	4,687	
Site Development	New single-family (View District)	4,710	330	141	5,181	
Site Development	Other new uses (>5,000 SF)	4,790	335	144	5,269	
Site Development	Multi-family	4,820	337	145	5,302	
Special Request	Clerical-Per Hour	-	-	-	-	Current Hourly Rate
Special Request	Planners, graphics- Per Hour	-	-	-	-	Current Hourly Rate for Planners, graphics- Per Hour
Special Request		-	-	-	-	Materials plus current hourly staff rate
Specific Plan Amendment		-	-	-	-	Fee based on current actual hourly rates, times actual time to process
Specific Plan New		-	-	-	-	Fee based on current actual hourly rates, times actual time to process
Tentative Map	5 - 20 lots	5,730	401	172	6,303	
Tentative Map	21 - 50 lots	9,160	641	275	10,076	
Tentative Map	over 50 lots	11,010	771	330	12,111	
Tentative Map Amendment	Amendments	33%	-	-	-	35% of applicable tentative map fee
Tentative Map Extensions	Extensions	4,380	307	131	4,818	

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**FY 2007-2008 City of Vallejo - Fee Schedule**

Fee	Type	FY 2007-2008 City Fee	FY 2007-2008 General Plan Plan Fee	FY 2007-2008 Permit Submitting 3% Fee	FY 2007-2008 Total Fee	Base for Fee/Comments
<b>Planning Division</b>						
<i>See below for Separate List of Mare Island Project Fees</i>						
Unit Investigations		1,240	87	37	1,364	
Use Permit	Existing structures	2,660	186	80	2,926	
Use Permit	Off-site signs	2,680	186	80	2,926	
Use Permit	New structures	4,860	340	146	5,346	
Use Permit Amendment	Amendment	33%				33% of applicable use permit fee
Variance		5,460	382	164	6,006	
<b>Planning Division - Mare Island Fees</b>						
Administrative Permit		\$610	\$43	\$16	\$671	
Certificate of Appropriateness	All Other	730	51	22	803	
Certificate of Appropriateness	Demolition	5,620	393	169	6,182	
Development Agreement	Amendment	-	-	-	-	Fee based on current actual hourly rates, times actual time to process
Development Agreement	Annual Review	-	-	-	-	Fee based on current actual hourly rates, times actual time to process
Parcel Map Amendment	Amendment	33%				33% of Parcel Map
Parcel Map		3,570	250	107	3,927	
Planned Development - Residential	1 - 5 residences	7,600	532	228	8,360	
Planned Development - Residential	5 - 20 residences	12,370	866	371	13,607	
Planned Development - Residential	>20 residences	15,920	1,114	478	17,512	
Planned Development - Commercial	<100,000 square feet	3,752	263	113	4,127	
Planned Development - Commercial	100,000 - 250,000 square feet	9,469	663	284	10,416	
Planned Development - Commercial	>250,000 square feet	13,601	952	408	14,961	Fee based on current actual hourly rates, times actual time to process
Specific Plan Amendment		-	-	-	-	
Tentative Map	5 - 20 lots	8,970	628	269	9,867	
Tentative Map	over 20 lots	11,710	820	351	12,881	
Tentative Map Amendment		33%				33% of applicable Map Fee
Use Permit		4,510	316	135	4,961	

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**FY 2007-2008 City of Vallejo - Fee Schedule**

Fee	Increment Type	FY 2007-2008 Fee	Basis for Fee/Comments
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**Public Works - Engineering Division**

Abandonment of Right of Way (Petition for)		\$1,580	
Address Change/Correction		580	
Apportionment of Assessment		2,820	
Certificate of Map Correction (Through County)		230	
City Specification		0.10	per page
City/Redev Property Use Permit (1 day or weekend use)		1,550	

**Consultant -- Grading Plan Review**

If a developer chooses to have an accelerated review of grading and/or improvement plans, then the City fees will be 50% of the normal plan review fee, and developer will pay, in advance, 100% of the cost of review by a City selected Consultant.

**Consultant -- Public Improvement Plan Review**

If a developer chooses to have an accelerated review of grading and/or improvement plans, then the City fees will be 50% of the normal plan review fee, and developer will pay, in advance, 100% of the cost of review by a City selected Consultant.

**Data Request**

**Encroachment Permit**

**Excavation Permit Processing Fees**

Excavation Inspection Fees	1 to 50-ft of trench	590	
Excavation Inspection Fees	51 to 100-ft of trench	730	Flat Fee
Excavation Inspection Fees	101 to 200-ft of trench	1,110	Flat Fee
Excavation Inspection Fees	201 or more ft of trench	2,000	Flat Fee
		1,510	for each 100 Ft. increment

Current Hourly Staff Rate

**FY 2007-2008 City of Vallejo - Fee Schedule**

Fee	Increment Type	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Public Works - Engineering Division</b>			
Ferry Dock Fee		1,130	The per day docking fee is based on vessel length as follows: 0-30m \$80; 31-45m \$117; 46-50m \$163; 51-75m \$224 per day.
Flood Map Revision		350	
Flood Plain Letter			
<b>Grading Inspection Fee</b>			
Grading Permit -- Inspection Fee	0-50 cubic yards	-	No permit required
Grading Permit -- Inspection Fee	51-1,000 cubic yards	200	+ \$580 for each additional 100 cy over 50 cy
Grading Permit -- Inspection Fee	1,001 - 40,000 cubic yards	6,000	+ \$163 per 1,000 cy over 1,000 cy
Grading Permit -- Inspection Fee	over 40,000 cubic yards	12,357	Plus \$60 for each additional 1,000 cy
<b>Grading Plan Check Fee</b>			
Grading - Plan Check Fee	0-50 cubic yards	-	No permit required
Grading - Plan Check Fee	51 -1,000 cubic yards	150	+ \$385 for each 100 cy over 50 cy
Grading - Plan Check Fee	1,001 - 40,000 cubic yards	4,000	+ \$175 for each 1,000 cy over 1,000 cy
Grading - Plan Check Fee	over 40,000 cubic yards	10,825	Plus \$50 for each additional 1,000 cy
Parcel Map/Final Map (Approval or Amendments)		6,560	
Plan Re-Check (after 3rd plan review)		230	per sheet
<b>Public Improvement Inspection Fees</b>			
Public Improvements -- Inspection Fees	\$0 - \$500,000	7%	% of Project Cost
Public Improvements -- Inspection Fees	\$500,001 - \$1,000,000	35,000	Plus 8% of project cost above \$500,000
Public Improvements -- Inspection Fees	over \$1,000,000	75,000	Plus 2.8% of project cost above \$1,000,000

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**FY 2007-2008 City of Vallejo - Fee Schedule**

Fee	Increment Type	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Public Works - Engineering Division</b>			
<b>Public Improvement Plan Check Fee</b>			
Public Improvements - Plan Check Fee	\$0 - \$500,000	4%	% of Project Cost
Public Improvements - Plan Check Fee	\$500,001 - \$1,000,000	20,000	Plus 2.4% of project cost above \$500,000
Public Improvements - Plan Check Fee	over \$1,000,000	32,000	Plus 1% of project cost above \$1,000,000
<b>Quit-Claim (for abandoned easements)</b>			
Sidewalk Permit	1st 25ft	990	
Sidewalk Permit	add 25ft	540	
Special Event Request		190	For each 25ft increment
Street Name Change Request		374	
Time Extension for Public Improvement Plan		3,080	+Cost of signage, to be determined by staff. Time extensions required beyond the two years from the original date of plan approval shall be 10% per year of the original fee for plan checking and inspection.
Utility Easement Agreement		1,550	
Benchmark Maintenance		140	to be applied to all grading and public improvement project fees
Technology Surcharge		4%	to be applied to all engineering fees

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**FY 2007-2008 City of Vallejo - Fee Schedule**

ID Classification	Type	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Code Enforcement</b>			
1	Property Maintenance and Vacant Building Abatement Fixed Incidental Cost	\$1,010	
2	Abatement Lien Process Administrative Charge	840	
3	Property Maintenance, Vacant Building, and Abandoned Shopping Cart Enforcement Appeal	640	
4	Vacant Building Monitoring Fee	310	
5	Abandoned Shopping Cart Prevention Plan	1,480	
6	Annual Evaluation Report of Shopping Cart Plan	220	
7	Modification of Abandoned Shopping Cart Previous Plan	220	
8	Administrative Charge for Late Administrative Citation Payment	890	
9	Property Maintenance and Vacant Building Notice of Violation Administrative Charge	270	

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Effective September 1, 2007



**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Development Impact Fees and Excise Tax Collected By Building Division**

Department ID	Classification Fee	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Development Impact Fees (Collected By Building Division)</b>					
1501	City Excise Tax		Residential	\$9,995.00	Per Unit
			Commercial	0.35	Per square foot
1502	Hiddenbrooke Excise Tax a. Overpass Fund 211 Excise Tax b. Overpass Fund 211 Surcharge c. General Fund 001 Excise Tax	EZ 2005-07 \$2,788.88 2,201.34 1,000.00		6,000.00	
1503	City Transportation Impact Mitigation Fee		Commercial	2.43	Per square foot
			Industrial	1.24	Per square foot
			Multi-Family	2,814.00	Per Unit
			Motels/Hotels	2,814.00	Per Unit
			Single-Family	5,002.00	Per Unit

**Area Special District Fees (Collected By Building Division)**

1504	Fire Facilities Impact Mitigation Fee (Northgate Area - Fire Station #7 - See Attachment 1 Diagram)		Residential	194.00	Per Unit
			Non-Residential	146.00	Per 1,000 square foot
1505	Northgate Area Fee District 94-1 (See Attachment 2 Diagram for area)			See Attachment 2	See Engineering for Fee Schedule
1506	Northgate Area Benefit District 93-1 (See Attachment 3 Diagram for Fee amount)			See Attachment 3	Fee set by APN
1507	Sky Valley Improvement Benefit District 95-1 (See Attachment 6 for Diagram of area)			See Attachment 6	See Engineering for Fee Schedule

**FY 2007-2008 City of Vallejo - Fee Schedule  
Development Impact Fees and Excise Tax Collected By Building Division**

Department ID	Classification Fee	Unit	Type	FY 2007-2008 Fee	Basis for Fee/Comments
<b>Other Agencies Fees (Non-City) (Collected by Building Division)</b>					
<b>Greater Vallejo Recreation District Park Fee (GVRD)</b>					
001		1 Bedroom		1,411.27	
		2 Bedrooms		1,061.69	
		3 Bedrooms		2,952.12	
		4 Bedrooms		3,282.96	
		5 Bedrooms or more		4,233.60	
		Adult Mobile Home		752.68	
		Other Mobile Home		1,061.69	
<p>Note: This is a City Fee authorized by VMG Section 3.16.050. In addition, pursuant to VMG Section 3.16.050 (E), the Fees are to be automatically increased each January 1 by the Engineering News Record Construction Cost Index for the San Francisco Bay Area.</p>					
<b>Solano County Public Facilities Fees</b>					
001		Single-Family		6,769.00	
		Multi-Family		8,314.00	
		Second Unit Dwelling		4,456.00	
		Retail		830.00	Per 1,000 square feet
		Office		1,382.00	Per 1,000 square feet
		Industrial		661.00	Per 1,000 square feet
		Warehouse		174.00	Per 1,000 square feet
<b>Vallejo City Unified School District Fees</b>					
001		Residential		2.24	Per square foot
		Commercial		0.36	Per square foot

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Public Works - Water Division**  
**Water Meter Cost Schedule - Guidelines**

Meter Size	Max Flow	Installation			Backflow Device		(4) Elevated Storage	(5) Lakes District	Capacity Charge (6A)		Fleming Hill Fee Amount
		(1) Tap	(2) Set	(3) Double	Reduced Pressure	Water			Fee Amount		
5/8"	20	2,632.00	308.00	177.00	259.00	1,300.00**	10,000.00***	4,390.00***	2,700.00***	2,700.00***	
3/4"	30	2,561.00	336.00	177.00	259.00	1,781.00	13,640.00	4,390.00	2,700.00	2,700.00	
1"	50	2,828.00	372.00	189.00	272.00	1,976.00	17,919.00	9,332.00	4,838.00	4,838.00	
1 1/2"	100	3,203.00	902.00	319.00	484.00	4,056.00	36,905.00	18,376.00	9,984.00	9,984.00	
2"	160	4,172.00	1,773.00	343.00	503.00	6,149.00	56,605.00	30,327.00	15,013.00	15,013.00	
3"	320		Deposit to Administrative Trust			11,427.00	103,305.00	57,108.00	27,892.00	27,892.00	
4"	500		Deposit to Administrative Trust			17,238.00	156,176.00	99,503.00	42,167.00	42,167.00	
6"	1,000		Deposit to Administrative Trust			29,088.00	262,862.00	212,368.00	70,872.00	70,872.00	
8"	1,500		TO BE COMPUTED BY CITY WATER SUPERINTENDENT					346,882.00	106,458.00	106,458.00	

- (1) Cost for tapping the main and installing the service and meter within the right way.
- (2) Cost of meter installation if the box is in place and the service is connected to the main.
- (3) A backflow device approved by the Water Division is required on domestic services for multi-family dwellings, commercial services and irrigation services. It is also required for other services where in the judgement of the Water Superintendent, a pollution or contamination condition could exist.
- (4) This is the additional cost pro-rata of pumping and storing if the installation is at too high an elevation to be served by the citywide "grid" pressure area.
- (5) The pro-rata cost of installations that are in the Lakes Benefit District, encompassing service areas outside of City of Vallejo proper.
- (6A) Pro-rata cost of providing capital reserve.
- (6B) Pro-rata cost of improvements at the Water Treatment Plant.
- \* 5/8" meter only available to replace existing service, not applicable to commercial service.
- \*\* Applies to each family dwelling unit above the "grid" elevation.
- \*\*\* Applies to each family dwelling unit.

Note: There is no water facilities fees or elevated storage fee for a fire service, but a deposit of \$6,000.00 for a 5", \$7,000.00 for a 6", and \$5,000.00 for a 4" fire service, is applied against the itemized billing of actual cost to install the corresponding double check detector assembly.

The above fees are to be used only as guideline. Official estimates of water connection fees should be requested through the office of the Water Superintendent.

**FY 2007-2008 City of Vallejo - Fee Schedule**

**Public Works - Water Division**

**Water Meter Cost Schedule - Guidelines**

**WATER MAIN SIZE**

Branch Size	4"	6"	8"	10"	12"	14"	16"	20"	24"	30"	36"	39"
<2"	323.00	363.00	403.00	443.00	483.00	523.00	563.00	643.00	723.00	843.00	963.00	1,023.00
2"	364.00	404.00	444.00	484.00	524.00	564.00	604.00	684.00	764.00	884.00	1,044.00	1,064.00
4"	429.00	469.00	509.00	549.00	589.00	629.00	669.00	749.00	829.00	949.00	1,089.00	1,129.00
6"	504.00	544.00	584.00	624.00	664.00	704.00	744.00	824.00	904.00	1,024.00	1,164.00	1,184.00
8"	589.00	629.00	669.00	709.00	749.00	789.00	829.00	909.00	989.00	1,109.00	1,249.00	1,269.00
10"	684.00	724.00	764.00	804.00	844.00	884.00	924.00	1,004.00	1,084.00	1,204.00	1,344.00	1,364.00
12"	789.00	829.00	869.00	909.00	949.00	989.00	1,029.00	1,109.00	1,189.00	1,309.00	1,449.00	1,469.00
14"	904.00	944.00	984.00	1,024.00	1,064.00	1,104.00	1,144.00	1,224.00	1,304.00	1,424.00	1,564.00	1,584.00
16"	1,029.00	1,069.00	1,109.00	1,149.00	1,189.00	1,229.00	1,269.00	1,349.00	1,429.00	1,549.00	1,689.00	1,709.00
20"	1,244.00	1,284.00	1,324.00	1,364.00	1,404.00	1,444.00	1,484.00	1,564.00	1,644.00	1,764.00	1,904.00	1,924.00
24"	1,469.00	1,509.00	1,549.00	1,589.00	1,629.00	1,669.00	1,709.00	1,789.00	1,869.00	1,989.00	2,129.00	2,149.00
30"	1,704.00	1,744.00	1,784.00	1,824.00	1,864.00	1,904.00	1,944.00	2,024.00	2,104.00	2,224.00	2,364.00	2,384.00
36"	1,949.00	1,989.00	2,029.00	2,069.00	2,109.00	2,149.00	2,189.00	2,269.00	2,349.00	2,469.00	2,609.00	2,629.00
39"	2,184.00	2,224.00	2,264.00	2,304.00	2,344.00	2,384.00	2,424.00	2,504.00	2,584.00	2,704.00	2,844.00	2,864.00

Actual Cost

**FY 2007-2008 City of Vallejo - Fee Schedule**

**Public Works - Water Division**

**Construction Water & Disinfection Testing Charges**

Fee	Type	FY 2007-2008 Fee Amount
Sterilization	Basic cost	\$210.00
	Pipeline cost	
	4" line	0.15 Per 100 feet
	6" line	0.21 Per 100 feet
	8" line	0.30 Per 100 feet
	10" line	0.43 Per 100 feet
	12" line	0.59 Per 100 feet
	14" line	0.78 Per 100 feet
	20" line	1.50 Per 100 feet
	24" line	2.13 Per 100 feet
Tap-tie	Tie-in Inspection	50.00 Per tie-in
Construction (Commercial)	Water Fee	12.00 Per lot of 5,000 sq. ft.
Benefit District Fees	See Water Division if applicable	

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Vallejo Sanitation & Flood Control District**

**Fees**

Fee	Type of Connection	FY 2007-2008 Fee Amount
Sanitary Sewer	Car Wash	\$31,800.00 Per 1,000 sq. ft.
	Church	435.00 Per 1,000 sq. ft.
	Commercial	1,725.00 Per 1,000 sq. ft.
	Drive-In or Take-Out Restaurants	3,110.00 Per 1,000 sq. ft.
	Hospital	755.00 Per bed
	Single Family Dwelling	2,230.00 Per dwelling unit
	Multi-Family Dwelling	2,230.00 Per dwelling unit (with kitchen)
	Multi-Family Dwelling	870.00 Per dwelling unit (no kitchen)
	Laundry	25,200.00 Per 1,000 sq. ft.
	Laundromat	485.00 Per machine
	Restaurant	6,280.00 Per 1,000 sq. ft.
	School	400.00 Per student
	Warehouse	250.00 Per 1,000 sq. ft.
Storm Drain	Single Family Dwelling	4,770.00 Per unit
	Multi-Family Dwelling	28,645.00 Per acre
	Commercial	38,135.00 Per acre
Other Miscellaneous	Plan Check, Inspection, etc.	150.00 Minimum, varies per # of Units

8/30/2007

Effective September 1, 2007

**FY 2007-2008 City of Vallejo - Fee Schedule**

**Fee Escalation Regulations**

<u>Line No.</u>	<u>Fee</u>	<u>Authorized Annual Escalation Factor</u>	<u>Escalation Regulation Authority</u>
1	ANY FEE NOT LISTED BELOW	CPI-U	Any Fee Not Listed Below: All fees incorporated into the City's Master Fee Schedule, unless excluded or otherwise provided for below, are increased pursuant to Resolution No. 02-95 N.C. effective July 1 <sup>st</sup> of each year, by the Consumer Price Index for All Urban Consumers, or whatever comparable Price Index the City Manager and Finance Director determines to be appropriate to reflect the increase in costs in the San Francisco Bay Area.
2	BUILDING PERMIT FEES (New In 2007)	CPI-U	Building Permit Fees: Fees included the City's Master Fee Schedule that are set by Council pursuant to Resolution No. 07-165 N.C., which includes an annual adjustment, effective July 1 <sup>st</sup> of each year, by the Consumer Price Index for All Urban Consumers, or whatever comparable Price Index the City Manager and Finance Director determines to be appropriate to reflect the increase in costs in the San Francisco Bay Area.
3	PLANNING DIVISION (New In 2007)	CPI-U	Planning Fees: Fees included the City's Master Fee Schedule that are set by Council pursuant to Resolution No. 07-165 N.C., which includes an annual adjustment, effective July 1 <sup>st</sup> of each year, by the Consumer Price Index for All Urban Consumers, or whatever comparable Price Index the City Manager and Finance Director determines to be appropriate to reflect the increase in costs in the San Francisco Bay Area.
4	PUBLIC WORKS ENGINEERING DIVISION (New In 2007)	CPI-U	Public Works Engineering Fees: Fees included the City's Master Fee Schedule that are set by Council pursuant to Resolution No. 07-165 N.C., which includes an annual adjustment, effective July 1 <sup>st</sup> of each year, by the Consumer Price Index for All Urban Consumers, or whatever comparable Price Index the City Manager and Finance Director determines to be appropriate to reflect the increase in costs in the San Francisco Bay Area.
5	C & D RECYCLING FEE	CPI-U	Construction & Demolition Recycling Fee: Fee included the City's Master Fee Schedule that is set by Council pursuant to Resolution No. 07-165 N.C., which includes an annual adjustment, effective July 1 <sup>st</sup> of each year, by the Consumer Price Index for All Urban Consumers, or whatever comparable Price Index the City Manager and Finance Director determines to be appropriate to reflect the increase in costs in the San Francisco Bay Area.

**FY 2007-2008 City of Vallejo - Fee Schedule**  
**Fee Escalation Regulations**

<u>Line No.</u>	<u>Fee</u>	<u>Authorized Annual Escalation Factor</u>	<u>Escalation Regulation Authority</u>
6	EXCISE TAX	CPI-U	Property Development Excise Tax: A tax set by Vallejo Municipal Code section 3.05.030, which authorizes the Finance Director, on July 1 <sup>st</sup> of each year, shall adjust based on the average of the most recent annual percentage change in the Bureau of Labor Statistics (BLS) Consumer Price Index--All Urban Consumers--San Francisco--Oakland--San Jose and the percentage change in the BLS' Consumer Price Index--Urban Wage Earners and Clerical Workers--San Francisco--Oakland--San Jose; or on any other responsible index of general local prices.
7	GENERAL PLAN UPDATE FEE	CPI-U	General Plan Update Fee: A fee created by Resolution No. 05-29 N.C. and incorporated into the City's Master Fee Schedule and pursuant to Resolution No. 02-55 N.C. includes an annual adjustment, effective July 1 <sup>st</sup> of each year, by the Consumer Price Index for All Urban Consumers, or whatever comparable Price Index the City Manager and Finance Director determines to be appropriate to reflect the increase in costs in the San Francisco Bay Area.
8	PERMIT STREAMLINING FEE	CPI-U	Permit Streamlining Fee: A fee created by Resolution No. 05-29 N.C. and incorporated into the City's Master Fee Schedule and pursuant to Resolution No. 02-55 N.C. includes an annual adjustment, effective July 1 <sup>st</sup> of each year, by the Consumer Price Index for All Urban Consumers, or whatever comparable Price Index the City Manager and Finance Director determines to be appropriate to reflect the increase in costs in the San Francisco Bay Area.
9	PARK AND RECREATION FEE (GVRD)	ENR - JANUARY 1ST	Park and Recreation Fee: A fee set by Vallejo Municipal Code section 3.18.050, which includes an automatic annual adjustment, effective January 1 <sup>st</sup> of each year, by the Engineering News Record Construction Cost Index for the San Francisco Bay Area.
10	FIRE FACILITIES IMPACT MITIGATION FEE (Northgate Area - Fire Station #7)	NONE	Fire Mitigation Fee: A fee created by Resolution No. 89-730 N.C. This fee is not automatically increased by any index. Any increase in the fee will require additional City Council action.
11	TRANSPORTATION IMPACT MITIGATION FEE	ENR - JULY 1ST	Transportation Impact Mitigation Fee: A City fee set by Municipal Code Section 3.07.030, which includes an automatic annual adjustment, effective July 1 <sup>st</sup> of each year, by the Engineering News Record Construction Cost Index for the San Francisco Bay Area.
12	WATER CONNECTION FEES	ORDINANCE	Water Connection Fees: A City fee set by Section 1 of Ordinance No. 1452 N.C. (2d), which has specific increases set for July 1, 2006, July 1, 2007 and July 1, 2008.

8/30/2007

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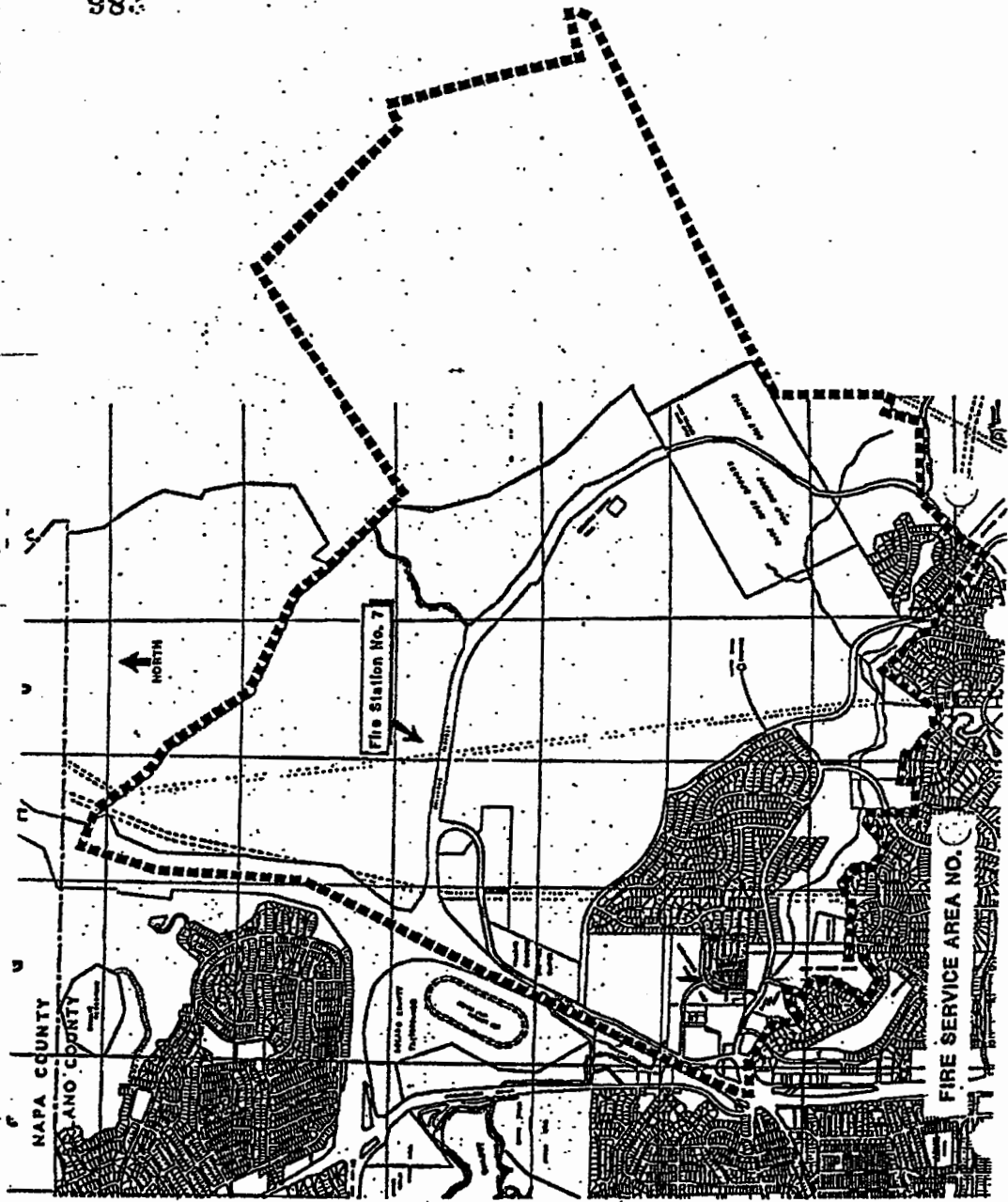


**FY 2007-2008 City of Vallejo - Fee Schedule**

**Fee Escalation Regulations**

<u>Line No.</u>	<u>Fee</u>	<u>Authorized Annual Escalation Factor</u>	<u>Escalation Regulation Authority</u>
13	VSFCD FEES	NONE	Vallejo Sanitation and Flood Control District Fees: These fees shall be imposed as set by VSFCD ordinances or resolutions.
14	SOLANO COUNTY FACILITIES FEE	NONE	Solano County Facilities Fee: This fee shall be as set by the Solano County Code or Solano County Resolution.
15	VALLEJO SCHOOL DISTRICT FEES	NONE	Vallejo City Unified School District Fees: This fee shall be set by the School District.
16	ROUNDING	NONE	Per Finance Director, round whole dollars downwards to nearest \$1.00, and round any fees of \$10.00 or less to the nearest \$0.10.

ATTACHMENT 1



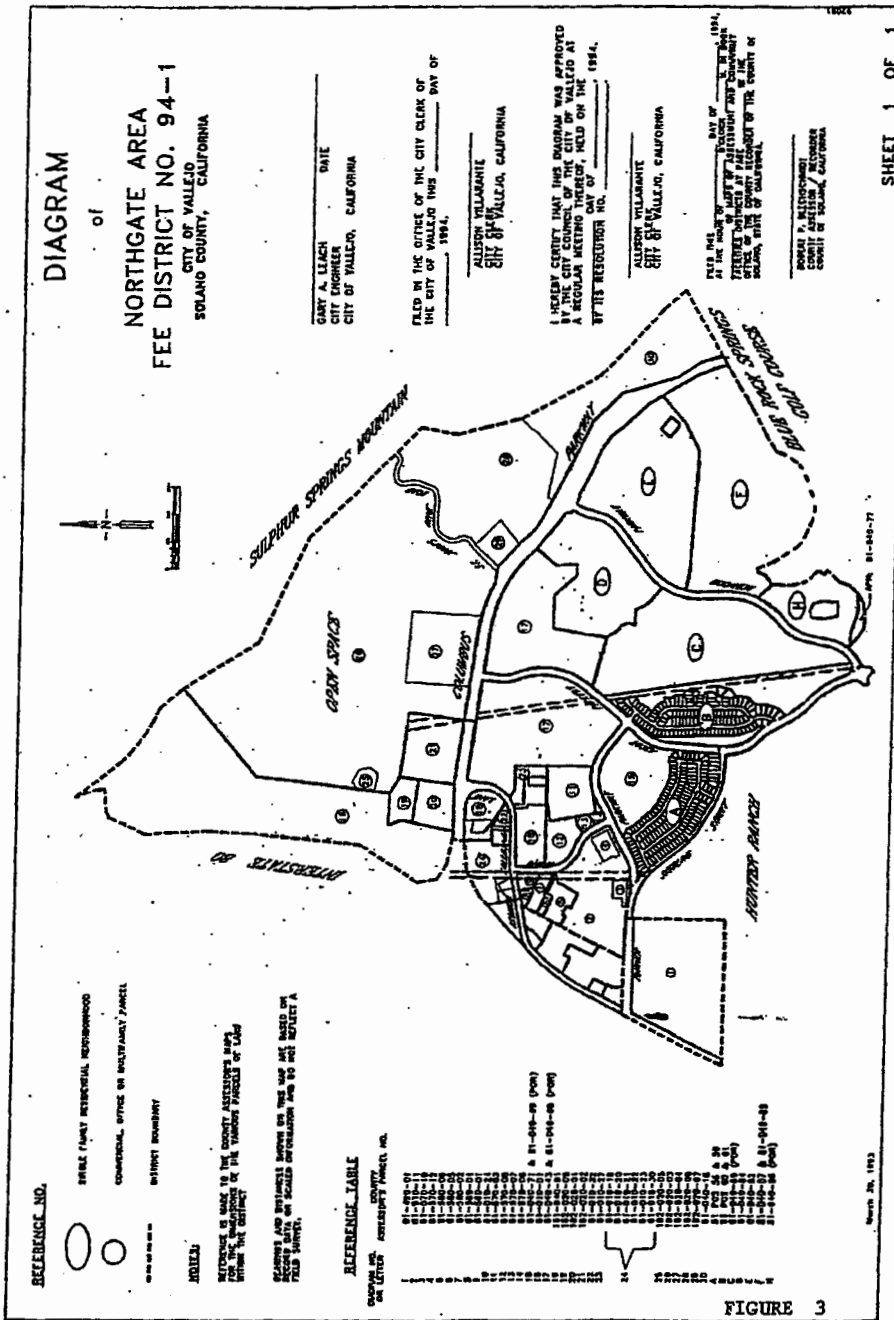
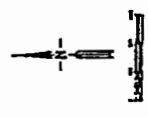


FIGURE 3

DIAGRAM

of  
 NORTHGATE AREA  
 BENEFIT DISTRICT NO. 93-1  
 CITY OF VALLEJO  
 SOLANO COUNTY, CALIFORNIA



REFERENCE NO.

- SINGLE FAMILY RESIDENTIAL RECREATION
- COMMERCIAL, OFFICE OR INDUSTRIAL PARCEL
- DISTRICT BOUNDARY

NOTES:

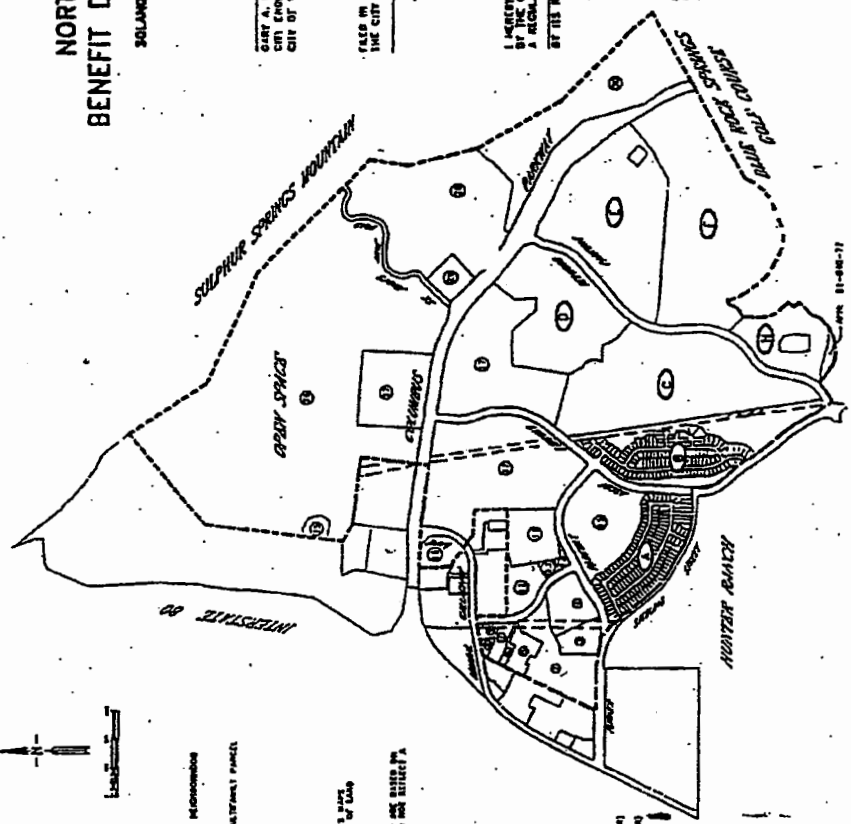
1. REFERENCE IS MADE TO THE COUNTY ASSISTANT'S MAP OF THE NORTHGATE AREA, CITY OF VALLEJO, CALIFORNIA, FOR THE BENEFIT DISTRICT NO. 93-1.

2. PARCELS AND DISTRICTS SHOWN ON THIS MAP ARE BASED ON THE COUNTY ASSISTANT'S MAP OF THE NORTHGATE AREA, CITY OF VALLEJO, CALIFORNIA, FOR THE BENEFIT DISTRICT NO. 93-1.

REFERENCE TABLE

PARCEL NO.	ACRES	ASSESSMENT YEAR	ASSESSMENT VALUE
01-010-010	1.00	1953	100.00
01-010-020	1.00	1953	100.00
01-010-030	1.00	1953	100.00
01-010-040	1.00	1953	100.00
01-010-050	1.00	1953	100.00
01-010-060	1.00	1953	100.00
01-010-070	1.00	1953	100.00
01-010-080	1.00	1953	100.00
01-010-090	1.00	1953	100.00
01-010-100	1.00	1953	100.00
01-010-110	1.00	1953	100.00
01-010-120	1.00	1953	100.00
01-010-130	1.00	1953	100.00
01-010-140	1.00	1953	100.00
01-010-150	1.00	1953	100.00
01-010-160	1.00	1953	100.00
01-010-170	1.00	1953	100.00
01-010-180	1.00	1953	100.00
01-010-190	1.00	1953	100.00
01-010-200	1.00	1953	100.00
01-010-210	1.00	1953	100.00
01-010-220	1.00	1953	100.00
01-010-230	1.00	1953	100.00
01-010-240	1.00	1953	100.00
01-010-250	1.00	1953	100.00
01-010-260	1.00	1953	100.00
01-010-270	1.00	1953	100.00
01-010-280	1.00	1953	100.00
01-010-290	1.00	1953	100.00
01-010-300	1.00	1953	100.00
01-010-310	1.00	1953	100.00
01-010-320	1.00	1953	100.00
01-010-330	1.00	1953	100.00
01-010-340	1.00	1953	100.00
01-010-350	1.00	1953	100.00
01-010-360	1.00	1953	100.00
01-010-370	1.00	1953	100.00
01-010-380	1.00	1953	100.00
01-010-390	1.00	1953	100.00
01-010-400	1.00	1953	100.00
01-010-410	1.00	1953	100.00
01-010-420	1.00	1953	100.00
01-010-430	1.00	1953	100.00
01-010-440	1.00	1953	100.00
01-010-450	1.00	1953	100.00
01-010-460	1.00	1953	100.00
01-010-470	1.00	1953	100.00
01-010-480	1.00	1953	100.00
01-010-490	1.00	1953	100.00
01-010-500	1.00	1953	100.00
01-010-510	1.00	1953	100.00
01-010-520	1.00	1953	100.00
01-010-530	1.00	1953	100.00
01-010-540	1.00	1953	100.00
01-010-550	1.00	1953	100.00
01-010-560	1.00	1953	100.00
01-010-570	1.00	1953	100.00
01-010-580	1.00	1953	100.00
01-010-590	1.00	1953	100.00
01-010-600	1.00	1953	100.00
01-010-610	1.00	1953	100.00
01-010-620	1.00	1953	100.00
01-010-630	1.00	1953	100.00
01-010-640	1.00	1953	100.00
01-010-650	1.00	1953	100.00
01-010-660	1.00	1953	100.00
01-010-670	1.00	1953	100.00
01-010-680	1.00	1953	100.00
01-010-690	1.00	1953	100.00
01-010-700	1.00	1953	100.00
01-010-710	1.00	1953	100.00
01-010-720	1.00	1953	100.00
01-010-730	1.00	1953	100.00
01-010-740	1.00	1953	100.00
01-010-750	1.00	1953	100.00
01-010-760	1.00	1953	100.00
01-010-770	1.00	1953	100.00
01-010-780	1.00	1953	100.00
01-010-790	1.00	1953	100.00
01-010-800	1.00	1953	100.00
01-010-810	1.00	1953	100.00
01-010-820	1.00	1953	100.00
01-010-830	1.00	1953	100.00
01-010-840	1.00	1953	100.00
01-010-850	1.00	1953	100.00
01-010-860	1.00	1953	100.00
01-010-870	1.00	1953	100.00
01-010-880	1.00	1953	100.00
01-010-890	1.00	1953	100.00
01-010-900	1.00	1953	100.00
01-010-910	1.00	1953	100.00
01-010-920	1.00	1953	100.00
01-010-930	1.00	1953	100.00
01-010-940	1.00	1953	100.00
01-010-950	1.00	1953	100.00
01-010-960	1.00	1953	100.00
01-010-970	1.00	1953	100.00
01-010-980	1.00	1953	100.00
01-010-990	1.00	1953	100.00
01-010-1000	1.00	1953	100.00

March 28, 1953



CLAY A. LEACH  
 CITY ENGINEER  
 CITY OF VALLEJO, CALIFORNIA

FILED IN THE OFFICE OF THE CITY CLERK OF  
 THE CITY OF VALLEJO THIS \_\_\_\_\_ DAY OF  
 \_\_\_\_\_, 1953.

ALISON WILLIAMS  
 CITY CLERK  
 CITY OF VALLEJO, CALIFORNIA

RESOLUTION NO. \_\_\_\_\_  
 WHEREAS CERTAIN PARCELS IN THE NORTHGATE AREA, CITY OF VALLEJO, CALIFORNIA, ARE BEING APPLIED FOR AS A BENEFIT DISTRICT NO. 93-1, AND WHEREAS A RESOLUTION WAS PASSED AT A REGULAR MEETING HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 1953,  
 BY THE RESOLUTION NO. \_\_\_\_\_

ALISON WILLIAMS  
 CITY CLERK  
 CITY OF VALLEJO, CALIFORNIA

THIS MAP WAS PREPARED BY THE CITY ENGINEER OF THE CITY OF VALLEJO, CALIFORNIA, AND IS SUBJECT TO THE APPROVAL OF THE CITY CLERK OF THE CITY OF VALLEJO, CALIFORNIA, AND THE COUNTY CLERK OF SOLANO COUNTY, CALIFORNIA.

ALISON WILLIAMS  
 COUNTY CLERK  
 COUNTY OF SOLANO, CALIFORNIA

MODIFIED  
NORTHGATE AREA BENEFIT DISTRICT NO. 93-1

BENEFIT SCHEDULE

(Exhibit "C")

<u>Diagram No. or Letter</u>	<u>Name</u>	<u>County Assessor's Reference</u>	<u>Amount</u>
2		81-570-110	\$ 9,107
3		81-570-100	0
4		81-570-120	0
5	(COMCL III)	81-560-060	0
6		81-560-050	0
7		81-560-020	0
8		81-560-010	0
9		81-560-010	0
11	(COMCL I)	81-570-030	0
12		81-570-130 & 81-570-140	
13	(COMCL II)	81-570-070 (Total of four	\$ 16,685
14		81-570-060 parcels)	
15	(MULTIFAMILY)	81-040-710 & 81-040-690 (Por)	\$ 440,150
16	(OFFICE PARK)	81-010-010	\$ 3,398
17	(BUS. PARK)	81-040-430 & 81-040-590 (Por)	\$2,279,791
25		182-020-050	0
26		182-020-100	0
27	(OPEN SPACE)	182-020-110 & 182-020-120	0
28		182-020-060	0
29		182-020-070	0
30		81-040-160	0
A		81 Pgs. 58 & 59	\$ 166,972
B		81- Pgs. 60 & 61	\$ 391,880
C	+ 1,354.10	81-040-950	\$ 558,231
D		81-040-840	\$ 293,695
E		81-630-060	<del>\$1,264,364</del>
F		81-630-050 & 81-630-040	\$ 782,948
H		81-630-010 (Por)	\$ 38,158
		TOTAL	\$ 6,245,379

2700. There is hereby established in the State of California a strong-motion instrumentation program for the purpose of administering the program and of acquiring strong-motion instruments and installing and maintaining such instruments as needed in representative geologic environments and structures throughout the state.

2701. The division shall organize and monitor the program with the advice of the Seismic Safety Commission.

2702. The division shall purchase, install, and maintain instruments in representative structures and geologic environments throughout the state, and shall process the data obtained from such instruments resulting from periodic earthquakes, as deemed necessary and desirable by the Seismic Safety Commission.

2703. The division shall maintain and service the strong-motion instruments installed, shall collect and interpret all records from the instruments, and shall make the records, record interpretations, and technical assistance available to the construction industry.

2704. It is the intent of the Legislature in enacting this chapter to provide adequate instrumentation throughout California.

→ 2705. (a) Counties and cities shall collect a fee from each applicant for a building permit. Each fee shall be equal to a specific amount of the proposed building construction for which the building permit is issued as determined by the local building officials. The fee amount shall be assessed in the following way:

(1) Group R occupancies, as defined in the 1985 Uniform Building Code and adopted in Part 2 (commencing with Section 2-101) of Title 24 of the California Code of Regulations, one to three stories in height, except hotels and motels, shall be assessed at the rate of ten dollars (\$10) per one hundred thousand dollars (\$100,000), with appropriate fractions thereof.

(2) All other buildings shall be assessed at the rate of

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=62978224910+1+0+0&WAISac...> 8/20/2007

twenty-one dollars (\$21) per one hundred thousand dollars (\$100,000), with appropriate fractions thereof.

(3) The fee shall be the amount assessed under paragraph (1) or (2), depending on building type, or fifty cents (\$0.50), whichever is the higher.

(b) (1) In lieu of the requirements of subdivision (a), a county or city may elect to include a rate of ten dollars (\$10) per one hundred thousand dollars (\$100,000), with appropriate fractions thereof, in its basic building permit fee for any Group R occupancy defined in paragraph (1) of subdivision (a), and a rate of twenty-one dollars (\$21) per one hundred thousand dollars (\$100,000), with appropriate fractions thereof, for all other building types. A county or city electing to collect the fee pursuant to this subdivision need not segregate the fees in a fund separate from any fund into which basic building permit fees are deposited.

(2) "Building," for the purpose of this chapter, is any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

(c) (1) A city or county may retain up to 5 percent of the total amount it collects under subdivision (a) or (b) for data utilization, for seismic education incorporating data interpretations from data of the strong-motion instrumentation program and the seismic hazards mapping program, and, in accordance with paragraph (2), for improving the preparation for damage assessment after strong seismic motion events.

(2) A city or county may use any funds retained pursuant to this subdivision to improve the preparation for damage assessment in its jurisdiction only after it provides the Department of Conservation with information indicating to the department that data utilization and seismic education activities have been adequately funded.

(d) Funds collected pursuant to subdivision (a) and (b), less the amount retained pursuant to subdivision (c), shall be deposited in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, as created by Section 2699.5.

2705.5. The California Geological Survey shall advise counties and cities as to that portion of the total fees allocated to the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, so that this information may be provided to building permit applicants.

2706. Funds collected pursuant to subdivision (a) and (b) of Section 2705, less the amount retained pursuant to subdivision (c) of Section 2705, shall be deposited in the State Treasury in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, as created by Section 2699.5, to be used exclusively for the purposes of this chapter and Chapter 7.8 (commencing with Section 2690).

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=62978224910+1+0+0&WAISac...> 8/20/2007

2707. The division, upon advice of the Seismic Safety Commission, whenever it determines that an adequate instrumentation program has been achieved, may reduce the fee levied against building permits as provided in Section 2705 to a level sufficient to maintain the program established pursuant to this chapter.

2709. Any city or county that has been exempted from the provisions of Section 2705 by Section 2708 may participate in the state strong-motion instrumentation program by a written request to the State Geologist by the governing body of such city or county that its exemption be rescinded.

2709.1. (a) No strong-motion instrumentation shall be installed pursuant to this chapter in the structural types identified in subdivision (b) unless funds proportionate to the construction value as called for under Section 2705 are received from organizations or entities representing these structural types, or the instrumentation is specifically called for by the Seismic Safety Commission in urgency situations.

(b) The structural types subject to this section include all of the following:

- (1) Hospitals.
- (2) Dams.
- (3) Bridges.
- (4) Schools.
- (5) Powerplants.

(c) The Strong-Motion Instrumentation and Seismic Hazards Mapping Fund may accept funds from sources other than the permit fees identified in this chapter. The priority of installations performed under this chapter shall be determined by the Seismic Safety Commission.

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=62978224910+1+0+0&WAISac...> 8/20/2007



# ICBO BUILDING VALUATION DATA

At the request of numerous building officials, *Building Standards™* offered the following building valuation data representing average costs for most buildings. Because residential buildings are the most common for many cities, two general classes are considered for these, one for "average" construction and the other for "good." Adjustments should be made for special architectural or structural features and the location of the project. Higher or lower unit costs may often result.

The unit costs are intended to comply with the definition of "valuation" in Section 223 of the 1997 *Uniform Building Code™* and thus include architectural, structural, electrical, plumbing and mechanical work, except as specifically listed below. The unit costs also include the contractor's profit, which should not be omitted.

The determination of plan check fees for projects reviewed by the International Conference of Building Officials will be based on valuation computed from these figures.

Occupancy and Type	Cost per Square Foot, Average	Occupancy and Type	Cost per Square Foot, Average	Occupancy and Type	Cost per Square Foot, Average	Occupancy and Type	Cost per Square Foot, Average		
<b>1. APARTMENT HOUSES:</b>									
Type I or II F.R.*	\$88.70								
(Good) \$109.20									
Type V-Masonry	72.40								
(or Type III)									
(Good) \$88.70									
Type V-Wood Frame	63.80								
(Good) \$82.00									
Type I-Basement Garage	37.40								
<b>2. AUDITORIUMS:</b>									
Type I or II F.R.	104.80								
Type II-1-Hour	75.90								
Type II-N	71.80								
Type III-1-Hour	79.80								
Type III-N	75.70								
Type V-1-Hour	76.30								
Type V-N	71.20								
<b>3. BANKS:</b>									
Type I or II F.R.*	148.10								
Type II-1-Hour	109.10								
Type II-N	105.60								
Type III-1-Hour	120.40								
Type III-N	116.10								
Type V-1-Hour	109.10								
Type V-N	104.50								
<b>4. BOWLING ALLEYS:</b>									
Type II-1-Hour	51.00								
Type II-N	47.60								
Type III-1-Hour	55.50								
Type III-N	51.90								
Type V-1-Hour	37.40								
<b>5. CHURCHES:</b>									
Type I or II F.R.	99.20								
Type II-1-Hour	74.50								
Type II-N	70.80								
Type III-1-Hour	81.00								
Type III-N	77.40								
Type V-1-Hour	75.70								
Type V-N	71.20								
<b>6. CONVALESCENT HOSPITALS:</b>									
Type I or II F.R.*	139.20								
Type II-1-Hour	96.60								
Type III-1-Hour	99.00								
Type V-1-Hour	93.30								
<b>7. DWELLINGS:</b>									
Type V-Masonry	\$75.70								
(Good) \$96.90									
Type V-Wood Frame	67.30								
(Good) \$92.40									
<b>Basements:</b>									
Semi-Finished	20.10								
(Good) \$23.20									
Unfinished	14.60								
(Good) \$17.70									
<b>8. FIRE STATIONS:</b>									
Type I or II F.R.	114.40								
Type II-1-Hour	75.30								
Type II-N	71.00								
Type III-1-Hour	82.40								
Type III-N	78.90								
Type V-1-Hour	77.30								
Type V-N	73.30								
<b>9. HOMES FOR THE ELDERLY:</b>									
Type I or II F.R.	103.70								
Type II-1-Hour	84.20								
Type II-N	80.60								
Type III-1-Hour	87.70								
Type III-N	84.10								
Type V-1-Hour	84.70								
Type V-N	81.80								
<b>10. HOSPITALS:</b>									
Type I or II F.R.*	163.20								
Type II-1-Hour	135.10								
Type III-1-Hour	128.90								
Type V-1-Hour									
<b>11. HOTELS AND MOTELS:</b>									
Type I or II F.R.*	101.00								
Type II-1-Hour	87.50								
Type II-N	83.40								
Type V-1-Hour	78.20								
Type V-N	74.70								
<b>12. INDUSTRIAL PLANTS:</b>									
Type I or II F.R.	56.90								
Type II-1-Hour	39.60								
Type II-N	36.40								
Type III-1-Hour	43.60								
Type III-N	41.10								
Tilt-up	30.00								
Type V-1-Hour	41.10								
Type V-N	37.60								
<b>13. JAILS:</b>									
Type I or II F.R.	\$159.10								
Type II-1-Hour	145.50								
Type V-1-Hour	109.10								
<b>14. LIBRARIES:</b>									
Type I or II F.R.	116.40								
Type II-1-Hour	85.20								
Type II-N	81.00								
Type III-1-Hour	90.00								
Type III-N	85.50								
Type V-1-Hour	84.50								
Type V-N	81.00								
<b>15. MEDICAL OFFICES:</b>									
Type I or II F.R.*	119.50								
Type II-1-Hour	92.20								
Type II-N	87.60								
Type III-1-Hour	100.00								
Type III-N	93.10								
Type V-1-Hour	90.20								
Type V-N	87.00								
<b>16. OFFICES**:</b>									
Type I or II F.R.*	106.80								
Type II-1-Hour	71.50								
Type II-N	68.10								
Type III-1-Hour	77.20								
Type III-N	73.80								
Type V-1-Hour	72.30								
Type V-N	68.10								
<b>17. PRIVATE GARAGES:</b>									
Wood Frame	24.30								
Masonry	27.40								
Open Carports	16.60								
<b>18. PUBLIC BUILDINGS:</b>									
Type I or II F.R.*	123.40								
Type II-1-Hour	100.00								
Type II-N	95.80								
Type III-1-Hour	103.80								
Type III-N	100.20								
Type V-1-Hour	85.00								
Type V-N	81.60								
<b>19. PUBLIC GARAGES:</b>									
Type I or II F.R.*	48.90								
Type I or II Open Parking*	36.70								
Type II-N	28.00								
Type III-1-Hour	37.00								
Type III-N	32.90								
Type V-1-Hour	33.70								
<b>20. RESTAURANTS:</b>									
Type III-1-Hour	\$97.40								
Type III-N	94.10								
Type V-1-Hour	89.20								
Type V-N	85.70								
<b>21. SCHOOLS:</b>									
Type I or II F.R.	111.20								
Type II-1-Hour	75.90								
Type III-1-Hour	81.20								
Type III-N	78.10								
Type V-1-Hour	76.10								
Type V-N	72.60								
<b>22. SERVICE STATIONS:</b>									
Type II-N	67.20								
Type III-1-Hour	70.10								
Type V-1-Hour	59.70								
Canopies	28.00								
<b>23. STORES:</b>									
Type I or II F.R.*	82.40								
Type II-1-Hour	50.40								
Type II-N	49.30								
Type III-1-Hour	61.30								
Type III-N	57.50								
Type V-1-Hour	51.60								
Type V-N	47.70								
<b>24. THEATERS:</b>									
Type I or II F.R.	109.80								
Type III-1-Hour	80.00								
Type III-N	76.20								
Type V-1-Hour	75.30								
Type V-N	71.20								
<b>25. WAREHOUSES***:</b>									
Type I or II F.R.	49.40								
Type II or V-1-Hour	29.30								
Type III or V-N	27.50								
Type III-1-Hour	33.20								
Type III-N	31.60								
<b>EQUIPMENT</b>									
<b>AIR CONDITIONING:</b>									
Commercial	4.20								
Residential	3.50								
<b>SPRINKLER SYSTEMS</b>									
	2.60								

\*Add 0.5 percent to total cost for each story over three. \*\*Deduct 20 percent for shell-only buildings. \*\*\*Deduct 11 percent for mini-warehouses.

**REGIONAL MODIFIERS**

The following modifiers are recommended for use in conjunction with the building valuation data. Additionally, certain local conditions may require further modifications. To use these modifiers, merely multiply the listed cost per square foot by the appropriate regional modifier. For example, to adjust the cost of a Type III One-hour hotel building of average construction for the Iowa area, select Regional Modifier 0.80 and unit cost from valuation data, \$87.50:

$$0.80 \times 87.50 = \$70.00 (\text{adjusted cost per square foot})$$

Eastern U.S.	Modifier	Eastern U.S. (cont.)	Modifier	Central U.S. (cont.)	Modifier	Western U.S.	Modifier
Connecticut	1.00	Pennsylvania	1.06	Kansas	0.87	Alaska	1.20
Delaware	0.93	Philadelphia	0.88	Kentucky	0.83	Arizona	0.87
District of Columbia	0.90	Other	0.88	Louisiana	0.78	California	
Florida	0.80	Rhode Island	0.97	Michigan	0.91	Los Angeles	1.00
Georgia	0.77	South Carolina	0.77	Minnesota	0.91	San Francisco Bay Area	1.16
Maine	0.86	Vermont	0.88	Mississippi	0.74	Other	0.97
Maryland	0.86	Virginia	0.83	Missouri	0.87	Colorado	0.92
Massachusetts	0.97	West Virginia	0.91	Nebraska	0.83	Hawaii	1.24
New Hampshire	0.88			North Dakota	0.86	Idaho	0.87
New Jersey	1.03	<b>Central U.S.</b>		Ohio	0.87	Montana	0.84
New York		Alabama	0.76	Oklahoma	0.78	Nevada	0.93
New York City	1.20	Arkansas	0.75	South Dakota	0.84	New Mexico	0.79
Other	0.90	Illinois	0.97	Tennessee	0.79	Oregon	0.94
North Carolina	0.78	Indiana	0.91	Texas	0.77	Utah	0.84
		Iowa	0.87	Wisconsin	0.92	Washington	0.97
						Wyoming	0.84

**ATTACHMENT 6**

**AMENDED  
DIAGRAM  
OF  
SKY VALLEY IMPROVEMENT  
BENEFIT DISTRICT NO. 85-1**

CITY OF VALLEJO  
SOLANO COUNTY, CALIFORNIA

JOHN H. DAVINE  
PUBLIC WORKS DIRECTOR  
CITY OF VALLEJO, CALIFORNIA

FILED IN THE OFFICE OF THE CITY CLERK OF  
THE CITY OF VALLEJO THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 1962.

ALEXANDER M. KOURTNIK  
CITY CLERK  
CITY OF VALLEJO, CALIFORNIA

WHEREAS, WHEREAS, THAT THE IMPROVEMENTS APPROVED  
BY THE CITY OF VALLEJO IN THE CITY OF VALLEJO, CALIFORNIA  
A RESOLUTION OF THE CITY OF VALLEJO, CALIFORNIA, PASSED  
BY ITS RESOLUTION NO. \_\_\_\_\_, 1962.

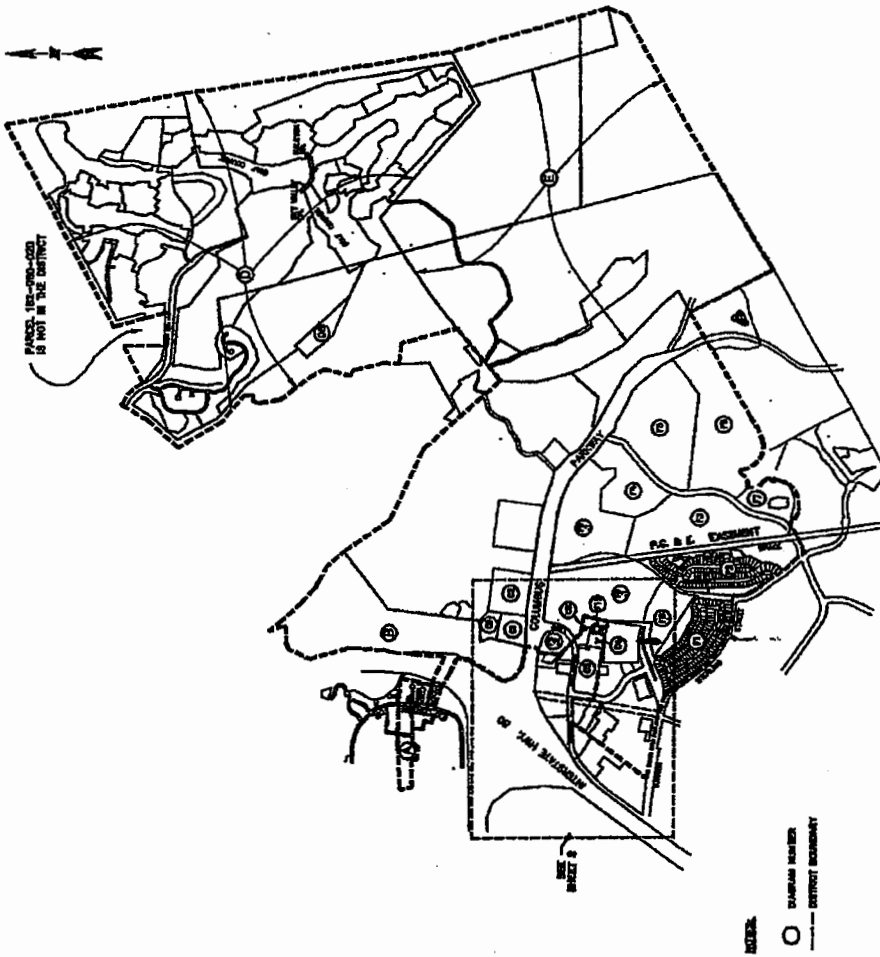
FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1962,  
AT THE HOUR OF \_\_\_\_\_ O'CLOCK IN THE COUNTY OF SOLANO,  
CALIFORNIA, IN THE OFFICE OF THE COUNTY CLERK,  
RECORDED AT PAGE \_\_\_\_\_ OF THE COUNTY RECORDS OF THE COUNTY OF SOLANO, STATE OF CALIFORNIA.

ROBERT A. BLECH-POMROT  
COUNTY ASSESSOR/RECORDER  
COUNTY OF SOLANO, CALIFORNIA

**NOTES.**  
REFERENCES IS MADE TO THE COUNTY ASSESSOR'S MAPS  
FOR THE SUBDIVISIONS OF THE VARIOUS PARCELS OF LAND  
WITHIN THE DISTRICT.  
MEASUREMENTS AND DISTANCES SHOWN ON THIS MAP ARE BASED ON  
FIELD DATA, OR SCALED INFORMATION AND DO NOT REFLECT A  
FIELD SURVEY.

THIS BENEFIT DISTRICT ONLY AFFECTS THE UNITED COUNTY  
AND NOT FEDERAL, NATIONAL, OTHER FEDERAL WITHIN THE AREA  
FEDERALLY OWNED, LEASED, OR OTHERWISE ACQUIRED, AND  
THIS PARCELS LISTED AS OPEN SPACE, PARKS, AND ARE NOT IN THE  
DISTRICT BUT ARE LISTED AS FEDERAL LAND.

SHEET 1 OF 3.



**ACQUISITION AGREEMENT**

by and between

**CITY OF VALLEJO**

and

**TOURO MARE ISLAND, LLC**

**Dated \_\_\_\_\_, 2008**

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## ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT ("*Acquisition Agreement*") dated \_\_\_\_\_, 2008 ("*Date of Agreement*"), is entered into by and between the CITY OF VALLEJO, a California municipal corporation ("*City*"), and TOURO MARE ISLAND, LLC, a California limited liability company ("*Touro*").

### RECITALS

The following Recitals are a substantive part of this Acquisition Agreement. Capitalized terms not defined in these Recitals are defined in Section 101 below.

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.

B. In accordance with procedures established under Federal and State law governing the planning, disposition and reuse of closed military bases, City accepted on July 26, 1994, a Final Reuse Plan ("*Reuse Plan*") for Mare Island, which Reuse Plan established goals for the reuse of Mare Island, including the creation of jobs and other economic development opportunities within the City, the creation of a self-sustaining and multi-use community and the use of a variety of innovative economic development tools for the marketing, financing and acquisition of Mare Island following its closure by the United States of America.

C. The Reuse Plan divided Mare Island into thirteen (13) Reuse Areas consisting of property owned by the United States of America, including the approximately 190 acre Reuse Area 1A located north of G Street.

D. In connection with the approval of the Reuse Plan, City certified a final Environmental Impact Statement/Environmental Impact Report (SCH #940930029) ("*EIS/EIR*") pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) ("*CEQA*"), and the United States of America, acting by and through the Secretary of the Navy ("*Navy*"), issued a Record of Decision pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§4321-4347 ("*NEPA*").

E. On or about January 4, 2001, the Navy approved a Finding of Suitability for Transfer ("*FOST*") finding, among other things, that certain Mare Island property, including the Property and other portions of Reuse Area 1A, was environmentally suitable for early transfer in accordance with and subject to Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9620 *et seq.* ("*CERCLA*").

F. On or about September 2001, Navy conveyed to City pursuant to the FOST certain Mare Island property, including the Property and other portions of Reuse Area 1A, by Quitclaim Deed dated September 26, 2001, recorded on October 17, 2001,

Series No. 2001-00120695 ("*Navy Quitclaim Deed*"), in the Official Records of the County of Solano.

G. On or about March 30, 1999, City adopted a Mare Island Specific Plan governing the land use policy and development process for Mare Island. On or about December 6, 2005, City amended the Mare Island Specific Plan by adopting the Mare Island Specific Plan Amended and Restated; the Mare Island Specific Plan Amended and Restated was further amended by City on June 26, 2007. The Mare Island Specific Plan Amended and Restated, as further amended by the June 26, 2007 Specific Plan Amendment, is hereinafter referred to as the "*Specific Plan*."

H. In connection with City's adoption of the Mare Island Specific Plan Amended and Restated, the City certified a final Subsequent Environment Impact Report on November 29, 2005 ("*SEIR*"). The SEIR identified and analyzed the significant impacts associated with the incremental change in intensity and distribution of land uses on Mare Island from the 1999 Specific Plan.

I. City and Touro University, entered into an Exclusive Right to Negotiate Agreement dated January 9, 2007, providing, among other things, for City and Touro University to negotiate with each other regarding Touro University's potential acquisition and development of Reuse Area 1A. Touro University is a California non-profit public benefit corporation, whose sole shareholder is Touro College, a New York educational corporation, and Touro College is the sole member and manager of Touro Mare Island, LLC.

J. On or about October 2, 2007, City and Touro University entered into a First Amendment to Exclusive Negotiating Agreement pursuant to which the parties agreed, among other things, to (i) extend the exclusive negotiating period, (ii) negotiate one or more agreements addressing development of that certain approximately 27.89 acre portion of Reuse Area 1A known as Parcel XV-A(2), as depicted in Exhibit A and described in Exhibit B attached hereto ("*Property*"), with an approximately 125,000 square foot advanced particle beam cancer-treatment center and ancillary related research and administrative/office space ("*Project*"), and (iii) defer negotiation of agreements addressing the balance of Reuse Area 1A to a later date, due in part to the uncertainty of reaching agreement with the Navy for the remediation of Hazardous Materials on the portion of Reuse Area 1A still owned by the Navy and the subsequent transfer of that property from the Navy to the City. The Exclusive Right to Negotiate Agreement, as amended by the First Amendment, has been replaced by an Amended and Restated Exclusive Right to Negotiate Agreement dated April 1, 2008, between City and Touro University pursuant to which the parties agreed, among other things, to extend the exclusive negotiating periods for the Property and the balance of Reuse Area 1A. The Amended and Restated Exclusive Right to Negotiate Agreement is hereinafter referred to as the "*ERN*."

K. As contemplated by the ERN, City and Touro now desire to enter into this Acquisition Agreement providing, among other things, for the purchase and sale of the Property by City to Touro and Touro's development of the Project or, subject to City's

approval in its sole discretion, an Alternate Project as described in Section 301.1, together with the Infrastructure Improvements and other on-site and off-site public improvements all as provided herein.

L. Concurrently herewith, City and Touro are entering into a Right of Entry and Demolition Agreement ("**Right of Entry and Demolition Agreement**") to allow Touro and its contractors and subcontractors to enter onto the Property and, at Touro's risk and expense, demolish certain buildings and improvements located thereon. Concurrently herewith, City and Touro are also entering into a Development Agreement ("**Development Agreement**"), which, among other things, sets forth the applicable fees, policies and zoning requirements that will apply to Touro's development of the Project and provides Touro with a vested right to develop the Project. On or prior to Closing, City and Touro shall enter into a Public Improvements Construction Agreement ("**Public Improvements Construction Agreement**") in the form attached as Exhibit \_\_ to this Acquisition Agreement which, among other things, shall, contingent upon Closing, obligate Touro to construct or cause the construction of certain Infrastructure Improvements, including North Mare Island Backbone Infrastructure Improvements and Ordinary Frontage Improvements (as such terms are defined in the Development Agreement). The Right of Entry and Demolition Agreement, Development Agreement and, effective upon execution by the Parties, the Public Improvements Construction Agreement are referred to collectively herein as the "**Transaction Documents**."

M. City has determined that by entering into this Acquisition Agreement and the Transaction Documents, City will promote orderly growth and quality development on Mare Island in accordance with the goals and policies set forth in the Reuse Plan, the City's General Plan and the Specific Plan, and City will benefit from increased employment and commercial opportunities created by the Project for residents of City.

N. The terms and conditions of this Acquisition Agreement have undergone review by City staff and the City Council of the City of Vallejo at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the City's General Plan and Specific 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 Acquisition Agreement.

## **A G R E E M E N T**

**NOW, THEREFORE**, City and Touro hereby agree as follows:

### **100. INTRODUCTORY PROVISIONS.**

#### **101. Definitions.**

"*Acquisition Agreement*" means this Acquisition Agreement.

"*Adjacent Infrastructure Improvements*" is defined in Section 211.9

"*Affiliate of Touro*" is defined in Section 103.2.

"*Alternative Project*" is defined in Section 301.1.

"*Applicable Laws*" is defined in Section 309.

"*CEQA*" is defined in Recital D.

"*CERCLA*" is defined in Recital E.

"*Certificate of Completion*" means the certificate evidencing satisfactory completion of the Project and the Infrastructure Improvements in the form of Exhibit E attached hereto.

"*CFD*" means a community facility district established pursuant to the Mello-Roos Act (Government Code Section 53311 *et seq.*).

"*City*" means City of Vallejo, a California municipal corporation.

"*City Conditions Precedent*" is defined in Section 204.

"*City Option*" is defined in Section 405.

"*City Parties*" is defined in Section 210.2.

"*City's Response*" is defined in Section 207.2.

"*Claims*" means any and all liabilities, obligations, orders, claims, actual damages, governmental fines or penalties, awards of attorneys' fees to third parties, and expenses of defense with respect to any of the foregoing, including attorneys' fees and costs.

"*Closing*" is defined in Section 206.

"*Closing Date*" is defined in Section 206.

"*Condition of Title*" is defined in Section 207.3.

"*Construction Drawings*" is defined in Section 306.2.

"*Date of Agreement*" is defined in the introductory paragraph preceding the Recitals of this Acquisition Agreement.

"*Deed*" means the grant deed for conveyance of the Property by City to Touro in substantially the form attached hereto as Exhibit F.

"*Demolition Activities*" is defined in the Right of Entry and Demolition Agreement.

"*Deposit*" is defined in Section 203.1.

*"Development Agreement"* is defined in Recital L.

*"Documents"* is defined in Section 201.1b.

*"EIS/EIR"* is defined in Recital D.

*"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, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §6901 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; the Hazardous Substance Account Act, California Health and Safety Code § 25300 *et seq.*; the Hazardous Waste Control Law, California Health and Safety Code §25100 *et seq.*; and the Porter-Cologne Water Quality Control Act, California Water Code §13000 *et seq.*

*"ERN"* is defined in Recital I.

*"Escrow"* is defined in Section 202.

*"Escrow Agent"* is defined in Section 202.

*"Feasibility Period"* is defined in Section 201.1.

*"FOST"* is defined in Recital E.

*"Hazardous Materials"* means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States of America, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely

hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (42 U.S.C. § 6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

*"Infrastructure Improvements"* is defined in the Development Agreement.

*"Island Energy"* is defined in Section 211.6.

*"Lennar Mare Island"* means Lennar Mare Island, LLC, a California limited liability company.

*"Loan/Equity Commitments"* is defined in Section 305.2.

*"Managing Member"* means Touro College, a New York non-profit educational corporation, the sole managing member of Touro.

*"Memorandum of Agreement"* means the Memorandum of Agreement attached hereto as Exhibit G, and described in Section 201.2.

*"Navy"* is defined in Recital D

*"Navy Quitclaim Deed"* is defined in Recital F.

*"NEPA"* is defined in Recital D.

*"Notice of Approval"* is defined in Section 201.1e.

*"Notice of Intent"* is defined in Section 405.2.

*"Off-Site Infrastructure Development Costs"* is defined in Section 211.1

*"Option Negotiation Period"* is defined in Section 405.2

*"Organizational Documents"* is defined in Section 102.2.

*"Outside Date"* is defined in Section 206.

*"Permitted Transfer"* is defined in Section 103.2.

*"Pre-Approved Exceptions"* is defined in Section 207.1.

*"Prevailing Wage Laws"* is defined in Section 309.



"Project" is defined in Recital J and more particularly described in the Scope of Work.

"Project Design Plans" is defined in Section 306.1.

"Project Hard Costs" is defined in Section 405.1.

"Property" is defined in Recital I.

"Public Improvement Construction Agreement" is defined in Recital L.

"Purchase Price" is defined in Section 203.

"Quitclaim Deed" means the Quitclaim Deed attached hereto as Exhibit H.

"Reuse Plan" is defined in Recital B.

"Right of Entry and Demolition Agreement" is defined in Recital L.

"Schedule of Performance" means the Schedule of Performance attached hereto as Exhibit D

"Scope of Work" means the Scope of Work attached hereto as Exhibit C describing the scope and quality of the Project.

"Specific Plan" is defined in Recital G.

"SEIR" is defined in Recital H.

"Title Company" is defined in Section 202.

"Title Notice" is defined in Section 207.2.

"Title Report" is defined in Section 207.1.

"Title Review Period" is defined in Section 207.2.

"Touro" means Touro Mare Island, LLC, a California limited liability company.

"Touro Conditions Precedent" is defined in Section 205.

"Touro Parties" is defined in Section 201.1a.

"Touro Project Budget/Financing Plan" is defined in Section 305.1.

"Touro's Response" is defined in Section 207.2.

"Touro Title Policy" is defined in Section 205.4.

"*Transaction Documents*" is defined in Recital L.

"*Transfer*" is defined in Section 201.

"*Transfer Agreement*" is defined in Section 103.4

## 102. Representations and Warranties.

**102.1 City Representations.** City represents and warrants to Touro as follows:

**a. Authority.** City is a municipal corporation duly organized within and in good standing under the laws of the State of California. City has full right, power, ability and lawful authority to perform its obligations hereunder and the execution, performance and delivery of this Acquisition Agreement by City has been duly authorized by all requisite actions on the part of City.

**b. No Conflict.** City's execution, delivery and performance of its obligations under this Acquisition 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.

**c. No Litigation or Other Proceeding.** To City's current actual knowledge, 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 Acquisition Agreement.

**d. Property Ownership.** Since the date City received conveyance of the Property by quitclaim deed from the Navy, City has not conveyed the Property or any right, title or interest therein to any person or entity, and to the best of City's current knowledge there are no unrecorded encumbrances on the Property that arose since the date City acquired its interest in the Property from Navy.

**e. City Bankruptcy.** Prior to the Date of Agreement, City filed a voluntary petition ("*Petition*") in U.S. Bankruptcy Court, Eastern District of California, Case Number 2008-26813 on May 23, 2008 ("*City Bankruptcy*"). The Petition was filed pursuant to Chapter 9 of the United States Bankruptcy Code. City acknowledges that this Acquisition Agreement and the Transaction Documents are entered into by City subsequent to the filing of City's Petition. In addition to the foregoing, as of the Date of Agreement, City is not the subject of any other bankruptcy proceeding, nor has it (i) made a general assignment for the benefit of creditors, (ii) suffered the filing of any involuntary petition by its respective creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, or (v) made an offer of settlement, extension or composition to its creditors generally.

**102.2 Touro's Representations.** Touro represents and warrants to City as follows:

**a. Authority.** Touro is a limited liability company duly organized within and in good standing under the laws of the State of California. Touro has provided City with true, complete and correct copies of Touro's operating agreement, as amended up to the Date of Agreement, and shall provide City with any substantial or material future updates or amendments thereof ("**Organizational Documents**"). In the event of an approved transfer or assignment or a Permitted Transfer, the term "Organizational Documents" shall be deemed to refer to the bylaws, operating agreement, partnership agreement or other organizational documents, as applicable, of Touro's approved successor-in-interest.

**b. Execution.** The execution and delivery of this Acquisition Agreement and the performance of the obligations of Touro hereunder have been duly authorized by all necessary company action and all necessary member approvals have been obtained, including without limitation the submission and approval of this Acquisition Agreement by the Board of Trustees of Touro College, and no approvals or consents of any persons are necessary for the execution, delivery or performance of this Acquisition Agreement by Touro, except as have been obtained.

**c. No Conflict.** Touro's execution, delivery and performance of its obligations under this Acquisition Agreement will not constitute a default or a breach under any contract, agreement or order to which Touro and/or Touro's Managing Member is a party or by which it is bound.

**d. No Litigation or Other Proceeding.** To Touro's actual current knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Touro to perform its obligations under this Acquisition Agreement.

**e. No Touro Bankruptcy.** As of the Date of Agreement, neither Touro nor Touro's Managing Member is the subject of any bankruptcy proceeding, nor has either (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its respective creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

**102.3 Renewal of Representations and Warranties.** Each party shall promptly notify the other party of any material change in any condition or of any event or circumstance which makes any representation or warranty of such party under this Acquisition Agreement untrue or misleading. Each of the representations and warranties made by City and Touro hereunder (i) is true as of the Date of Agreement, (ii) shall be deemed remade and shall be true in all material respects as of the date of Closing, and (iii) shall survive Closing.

### **103. Changes in Ownership, Management or Control.**

**103.1 General Prohibition.** The qualifications and identity of Touro and its Managing Member are of particular interest to City. It is because of those unique qualifications and identities, in addition to Touro's agreement to develop the Project on the Property as contemplated by this Acquisition Agreement and the Development Agreement, that City has entered into this Acquisition Agreement with Touro. Prior to issuance of the Certificate of Completion and except as otherwise specifically provided in this Acquisition Agreement or the Development Agreement, no voluntary or involuntary successor in interest of Touro shall acquire any ownership interest in the Property nor any rights or powers under this Acquisition Agreement, except for Permitted Transfers or as may otherwise be approved by City. Notwithstanding the foregoing, Touro may grant or a third party may obtain an interest in the Property that is an easement, license, right of entry or profit, so long as the conveyance of such interest does not adversely or materially affect Touro's ability to perform its obligations under this Acquisition Agreement and the Transaction Documents.

**103.2 Permitted Transfers.** Notwithstanding any other provision of this Acquisition Agreement to the contrary, City approval of a transfer of the Property or an assignment of this Acquisition Agreement or any interest therein ("*Transfer*") shall not be required in connection with any of the transfers listed in items a. through c. below (each, a "*Permitted Transfer*"):

a. Any transfer of the Property or assignment of this Acquisition Agreement or any interest therein to an entity or entities in which Touro, Touro University or Touro's Managing Member retains a beneficial economic interest and in which Touro, Touro University or Touro's Managing Member retains effective management and control of the transferee entity or entities, subject only to major events requiring the consent or approval of the other owners of such entity ("*Affiliate of Touro*"), and in connection with which such Affiliate of Touro assumes the rights and obligations of Touro under this Acquisition Agreement pursuant to an assignment and assumption agreement in a form reasonably acceptable to City's legal counsel;

b. Any assignment for financing purposes (subject to Touro providing copies of all relevant loan documentation to City prior to loan closing), including the grant of a deed of trust, to secure the funds necessary for construction and financing of the Project;

c. A transfer which combined with any and all previous or simultaneous transfers represents less than fifty percent (50%) of the membership, equity or beneficial interest of Touro, provided such transfer does not cause a material change in the rights to manage and control Touro; or

d. A transfer of an interest in the Project to the University of California, San Francisco, or such other entity or entities managing the day to day operation of the Project,; provided, such transfer does not result in a change in the management and control of Touro or the Project. Touro shall give at least thirty (30) days prior written notice to City of a Permitted Transfer. In addition, City shall be entitled to review such documentation as may be reasonably required by the City

Manager or his/her designee to assess the nature and scope of the Permitted Transfer, but such review shall in no event be longer than twenty (20) days following receipt of the requested information.

**103.3 Other Transfer or Assignment.** For any proposed Transfer that is not a Permitted Transfer under Section 103.2 above, Touro shall give notice to City of Touro's desire to make such Transfer. Touro's notice shall include (i) information concerning the proposed transferee, including the transferee's bonding capacity and specific development experience, financial capabilities and knowledge concerning the Project, and (ii) a certification from Touro that Touro has provided copies of all Project Approvals (as defined in the Development Agreement) to the proposed transferee. City shall have twenty (20) days following receipt of such notice to request additional information regarding the proposed Transfer and the transferee's experience and financial capacity as is reasonably necessary to evaluate the proposed Transfer and transferee. City shall have until the later of (30) calendar days after Touro gives its initial notice or ten (10) days after receipt of all additional requested information, if any, to review and either approve or reject the proposed Transfer and transferee. City's approval of the proposed Transfer and transferee shall not be unreasonably withheld. The parties agree that it shall not be unreasonable for City to disapprove a proposed Transfer and transferee based on: (i) transferee's insufficient understanding of the Project Approvals and Transaction Documents; (ii) transferee having bonding capacity less than that of Touro; (iii) transferee having insufficient financial capacity to complete the Project and, to the extent not already complete, the Infrastructure Improvements; and/or (iv) transferee lacking the development qualifications and experience to reasonably ensure successful completion of the Project. If City rejects the proposed Transfer and transferee, City shall provide notice of such rejection within the time period set forth above, and in its notice of rejection, City shall detail all reasons supporting rejection of the proposed Transfer and transferee based on the standards set forth in this Section 103.3.

**103.4 Written Transfer Agreement.** In connection with any Transfer by Touro, including any Permitted Transfer to an Affiliate of Touro, Touro and the transferee shall enter into a written agreement ("*Transfer Agreement*") regarding the respective interests, rights and obligations of Touro and the transferee in and under this Acquisition Agreement and, to the extent applicable, the other Transaction Documents and the Project Approvals (as defined in the Development Agreement). The Transfer Agreement shall be in a form reasonably acceptable to the City Attorney. Such Transfer Agreement may (i) release Touro from obligations under this Acquisition Agreement that pertain to that portion of the Property and/or Project being transferred, as described in the Transfer Agreement, provided the transferee expressly assumes all such obligations, (ii) transfer to the transferee all rights, including vested rights, and all obligations under this Acquisition Agreement and, to the extent applicable, the other Transaction Documents to improve and use that portion of the Property and/or Project being transferred, (iii) provide that no subsequent breach or default by a transferee assuming a portion of Touro's obligations under this Acquisition Agreement shall be attributed to Touro, nor may Touro's remaining rights hereunder be canceled or diminished in any way by any breach or default by any such transferee, and (iv) address such other matters as are reasonably necessary or appropriate in connection with the Transfer.

**103.5 Transfer Following Issuance of Certificate of Completion.**

There shall be no restriction or prohibition of Touro's right to make any transfer of any interest in the Property or any rights or powers under the Acquisition Agreement following issuance of the Certificate of Completion.

**200. SALE AND TRANSFER OF PROPERTY.**

**201. Sale and Transfer.** City agrees to sell to Touro, and Touro agrees to purchase from City, the Property in accordance with and subject to the terms and conditions of this Acquisition Agreement. City shall convey the Property to Touro by execution and delivery of a grant deed ("*Deed*") substantially in the form of Exhibit F attached hereto. The conveyance of the Property by City to Touro is hereinafter referred to as the "*Transfer*."

**201.1 Feasibility Period.** Commencing on the Date of Agreement and ending on the date that is ninety (90) days after the Date of Agreement ("*Feasibility Period*"), Touro shall have the right to inspect and review the condition of the Property, determine the suitability of the Property for Touro's intended use and evaluate all other aspects of Project feasibility, including financial viability. The Feasibility Period may be extended by the City Manager in his or her sole discretion.

**a. Right of Access.** From and after the Date of Agreement and thereafter until Closing or termination of this Acquisition Agreement, Touro, its employees, agents, contractors and subcontractors ("*Touro Parties*"), shall have the right to enter upon the Property and while thereon make surveys, take measurements, perform test borings or other tests of surface and subsurface conditions, including soils, soil gas and water, make engineering, architectural, environmental and other studies and inspect the Property. Touro agrees to provide notice to the City Mare Island Conversion Program Manager at least forty-eight (48) hours prior to undertaking any studies or work upon the Property. Touro shall provide City with copies of all data, survey and tests which Touro produces in connection with such studies and investigations. Prior to any entry on the Property by Touro Parties occurring any time prior to Closing, Touro shall procure and maintain commercial general liability insurance covering City, and naming City as an additional insured, in the minimum amount of \$1,000,000 per occurrence. If Touro exercises its rights of entry under the provisions of this Section 201.1, Touro shall (i) keep the Property free of any liens or third-party claims resulting therefrom; (ii) indemnify and defend City against any liability or expense for injuries to or death of persons or damage to property of any nature whatsoever to the extent arising out of or resulting from Touro's exercise of its rights hereunder; provided that Touro shall have no obligation to indemnify or defend City against any Claims arising from the active negligence or willful misconduct of City or City Parties and Touro shall have no responsibility or liability for any Hazardous Materials within, on, above, under, emanating from, or adjacent to the Property which were present before Touro Parties' entry on the Property; and (iii) if the Closing does not occur for any reason (other than a default by City), restore as nearly as practicable any portion of the Property affected by such entry substantially to its condition immediately before such entry. The

indemnification provisions of this Section shall survive the termination of this Acquisition Agreement.

**b. Availability of Documents.** During the Feasibility Period, City shall make available to Touro all non-privileged documents and materials in City's possession, custody or control concerning the Property and the improvement, development and operation thereof (collectively, the "**Documents**"), including, to the extent available, any reports or documents pertaining to remediation of Hazardous Materials in, on, above, under or emanating from the Property; the existence or location of any Hazardous Materials that were not removed in connection with any prior remediation activities; any other documents describing any Hazardous Materials in, on, above, under or emanating from the Property or off-site at the location of certain Infrastructure Improvements which are to be constructed by Touro; surveys, including any boundary, topographic and tree surveys; engineering studies, cost estimates, plans, schematics and diagrams related to the potential development of the Property; maps; soils reports; environmental, natural resource and biological studies and reports; material relating to earthquake faults and flood zones; leases, rental agreements and licenses; and property tax bills. City makes no representations or warranties with respect to the accuracy, completeness, methodology of preparation or otherwise concerning the contents of any Documents made available to Touro. Touro acknowledges that City has requested Touro to inspect fully all portions of the Property and investigate all matters relevant thereto and to rely solely upon the results of Touro's own inspections or other information obtained or otherwise available to Touro, rather than any information that may have been provided by City to Touro.

**c. Title Review.** Touro shall have the right during the Feasibility Period to review and approve the Condition of Title as provided in Section 207 below.

**d. Touro Rights for Off-Site Infrastructure Improvements.** As described in this Acquisition Agreement and the Development Agreement, Touro will be responsible for the construction of certain Infrastructure Improvements, some of which are located off of the Property on properties owned, occupied or under the control of third parties, including the Navy and Lennar Mare Island. City, at Touro's expense, will use diligent, good-faith efforts to obtain from the Navy, Lennar Mare Island and any other third parties owning said properties or any interests in such properties, appropriate easement, leasehold, license, sub-leasehold or sub-license interests, or other similar rights to enable Touro to construct and install the Infrastructure Improvements on such properties. Nothing herein shall be deemed to obligate Touro or City to make any monetary payments to any third parties in connection with the acquisition of such easement, lease, license or similar interests.

**e. Feasibility Approval.** Touro shall have the right during the Feasibility Period to investigate and conduct any feasibility, economic, financial, environmental (including without limitation subsurface sampling), political, soils or engineering studies, or make such other investigations, studies and tests with respect to the Property and Project as Touro deems necessary or appropriate to determine the

feasibility of purchasing the Property and constructing the Project thereon. If Touro elects to proceed with the purchase of the Property and development of the Project after conducting such investigations, then as soon as practicable following completion of such investigations, but in any event no later than expiration of the Feasibility Period, Touro may, in its sole discretion, deliver a written notice of approval ("**Notice of Approval**") to City and Escrow Agent. Touro's failure to give the Notice of Approval prior to the expiration of the Feasibility Period shall not be a Default under this Acquisition Agreement, but will be deemed Touro's disapproval of the condition of the Property and election not to proceed with the purchase of the Property and development of the Project and to terminate this Acquisition Agreement effective as of the expiration of the Feasibility Period. If Touro disapproves or is deemed to have disapproved the condition of the Property, any Deposit previously paid into Escrow and all interest accrued thereon shall be immediately released to Touro without delay, deduction or offset, and neither party hereto shall have any further obligation or liability to the other with respect to the transactions contemplated by this Acquisition Agreement, except for obligations which expressly survive termination. If Touro gives its Notice of Approval, then this Acquisition Agreement shall continue in effect and the rights and obligations of the parties shall be governed by this Acquisition Agreement.

**201.2 Memorandum of Agreement.** Concurrently with the execution of this Acquisition Agreement, Touro and City shall execute in recordable form and deliver to Escrow Agent: (i) the Memorandum of Agreement in the form attached hereto as Exhibit G; (ii) a quitclaim deed in the form attached hereto as Exhibit H ("**Quitclaim Deed**"); and (iii) signed escrow instructions in the form attached hereto as Exhibit I authorizing the Escrow Agent to record or return the Quitclaim Deed in accordance with the provisions of this Section 201.2. If Touro gives the Notice of Approval pursuant to Section 201.1(e), Escrow Agent shall immediately record the Memorandum of Agreement in the Official Records of Solano County. If Touro fails to give the Notice of Approval pursuant to Section 201.1(e), Escrow Agent shall return the Memorandum of Agreement to the City and the Quitclaim Deed to Touro. If, after giving the Notice of Approval, Touro closes Escrow for Transfer of the Property, Escrow Agent shall return the unrecorded Quitclaim Deed to Touro at the Closing. If, after giving the Notice of Approval, Touro does not close Escrow for Transfer of the Property on or before the Outside Date or this Acquisition Agreement is terminated pursuant to Section 404 below, Escrow Agent shall record the Quitclaim Deed in the Official Records of Solano County, without further instructions of the parties.

**202. Escrow.** Within the time set forth in the Schedule of Performance, Touro shall open an escrow ("**Escrow**") for the Transfer with First American Title Company or another escrow company mutually acceptable to City and Touro ("**Title Company**" or "**Escrow Agent**").

**202.1 Escrow Costs.** Any and all fees, charges, and costs for the Escrow, including recording fees, document fees and documentary transfer taxes, if any, related to the Transfer, shall be paid by Touro.



**202.2 Escrow Instructions.** This Acquisition Agreement constitutes the joint escrow instructions of Touro and City with respect to the Transfer, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Acquisition Agreement. The parties shall use reasonable good faith efforts to close Escrow in the shortest possible time, subject to the terms of this Acquisition Agreement. Insurance policies insuring the Property for fire or casualty are not to be transferred, and City will cancel its own policies, if any, after the Closing. All funds received in the Escrow shall be deposited with a federally-insured state or national bank doing business in the State of California, in interest bearing accounts. All disbursements shall be made by check or wire transfer from such account. If, in the opinion of either party, it is necessary or convenient in order to accomplish the Closing, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Acquisition Agreement and the supplemental escrow instructions, then the provisions of this Acquisition Agreement shall control. Escrow Agent is instructed to release City's and Touro's supplemental escrow instructions, if any, and Closing statements to both parties.

**202.3 Authority of Escrow Agent.** Escrow Agent is authorized to, and shall:

- a. Pay and charge Touro for the premium of the Touro Title Policy and pay and charge Touro for the premium of the Survey and/or additional endorsements requested by Touro.
- b. Pay and charge Touro for any Escrow fees, charges, and costs payable under Section 202.
- c. Upon Touro's delivery of the Notice of Approval to the City and Escrow Agent, record the Memorandum of Agreement in the Official Records of Solano County and deliver conformed originals of the Memorandum of Agreement to both City and Touro, as described in Section 201.2.
- d. Return the Quitclaim Deed to Touro, or record the Quitclaim Deed, pursuant to the requirements of Section 201.2.
- e. Disburse funds, record the Deed and Public Improvements Construction Agreement in the Official Records of Solano County, in that order, and deliver conformed originals of the Deed and Public Improvements Construction Agreement to both City and Touro when both the Touro Conditions Precedent and City Conditions Precedent have been fulfilled or waived in writing by Touro and/or City as applicable.
- f. Do such other actions as necessary, including issuing the Touro Title Policy, to fulfill its obligations under this Acquisition Agreement.
- g. Direct City and Touro to execute and deliver any instrument, affidavit, and statement, and to perform any act, reasonably necessary to

comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

**h.** Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

**203. Purchase Price.** The purchase price for the Property is One Dollar (\$1.00) ("**Purchase Price**"). The Purchase Price shall be paid by Touro to City in immediately available funds at Closing.

**203.1 Deposit; Liquidated Damages.**

**a.** Within the time set forth in the Schedule of Performance, Touro shall deposit in Escrow immediately available funds in the amount of One Hundred Thousand Dollars (\$100,000) ("**Deposit**"). Escrow Agent shall place the Deposit with a federally-insured state or national bank doing business in the State of California, in an interest bearing account. All interest thereon shall become part of the Deposit.

**b.** If the Transfer is consummated, then the Deposit (and all accrued interest thereon) shall be applied towards Touro's closing costs and the balance, if any, returned to Touro at Closing.

**c.** If the Transfer is not consummated for any reason other than (i) a material default by City hereunder, or (ii) a failure of a Touro Condition Precedent on or before the Outside Date, then City shall retain the Deposit (and all accrued interest thereon) as liquidated damages pursuant to subsection e., below.

**d.** If the Transfer is not consummated due to (i) a material default by City hereunder and Touro has not elected to bring an action for specific performance, or (ii) a failure of a Touro Condition Precedent on or before the Outside Date, then the Deposit (and all accrued interest thereon) shall be refunded to Touro. Nothing herein shall be construed to prevent or limit any of Touro's rights or remedies provided under Section 403.1 of this Acquisition Agreement.

**e.** The parties have agreed that City's actual damages, in the event of a failure to consummate the Transfer for any reason other than as set forth in subsection 203.1.d., above, would be extremely difficult or impracticable to determine. After negotiation, the parties have agreed that, considering all the circumstances existing on the Date of Agreement, the amount of the Deposit (and all interest accrued thereon) is a reasonable estimate of the damages that City would incur in such event. The parties hereto agree that in such event City's sole and exclusive remedy under this Acquisition Agreement shall be to retain Touro's Deposit and all accrued interest thereon as liquidated damages. By placing their initials below, each party specifically confirms the accuracy of the statements made above and the fact that each party was represented by counsel who explained, at the time this Acquisition Agreement was made, the

consequences of this liquidated damages provision. The foregoing is not intended to limit Touro's obligations under Section 518.

INITIALS: CITY \_\_\_\_\_ TOURO \_\_\_\_\_

f. As provided in Section 404 of this Acquisition Agreement, if, for any reason, the Transfer is not consummated and this Acquisition Agreement is terminated, the Development Agreement shall also be terminated and, except as otherwise expressly provided in the Right of Entry and Demolition Agreement or Public Improvement Construction Agreement, following such termination: (i) Touro shall have no further obligation to complete or fund the completion of the Demolition Activities, the Infrastructure Improvements or the Project, and (ii) subject to Touro's rights to recover damages in the event of an uncured City Default pursuant to Section 403 below, City shall have no obligation to reimburse Touro for any costs or expenses incurred by Touro in connection with the Demolition Activities, Infrastructure Improvements or Project or any CFD or site maintenance payments made by Touro prior to the effective date of such termination.

**204. City's Conditions Precedent to Transfer.** City's obligation to proceed with the Transfer is subject to the fulfillment or written waiver by City of each and all of the conditions precedent described below (individually and collectively "*City Conditions Precedent*"), which are solely for the benefit of City, and which shall be fulfilled or waived within the time periods provided for herein:

**204.1 No Default.** Touro shall not be in Default under this Acquisition Agreement or any of the other Transaction Documents, and no event shall have occurred which, with the passage of time or giving of notice or both, would constitute a Default by Touro under this Acquisition Agreement or the other Transaction Documents.

**204.2 Execution of Documents.** Touro shall have executed and acknowledged the Deed and executed and where appropriate acknowledged such other documents required to close Escrow and shall have delivered the Deed and such other Closing documents into Escrow.

**204.3 Purchase Price.** Touro shall have deposited the full amount of the Purchase Price and all Closing costs into Escrow. City acknowledges that so long as the Deposit remains in Escrow this condition shall be satisfied and waived by City.

**204.4 Evidence of Financing and Loan Closing.** Touro shall have prepared and submitted for City approval the Project Budget and Financing Plan as provided in the Schedule of Performance and shall have obtained and delivered the Loan/Equity Commitments to City. Additionally, Touro's construction loan and other financing for the Project shall have closed or shall be ready to close concurrently with or immediately following the Closing.

**204.5 Permits and Land Use Approvals.** Touro shall have obtained all required City and other governmental agency permits and land use approvals and all other entitlements for the Project, and the period for administrative and legal challenge to

such land use approvals and entitlements shall have expired and City shall have issued, or shall be ready to issue upon payment of applicable fees, building permits for construction of the Project.

**204.6 Construction Drawings.** The City building department shall have approved Touro's Construction Drawings.

**204.7 Construction Contract.** Touro shall have entered into a construction contract for the Project with a licensed general contractor with the demonstrable capability to construct the Project and Infrastructure Improvements.

**204.8 Particle Beam Contract.** Touro shall have entered into one or more agreements with a qualified entity or entities (such, as for purposes of example only, Ion Beam Applications S.A. and Siemens Medical Solutions), for the purchase and installation of the particle beam equipment for the Project.

**204.9 Clinical Operator.** Touro shall have entered into a contract with the University of California, San Francisco, or another entity or entities with expertise in managing and operating a comparable particle therapy cancer treatment center, for the operation and day to day management of the Project. Touro shall provide the City Manager, for informational purposes only, with a detailed written profile of the entity or entities that Touro has selected to manage and operate the Project.

**204.10 Public Improvements Construction Agreement and Security Instrument.** Prior to or concurrent with Closing, Touro shall have executed, acknowledged and delivered to City for recordation with the Solano County Recorder's Office the Public Improvements Construction Agreement in the form attached as Exhibit J to this Acquisition Agreement and furnished to City a "Security Instrument," as defined in and meeting the requirements of the Public Improvements Construction Agreement. Nothing herein shall require Touro to execute the Public Improvements Construction Agreement prior to Closing.

**204.11 Completion of Demolition Activities.** Touro shall have satisfactorily commenced those Demolition Activities required to be commenced on or before the Closing Date as set forth in the Schedule of Performance (which is expressly limited to Buildings 897, 1013, and 1015) and shall be diligently prosecuting such Demolition Activity to completion pursuant to the terms and conditions of the Right of Entry and Demolition Agreement.

**204.12 Touro Representations.** The representations and warranties of Touro shall be true and correct as of the Closing Date.

**204.13 Right to Install Off-Site Infrastructure Improvements.** City shall have obtained from the Navy, Lennar Mare Island and any other third parties owning adjacent properties or any interests in such properties, appropriate easement, leasehold, license, sub-leasehold or sub-license interests, or other similar rights to enable Touro to construct and install the Infrastructure Improvements on such off-site properties as provided in Section 201.1d above.

**204.14 Island Energy.** Island Energy shall have approved a plan for completion of electrical utilities required for the Project and Touro shall have entered into one or more agreements with Island Energy to authorize Touro to enter upon Reuse Area 1A, demolish certain existing electrical utilities and construct the new utilities and/or relocate the utilities required for the Project.

**204.15 Notice of Approval.** Touro shall have delivered the Notice of Approval to City and Escrow Agent.

**205. Touro's Conditions Precedent to Transfer.** Touro's obligation to proceed with the Transfer is subject to the fulfillment or written waiver by Touro of each and all of the conditions precedent described below (individually and collectively, "***Touro Conditions Precedent***"), which are solely for the benefit of Touro, and which shall be fulfilled or waived within the time periods provided for herein:

**205.1 Execution of Documents.** City shall have executed and acknowledged the Deed and executed and where appropriate acknowledged such other documents required to close Escrow and shall have delivered the Deed and such other Closing documents into Escrow.

**205.2 No Default.** City shall not be in Default under this Acquisition Agreement or any of the other Transaction Documents, and no event shall have occurred which, with the passage of time or giving of notice or both, would constitute a Default by City under this Acquisition Agreement or the other Transaction Documents.

**205.3 Review and Approval of Title.** Touro shall have reviewed and approved the Condition of Title.

**205.4 Touro Title Policy.** The Title Company shall, upon payment of Title Company's regularly scheduled premium, be ready to issue to Touro an ALTA owners policy of title insurance ("***Touro Title Policy***"), together with such endorsements as are reasonably requested by Touro, insuring that Touro has a valid fee interest in the Property. The premium for the Touro Title Policy, plus any additional costs, including the cost of surveys and any endorsements requested by Touro, shall be paid by Touro.

**205.5 Personal Property.** With respect to any personal property on the Property, Touro shall have obtained reasonable evidence that title to the personal property is not subject to the claims of any third party.

**205.6 No Incompatible Development of Adjacent Properties.** No development shall have occurred after the Date of Agreement on properties adjacent to the Property that is incompatible with the Project or which would render the Project infeasible or substantially more expensive to complete.

**205.7 Legal Parcel.** The Property to be transferred to Touro shall constitute a legal parcel in compliance with the Subdivision Map Act and shall be capable of conveyance.

**205.8 Permits and Land Use Approvals.** Touro shall have received all required City and other governmental agency permits and land use approvals and all other entitlements for the Project, and the period for administrative and legal challenge to such land use approvals and entitlements shall have expired and City shall have issued, or shall be ready to issue upon payment of applicable fees, building permits for construction of the Project.

**205.9 City Representations.** The representations and warranties of the City shall be true and correct as of the Closing Date.

**205.10 No Challenges.** No litigation, appeals, referenda or other challenge of any type or kind opposing or related to the Project or the Property shall have been threatened, filed or commenced as of the Closing Date.

**205.11 Clinical Operator.** Prior to the Closing Date, Touro shall have entered into an agreement on terms reasonably satisfactory to Touro with one or more entities for the clinical operation and day to day management of the proposed cancer treatment center. Touro shall use diligent, good faith efforts to reach agreement with such clinical operator or operators.

**205.12 Financing.** Prior to or concurrent with the Closing, (i) City shall have approved the Project Budget and Financing Plan, (ii) Touro shall have obtained and delivered the Loan/Equity Commitments to City, and (iii) Touro shall have obtained financing on terms reasonably satisfactory to Touro to fund the Demolition Activities and construction of the Infrastructure Improvements and the Project. Touro shall use diligent, good faith efforts to obtain such financing described in (iii) above.

**205.13 Particle Beam Equipment.** Prior to the Closing Date, Touro shall have entered into one or more definitive agreements on terms reasonably satisfactory to Touro, with a qualified entity or entities (such as, for purposes of example only, Ion Beam Applications S.A. and Siemens Medical Solutions), for the purchase, installation and maintenance of the particle beam equipment for the cancer treatment center. Touro shall use diligent, good faith efforts to reach agreement with such manufacturer(s) for the purchase, installation and maintenance of the particle beam equipment.

**205.14 Benefit District.** A reimbursement agreement shall have been entered into, or a Benefit Assessment District with a duration of at least twenty (20) years or infrastructure financing CFD shall have been established, as provided in Section 5.05 of the Development Agreement. If a Benefit Assessment District as contemplated hereunder is established, a further condition is that there shall be a viable entity in place as the principal developer of Mare Island that has the financial capacity to contribute its share of payment into the Benefit Assessment District.

**205.15 Right to Install Off-Site Infrastructure Improvements.** City shall have obtained from the Navy, Lennar Mare Island and any other third parties owning adjacent properties or any interests in such properties, appropriate easement,

leasehold, license, sub-leasehold or sub-license interests, or other similar rights to enable Touro to construct and install the Infrastructure Improvements on such off-site properties as provided in Section 201.1d above.

**205.16 Island Energy.** Island Energy shall have approved a plan for completion of electrical utilities required for the Project and Touro shall have entered into one or more agreements with Island Energy to authorize Touro to enter upon Reuse Area 1A, demolish certain existing electrical utilities and construct the new utilities required for the Project, all on terms and conditions satisfactory to Touro in Touro's reasonable discretion.

**205.17 No Contracts or Leases.** As of the Closing Date, no part of the Property shall be alienated, leased, encumbered or transferred except as contemplated by this Acquisition Agreement, and the Property, or any part thereof, shall not be subject to any leasehold, tenancy, option or right of first refusal of any duration, type or kind whatsoever.

**205.18 Notice of Approval.** Touro shall have delivered the Notice of Approval to City and Escrow Agent.

**205.19 Navy Agreement for Remediation.** The Navy shall have agreed to either timely cause the remediation, in compliance with all applicable Environmental Laws, of Hazardous Materials that may be located in, on or under the land on which the Infrastructure Improvements are to be constructed or reimburse Touro for additional costs that Touro may incur as a result of the presence of such Hazardous Materials on terms reasonably acceptable to Touro.

**205.20 Environmental Insurance Policy.** Touro shall procure a pollution legal liability policy, or its equivalent, for the Property on terms reasonably acceptable to Touro.

**205.21 Construction Contract.** Touro shall have entered into a construction contract for the Project with a licensed general contractor with the demonstrable capability to construct the Project and Infrastructure Improvements.

**205.22 No Rejection of Transaction Documents by City.** City (or any bankruptcy trustee) shall not have rejected, voided, terminated or annulled this Acquisition Agreement or any of the Transaction Documents through the City Bankruptcy. Nothing herein shall be construed to prevent Touro from claiming that City is in default if City rejects, voids, terminates or annuls this Agreement or any of the Transaction Documents through the City Bankruptcy.

**206. Closing.** The Transfer shall close within thirty (30) days after the satisfaction or written waiver by the appropriate party, of all of City's Conditions Precedent and Touro's Conditions Precedent to Transfer, but in any event no later than six months after the Date of Agreement, which date shall be \_\_\_\_\_, 2009 ("**Outside Date**"). "**Closing**" means the closing of Escrow for the Transfer. "**Closing Date**" means the day on which the Closing occurs.

**206.1 Extension of Outside Closing Date.** If Touro is diligently proceeding with satisfying the conditions required to close escrow set forth in Sections 204 and 205, but it is likely that all conditions will not be satisfied prior to the Outside Date, Touro may request that City extend the Outside Date. The City Manager, in his or her sole discretion, may agree to reasonable extensions of the Outside Date. Touro's request for an extension of the Outside Date shall be made no later than twenty (20) days prior to the then-existing Outside Date. If the Outside Date is extended as provided in this Section 206.1, then such extension of the Outside Date shall automatically extend any deadlines contained in the Transaction Documents that are dependent on the occurrence of close of escrow.

**207. Review and Approval of Condition of Title.**

**207.1 Pre-Approved Exceptions.** Within five (5) business days after the Date of Agreement, Touro shall cause Title Company or another title company mutually acceptable to City and Touro, to deliver to Touro and City a standard preliminary title report ("**Title Report**") with respect to the Property, together with legible copies of all the documents underlying the exceptions set forth in the Title Report. Touro shall have the right to request that an ALTA Survey ("**Survey**") be prepared, at Touro's sole cost and expense. Touro shall have the right to reasonably approve or disapprove all exceptions; provided, however, Touro hereby approves the following exceptions which shall be referred to herein as the "**Pre-Approved Exceptions**": (a) the lien of any non-delinquent property taxes and assessments; (b) any incidental easements or other matters affecting title which do not preclude, hinder, inhibit or increase the cost of developing the Project; (c) the Development Agreement; (d) the Public Improvements Construction Agreement; (e) the covenants in the Deed; (f) the Memorandum of Agreement; and (f) matters created by, through or under Touro.

**207.2 Approval and Disapproval Process.** No later than sixty (60) days ("**Title Review Period**") after the later of Touro's receipt of the Title Report, Survey (if requested by Touro), and copies of all of the documents underlying the exceptions, Touro shall give City and Escrow Agent written notice ("**Title Notice**") of Touro's approval or disapproval of the legal description and every item or exception disclosed by the Title Report and Survey, if any, and of any title insurance endorsements which Touro requires, other than as to the Pre-Approved Exceptions. Touro's failure to give such Title Notice to City within the Title Review Period shall be deemed Touro's approval of the condition of title to the Property and Touro's waiver of title endorsements. In the event Touro disapproves of any title matter (other than the Pre-Approved Exceptions) shown in the Title Report, City shall, within thirty (30) days after receipt of the Title Notice give Touro written notice ("**City's Response**") of those disapproved title matters, if any, which City is unable or unwilling to eliminate as of Closing. City's failure to give City's Response within such time period shall be deemed City's notice that it will not eliminate any of the disapproved title matters. Touro shall notify City in writing, within twenty (20) days after receipt of City's Response (or within twenty (20) days after City is deemed to have refused to eliminate title matters to which Touro has objected) whether Touro is willing to purchase the Property subject to such disapproved exceptions, or is electing to terminate this Acquisition Agreement ("**Touro's Response**"). If Touro so



elects to terminate this Acquisition Agreement, Escrow Agent shall immediately refund the Deposit to Touro. The failure of Touro to give Touro's Response to City shall be deemed Touro's election to proceed with the Transfer, subject to the disapproved exceptions. City, at Touro's cost and expense, shall cause any disapproved title matters not set forth in City's Response to be removed from title prior to Closing.

**207.3 New Exceptions.** The Pre-Approved Exceptions, together with those exceptions to title approved or deemed approved by Touro as provided herein, are individually and collectively referred to as the "**Condition of Title.**" If any exceptions other than Pre-Approved Exceptions, or other exceptions previously approved or deemed approved pursuant to this Section 207 are reported by the Title Company after Touro has approved the Condition of Title pursuant to the foregoing procedures, then any such new exception shall be subject to the same procedures for review and approval set forth above.

**208. Property Taxes and Assessments.** Except as otherwise set forth in the Development Agreement with respect to Touro's obligation to pay all CFD special taxes on the Property from and after the effective date of the Development Agreement (pro-rated as of the effective date of the Development Agreement), all ad valorem taxes and assessments, if any, on the Property levied, assessed or imposed for any period prior to the Closing shall be borne by City. Ad valorem taxes and assessments levied or imposed for any period on or after the Closing, and any taxes upon this Acquisition Agreement or the Transfer, shall be paid by Touro and pro-rated as of the Closing Date.

**209. Community Facilities Districts for City Services.** As set forth in Sections 5.03 of the Development Agreement, Touro and City shall cooperate in the establishment and implementation of one or more additional CFDs which provide funding for City services that benefit the Property or the Property and other properties on or off Mare Island.

**210. Environmental Matters.**

**210.1 No Warranties as to Property.** Touro is purchasing the Property on the basis of Touro's own investigation of the physical and environmental conditions of the Property, including subsurface conditions. Subject to any Navy obligations with respect to the Navy Retained Conditions identified in the Navy Quitclaim Deed, Touro assumes the risk that adverse physical and environmental conditions may not have been revealed by its own investigation, and the Property shall be conveyed by City to Touro in its "AS IS" condition, "WITH ALL FAULTS," including the presence of Hazardous Materials and any violations of Applicable Laws, including Environmental Laws, with no warranty expressed or implied by City regarding the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, title to the Property or the suitability of the Property for the development purposes intended hereunder.

**210.2 Waiver and Release.** Effective as of the Closing Date, Touro hereby waives, releases and discharges forever City and its officers, officials, employees,

agents and representatives (collectively, "**City Parties**") from any and all present and future Claims arising out of or in any way connected with the condition of the Property, any Hazardous Materials on, under or about the Property, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Property, however they came to be placed there, except to the extent City, City Parties or City's prior tenants caused the release, generation or discharge of Hazardous Materials on, under, in or about the Property. Touro is aware of and familiar with the provisions of California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

As such relates to this Section 210.2, Touro hereby waives and relinquishes all rights and benefits that it may have under California Civil Code section 1542.

**210.3 Obligations with Respect to Hazardous Materials After Closing.** Touro acknowledges and agrees that additional Hazardous Materials remediation work may have to be performed in order to develop the Project on the Property. Before undertaking any site preparation work on or about the Property, Touro shall, at its sole cost and expense, promptly take all actions necessary to prepare the Property for the uses contemplated by this Acquisition Agreement and the Development Agreement, including any additional remediation work required pursuant to applicable Environmental Laws.

**210.4 Duty to Prevent Further Hazardous Materials Contamination.** After Closing, Touro shall comply with all Environmental Laws concerning the Property to prevent the release of any Hazardous Materials into the environment in violation of any Environmental Laws. In addition, Touro shall install and utilize such equipment and implement and adhere to such procedures as are consistent with Environmental Laws as to disclosure, storage, use, removal and/or disposal of Hazardous Materials.

**210.5 Environmental Inquiries.** Both before and after Closing, Touro shall notify City, and provide to City a copy or copies, of any and all environmental permits or applications relating to the Property, including notices of violation, notices to comply, citations, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Environmental Laws.

**210.6 Notice of Hazardous Materials Release.** In the event of a release of any Hazardous Materials onto or from the Property in violation of any Environmental Laws, Touro shall, as soon as possible after the release, furnish to City a copy of any and all reports relating thereto and copies of all official correspondence with regulatory agencies relating to the release. Upon request of City, Touro shall furnish to

City a copy or copies of any and all other environmental workplans relating to or affecting the Property.

**210.7 No Environmental Indemnity.** The parties acknowledge that Touro's indemnity obligations under Section 518 of this Acquisition Agreement, Section 12.01 of the Development Agreement and Section 8 of the Right of Entry and Demolition Agreement shall not extend to any Claims related to Hazardous Materials in the soils, soil-gas or groundwater at, on, under or emanating from the Property that existed prior to the Date of Agreement.

**211. City Obligations.** In addition to any other obligation of the City provided for in this Acquisition Agreement, the following are expressly made obligations of the City.

**211.1 Mare Island Public Roads, and Mare Island Public Water and Sewer Systems Maintenance and Operation.** City shall cooperate with Touro, at no cost to City, to take all steps reasonably necessary to relocate or realign the Mare Island public roads to conform to the locations approved by City in the course of Touro's development of the Project and the Infrastructure Improvements in accordance with the Project Approvals (as defined in the Development Agreement). City reserves full and complete discretion under Applicable Laws with respect to any findings that may be required in connection with any roadway abandonments and dedications. In no event shall City bear any costs of any roadway relocations or realignments required for development of the Project and Infrastructure Improvements.

**211.2 Reimbursement of Off-Site Infrastructure Development Costs by Future Developers.** If the Acquisition Agreement and Development Agreement are terminated for any reason, including Touro's Default, Touro within one hundred twenty (120) days following such termination may submit to the City Manager or his designee for review and approval a detailed accounting of all Off-Site Infrastructure Development Costs incurred by Touro, if any, in connection with the construction and installation of those Infrastructure Improvements which are not located on the Property. Such accounting shall be accompanied by copies of invoices and cancelled checks or other evidence that Touro has paid such costs. The City Manager or his designee shall not unreasonably withhold, condition or delay approval of the submitted Off-Site Infrastructure Development Costs. Following such approval by City, City shall use diligent, good faith efforts to impose as a condition of approval of future development applications for the Property or portion thereof a requirement that such future developer or developers reimburse Touro for a portion of such Off-Site Infrastructure Development Costs based upon a "fair share" engineering analysis, developed by the City at Touro's expense. If Touro fails to submit the detailed accounting of Off-Site Infrastructure Development Costs within the time provided above, City shall have no obligation to impose any reimbursement obligations on such future developer or developers. "*Off-Site Infrastructure Development Costs*" shall mean the actual out-of-pocket costs and expenses, if any, paid by Touro to third-parties in connection with the design, engineering, construction and installation of those Infrastructure Improvements which are not located on the Property.

**211.3 City Commitment to Grant or Cooperate to Cause Others to Grant Easements to Touro.** City, at Touro's expense, shall use diligent, good faith efforts to ensure that Touro is granted all easements and rights of way required to develop the Project, including easements for ingress/egress, utilities of all type and kind, sanitary sewer, storm drainage, demolition/construction, flood control, support, slope and rights of way, whether from the City, the Navy or other third parties. Nothing herein shall be deemed to obligate Touro or City to make any monetary payments to any third parties in connection with the acquisition of such easements.

**211.4 Relocation of Easements.** City, at Touro's expense, shall use diligent, good faith efforts to cause the relocation of easements necessary to the development of the Project, including by securing the cooperation of third parties, including the Navy and third parties occupying other portions of Mare Island and utility providers. Nothing herein shall be deemed to obligate Touro or City to make any monetary payments to any third parties in connection with such easement relocations.

**211.5 Easements from Navy for Installation of Infrastructure Improvements.** City shall use diligent, good faith efforts to secure from the Navy all easements, consents under any existing LIFOC, approval of a Sub-LIFOC or other rights necessary and required for the installation of the Infrastructure Improvements, on property owned or under the control of the Navy.

**211.6 Island Energy and GST Easements.** City shall make available to Touro, on an ongoing basis, all documents in City's possession or control related to the current or proposed location of easements granted by the Navy to Pittsburg Power Company Joint Powers Authority doing business as Island Energy, GST Telecom Company, Inc. ("*Island Energy*"), and other utility providers. City, at Touro's expense, shall assist Touro with obtaining any rights from Island Energy for the demolition or relocation of existing utilities and the construction of new utilities.

**211.7 Assessor Cooperation on Valuation for Property Tax.** City, at no cost to City, shall facilitate Touro's negotiations with the County Assessor to establish appropriate valuations and tax rates applicable to the Property and the Project.

**211.8 Rights to Develop.** City, at Touro's expense, shall assist Touro in obtaining from third parties owning property on Mare Island such easements, leases, licenses or other appropriate rights and interests as may be reasonably necessary to enable Touro to construct those portion of the Infrastructure Improvements located on the land owned by such parties, including easements or offers of dedication, and, subject to Touro's execution of a City standard encroachment permits, right of entry or other similar agreement, City agrees to permit Touro to construct the Infrastructure Improvements on property owned by the City. Nothing herein shall be deemed to obligate Touro or City to make any monetary payments to any third parties in connection with the acquisition of such rights or interests. Pursuant to Section 4.15.D of the Development Agreement, City may also consider use of its power of eminent domain to acquire any such needed real property interests.

**211.9 Adjacent Infrastructure Improvements.** The successful development of the Project is reliant upon certain infrastructure improvements being timely completed on Mare Island property owned or under the control of others ("*Adjacent Infrastructure Improvements*"), which are described in the Scope of Work. City shall use diligent, good faith efforts to cause Lennar Mare Island to comply with Section 8.10.3 of the Acquisition Agreement entered into between City and Lennar Mare Island dated December 21, 1999, and to construct the Adjacent Infrastructure Improvements within the time set forth in the Schedule of Performance and perform any remediation of Hazardous Materials necessary for the construction of such improvements. If, despite City's diligent, good faith efforts, City determines that the construction of the Adjacent Infrastructure Improvements and any necessary remediation will not be completed within the time set forth in the Schedule of Performance, then Touro shall have the right (but not the obligation) to take on the responsibility to construct the Adjacent Infrastructure Improvements and perform necessary remediation, subject to reimbursement from Lennar Mare Island or such other third party that had responsibility to construct such Adjacent Infrastructure Improvements, or portion thereof, pursuant to a Benefit Assessment District, infrastructure financing CFD or reimbursement agreement as provided in Section 5.05 of the Development Agreement.

### **300. DEVELOPMENT OF THE PROJECT**

**301. Scope of Work.** Except to the extent the City Council approves an Alternate Project in its sole discretion as provided in Section 301.1 below, Touro shall develop the Project on the Property as provided in the Scope of Work. In the event City approves an Alternate Project, the Scope of Work shall be amended to set forth the scope quality and extent of the improvements to be constructed as part of the Alternate Project.

**301.1 City Approval Required for Alternate Project.** If, notwithstanding its best efforts, Touro is unable develop the Project as described in the Scope of Work, Touro may request City Council approval to develop a proposed alternate project ("*Alternate Project*") on the Property that satisfies the goals of the Specific Plan. Any such request by Touro shall be submitted in writing and shall be accompanied by a detailed Alternate Project proposal, including a line-item pro forma and budget for the Alternate Project, a detailed description of the proposed use and operator/tenant and such other information as the City may reasonably request for purposes of evaluating the proposed Alternate Project. The City Council may approve or disapprove any proposed Alternate Project in its sole discretion and any approval shall be subject to compliance with all Applicable Laws, including any additional environmental review required under CEQA or NEPA. The parties agree that it shall not be unreasonable for City Council to disapprove any proposed Alternate Project which does not satisfy the following general criteria: (a) the proposed Alternate Project consists of a use which provides unique benefits and significance to Mare Island in a manner similar to the projected benefits and significance of the Project; (b) the proposed Alternate Project generates an economic value for Mare Island that is consistent with the economic value that was projected to be generated by the Project; (c) the proposed Alternate Project employs highly-skilled employees in a number comparable to those projected to be employed by the Project; (d) the proposed Alternate Project remains a Revenue Neutral Project, as set forth in Section

5.02 of the Development Agreement; and (e) the proposed Alternate Project has the financial capacity to fund and construct the Infrastructure Improvements. If City approves Touro's development of an Alternate Project on the Property, Touro shall be required to develop the Alternate Project, as well as all the Infrastructure Improvements, in the manner and within the times set forth in the Schedule of Performance and other Transaction Documents, as such documents may be amended.

**302. Schedule of Performance.** Touro shall commence and complete construction of the Project and satisfy all of Touro's other obligations under this Acquisition Agreement within the times established therefor in the Schedule of Performance, subject to Section 502 and other excused delays set forth in the Transaction Documents. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Touro and the City Manager.

**303. Cost of the Project.** All costs related to Project planning, design, construction and development, shall be borne solely by Touro, whether or not such costs exceed the projected amount of Touro's Loan/Equity Commitments. Nothing herein shall be construed to prevent Touro from recovering reimbursements due to Touro under a Benefit Assessment District, infrastructure financing CFD or reimbursement agreement as provided in Section 5.05 of the Development Agreement or under other applicable sections of this Acquisition Agreement, including but not limited to Section 211.2.

**304. Permits and Approvals.** Within the time set forth in the Schedule of Performance, Touro, at its expense, shall secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required by City and any other governmental agency having jurisdiction over that portion of construction of the Project. The approval of this Acquisition Agreement by City does not constitute the granting of, or a commitment to obtain, any required land use permits, entitlements or approvals.

**305. Touro's Evidence of Financing.**

**305.1 Touro Project Budget/Financing Plan.** Within the time set forth in the Schedule of Performance, Touro shall prepare a detailed budget of all hard and soft costs to be incurred by Touro in connection with the Project and Infrastructure Improvements, including reasonable contingency amounts, and a financing plan for securing debt and equity commitments sufficient to ensure completion of the Project and Infrastructure Improvements. Touro's budget shall show all sources and uses of Touro's debt and equity funding with line item breakdown. Touro shall be required to obtain written approval of said budget from Touro's construction loan lender and approval of both the budget and financing plan from City Manager within the time set forth in the Schedule of Performance. Such budget and financing plan, as approved by Touro's construction loan lender and City, is referred to herein as "***Touro Project Budget/Financing Plan.***" The City Manager shall not unreasonably withhold or delay approval of Touro Project Budget/Financing Plan.

**305.2 Loan/Equity Commitments.** Within the times provided in the Schedule of Performance, Touro shall deliver to City: (i) certified copies of binding loan commitment letter(s) from the lender(s) and financing company(ies) providing Touro's construction loan and equipment financing, committing said lender(s) and financing company(ies) to fund such loan(s) and financing(s) for the Infrastructure Improvements and Project, subject only to the Touro Conditions Precedent, and such other lender and financing company conditions as are customary in connection with binding loan and financing commitments, and setting forth the terms of Touro's construction loan and related financings; and (ii) evidence reasonably satisfactory to City of Touro's equity investment, which shall include bank statements in the name of Touro showing all required equity funds on deposit, or a bank's letter of confirmation of the existence and accessibility of such funds (collectively, "*Loan/Equity Commitments*"). The total Loan and Equity Commitments shall be sufficient to ensure Touro's completion of the Project and Infrastructure Improvements, and fulfillment of its obligations under this Acquisition Agreement and the Transaction Documents.

### **306. Design Review.**

**306.1 Project Design Approvals.** Within the time set forth in the Schedule of Performance, Touro shall submit to and obtain City's approval of "Unit Plan" level preliminary design plans for the Project, with components as required by the City's Unit Plan submittal process (collectively, "*Project Design Plans*").

**306.2 Construction Drawings and Related Documents.** Following City's approval of the Project Design Plans and within the time set forth in the Schedule of Performance, Touro shall prepare and submit to the City building department for review and approval, and obtain approval of, detailed construction plans and drawings with respect to the Project, including roof plans, engineering plans and drawings ("*Construction Drawings*") for the building foundation and all structural components of the Project, project sections and a grading plan, which shall have been prepared by a registered civil engineer. Touro's Construction Drawings shall also address construction and engineering requirements associated with the interfacing and interconnection of the Project and the Infrastructure Improvements with other development on Mare Island. Touro's obligations with respect to the design and construction of the Infrastructure Improvements shall be set forth in the Public Improvements Construction Agreement

**306.3 Revisions.** If Touro desires to propose any material revisions to the City-approved Project Design Plans, Touro shall submit such proposed changes to the City Manager, and shall also proceed in accordance with all Applicable Laws. If Touro proposes to make any material and substantial change to the design of the Project from the basic concept set forth in the Project Design Plans as originally approved by City together with any duly approved amendments thereof, then City Manager's approval of any revisions to the Project Design Plans may be conditioned upon the renegotiation of the terms and conditions of this Acquisition Agreement, the Development Agreement and the other Transaction Documents that are necessary and appropriate to effectuate such change. If, in the reasonable opinion of City Manager, the Project Design Plans, as modified by the proposed change, generally and substantially conform to the

requirements of this Section 306 and the Scope of Work, City Manager shall review the proposed change and notify the Touro in writing within fifteen (15) days after submission to City as to whether the proposed change is approved or disapproved. City Manager is authorized to approve changes to City-approved Project Design Plans provided such changes: (i) do not materially reduce the quality of materials to be used, (ii) do not reduce the imaginative and unique qualities of the Project design, and (iii) are substantially and materially consistent with the Project Design Plans as originally approved. City Manager's approval of any changes in the Project Design Plans shall not relieve Touro of its obligation to obtain any and all City and other approvals required in connection with the changes. Any and all change orders or revisions required by City or its inspectors under Applicable Laws shall be included by Touro in its Project Design Plans and Construction Drawings and completed during the construction of the Project.

**306.4 Consultation and Coordination.** During the preparation of the Project Design Plans, staff of City and Touro shall hold progress meetings on an as needed basis to coordinate the preparation, submission, and review of such plans. The staff of City and Touro shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any complete documents to City can receive timely and thorough consideration in accordance with City policies.

**306.5 Defects in Plans.** City shall not be responsible either to Touro or to any third parties in any way for any defects in the Project Design Plans or the Construction Drawings, or for any structural or other defects in any work done according to the approved Project Design Plans or Construction Drawings, nor for any delays caused by the review and approval processes established by this Section 306. Touro shall hold harmless, indemnify, protect and defend City and City Parties from and against any and all Claims to the extent arising out of or relating to defects in the Project Design Plans or the Construction Drawings, including the violation of any Applicable Laws, or for defects in any work done according to the approved Project Design Plans and Construction Drawings.

**307. Insurance Requirements.** Until issuance of the Certificate of Completion, Touro shall procure and maintain, or cause its contractor(s) to procure and maintain, the insurance policies required under Section 12.02 of the Development Agreement and, in addition, Builders all-risk insurance in an amount not less than the full insurable cost of the Project and the Infrastructure Improvements. Such insurance shall not be construed to relieve Touro or its contractor(s) of any liability in excess of such coverages.

**308. Rights of Access.** Prior to final completion of the Project and during the Term of this Acquisition Agreement, City representatives shall have the right of access to the Property, without charges or fees, at normal construction hours, and Touro hereby waives any and all Claims that City's access to the Property may interfere with Touro's obligations under this Acquisition Agreement or any of the Transaction Documents, or delay Touro's performance thereof. Except as set forth herein or in the Public Improvements Construction Agreement, nothing herein shall be deemed to limit the ability of City to conduct code enforcement and other administrative inspections of the



Property in accordance with Applicable Laws. City acknowledges that construction activities are inherently dangerous, and therefore for safety reasons, City acknowledges that once construction activities commence, City employees, agents and assigns that are not involved in conducting code enforcement and/or inspection of the Property shall give Touro a minimum of 24 hours advance notice and coordinate any physical access to the Property through Touro or its agents, contractors or assigns and shall observe property safety protocol at all times. City employees, agents and assigns that are involved in conducting code enforcement and/or inspection of the Property shall give notice of their presence on the Property as described in Section 14 of the Public Improvements Construction Agreement.

**309. Compliance With Laws.** Touro shall carry out the Project in conformity with all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of California, the County of Solano, the City, and any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Touro or the Property, any applicable provision of CEQA or NEPA, orders, permits, requirements and approvals of San Francisco Bay Conservation and Development Commission, California Environmental Protection Agency, Department of Toxic Substances Control and/or the Regional Water Quality Control Board, and agreements or approvals from the State of California State Lands Commission or the Navy, any Environmental Laws, or any amendments of any of the foregoing (collectively, "**Applicable Laws**").

**310. Prevailing Wages.** Touro acknowledges and agrees that, by virtue of the terms of the Transfer set forth herein, the development of the Project will constitute construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds under California Labor Code Section 1720 *et seq.* Touro shall comply, and shall ensure that its contractors and subcontractors comply, with all California Labor Code requirements, including implementing regulations of the Department of Industrial Relations, applicable to public works and payment of prevailing wages, as well as all applicable Federal prevailing wage laws, including the Davis-Bacon Act of 1931, as amended, and implementing regulations (collectively, "**Prevailing Wage Laws**") in connection with construction and development of the Project. Additionally, Touro has entered into a Project Labor Agreement ("**PLA**") with the Napa-Solano Building and Construction Trades Council and certain local unions identified in the PLA, with respect to certain Covered Work identified in the PLA. Without limiting the generality of the foregoing, Touro shall (i) require its contractors and subcontractors to submit certified copies of payroll records to Touro; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to City and its designees for inspection and copying during regular business hours at the Property or at another location within the City of Vallejo. Touro shall defend (with counsel reasonably acceptable to City), indemnify and hold harmless City and City Parties from and against any and all present and future Claims arising out of or in any way connected with Touro's obligation to comply with all Prevailing Wage Laws, including any and all Claims that may be asserted by contractors, subcontractors or other

third party claimants pursuant to California Labor Code Sections 1726 and 1781. Touro hereby waives, releases and discharges forever City and its employees, officers, volunteers, agents and representatives, from any and all present and future Claims arising out of or in any way connected with Touro's failure to comply and to cause its contractors and subcontractors to comply with all Prevailing Wage Laws in connection with construction and development of the Project.

**311. Project Sign.** Touro and City shall cooperate in placing and maintaining on the Property, during construction, one sign indicating the respective roles of Touro and City in the Project. The cost of the sign shall be borne by Touro.

**312. Liens and Stop notices.**

**312.1 Generally.** Prior to the issuance of a Certificate of Completion, Touro shall not place or allow to be placed on the Property any mortgage, trust deed, encumbrance or lien except as expressly authorized by this Acquisition Agreement. Touro shall remove or have removed any levy or attachment made on the Property (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event not more than sixty (60) days after filing of such levy or attachment. Nothing herein contained shall be deemed to prohibit Touro from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Touro with respect thereto.

**312.2 Right of City to Satisfy Other Liens After Closing.** After Closing and prior to the issuance of a Certificate of Completion, and after Touro has had written notice and has failed after a reasonable time, but in any event not more than sixty (60) days, to satisfy or release any liens or stop notices on the Property pursuant to this Section 312, City shall have the right, but not the obligation, to satisfy any such liens or stop notices without further notice to Touro. Touro shall reimburse City for any and all costs associated with removal or payment of such lien or stop notice within ten (10) days of City's demand.

**313. Mortgage, Deed of Trust, Sale and Lease-Back Financing.**

**313.1 Mortgages and Deeds of Trust for Development.** Mortgages and deeds of trust shall be permitted prior to issuance of the Certificate of Completion, but only for the purpose of securing Touro's construction loan and related Project financings. City hereby approves any Project financing that is consistent with the City approved Touro Project Budget/Financing Plan. To the extent Touro desires to obtain a construction loan or related Project financing on terms different from those set forth in the approved Touro Project Budget/Financing Plan, Touro shall be required to obtain the prior written approval of the City Manager or his designee, not to be unreasonably withheld, conditioned or delayed.

**313.2 Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Acquisition Agreement shall not be obligated by the provisions of this Acquisition Agreement to construct or complete

the Project or to guarantee such construction or completion. Nothing in this Acquisition Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon or therein other than those uses and the Project provided for and required by this Acquisition Agreement.

**313.3 Notice of Default to Mortgagee or Deed of Trust Holders;**

**Right to Cure.** With respect to any mortgage or deed of trust granted by Touro as provided herein, whenever City shall deliver any notice to Touro with respect to any Default by Touro hereunder, City shall at the same time deliver a copy of such notice to each holder of record of any mortgage or deed of trust expressly authorized by this Acquisition Agreement. No notice of Default shall be effective as to the holder unless such notice is given. Each such holder shall (insofar as the rights of City are concerned) have the right, at its option, within sixty (60) days after the receipt of the copy of the notice, to cure or remedy or commence to cure or remedy any such Default. In the event possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

**313.4 Right of City to Cure Mortgage or Deed of Trust Default.**

If a mortgage or deed of trust default or breach by Touro prior to the completion of the Project occurs, and the holder of any mortgage or deed of trust has not exercised its option to cure the default, City, at its option, may cure the default following prior notice thereof to Touro. In the event City opts to cure such Touro mortgage or deed of trust default, Touro shall be liable for, and City shall be entitled to reimbursement from Touro of, all costs and expenses incurred by City associated with and attributable to the curing of the mortgage or deed of trust default or breach. City shall also be entitled to record a lien against the Property and the Project to the extent of such incurred costs and disbursements. Any such lien shall be subject and subordinate to all prior encumbrances and deeds of trust.

**314. Property Tax Covenant.** Touro, on behalf of itself and its operators and lessees and its and their successors and assigns, covenants and agrees (a) that the Property and the Project and all improvements, equipment and contents located therein and thereon shall be and remain subject to the assessment and payment of real and personal property taxes, including possessory interest taxes and (b) that it shall not apply for or otherwise accept any exemption from the payment of any real or personal property taxes, including possessory interest taxes. In the event Touro or its operators or lessees or its and their successors or assigns are granted any exemption from the payment of real or personal property taxes of any nature, Touro shall pay annually to the City and the Greater Vallejo Recreation District a payment in lieu of taxes in an amount determined by the City to be equal to the portion of the real and personal property tax levy the City and the Greater Vallejo Recreation District would have received but for the exemption. The payment in lieu of taxes shall be payable on the date that the second installment of property taxes would otherwise have been due and payable. Any payment in lieu of taxes which is not paid when due shall accrue interest at the lesser of ten percent (10%) per

annum or the highest rate allowed by Applicable Law. To the extent Touro fails to timely make any payment in lieu of taxes, or accrued interest thereon, the City, in addition to its other rights and remedies, shall be entitled to record a lien upon the Property and the Project for the amount of such delinquent payment.

**315. Memorandum of Agreement.** A Memorandum of Agreement in the form attached hereto as Exhibit G shall be recorded against the Property immediately following Touro's delivery of the Notice of Approval to the City and the Escrow Agent as provided in Section 210.2 of this Agreement.

**316. Certificate of Completion.** Following Touro's satisfactory completion of the Project and Infrastructure Improvements and fulfillment of its other obligations under this Acquisition Agreement and the Transaction Documents, and within the time set forth in the Schedule of Performance, City, without condition or delay, shall furnish Touro with a "*Certificate of Completion*" substantially in the form of Exhibit F attached hereto. The Certificate of Completion shall be conclusive determination of satisfactory completion of the Project and Infrastructure Improvements and the Certificate of Completion shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property or Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Acquisition Agreement. However, the Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Touro to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof, and is not a notice of completion as referred to in California Civil Code section 3093. If City refuses or fails to furnish the Certificate of Completion, City shall, within thirty (30) days after Touro's written request therefor, provide Touro with a written statement of the reasons City refused or failed to furnish the Certificate of Completion. The statement shall also contain City's opinion of the actions Touro must take to obtain the Certificate of Completion. City shall not unreasonably withhold such Certificate of Completion. City's failure to provide such a written statement within such thirty (30) day period shall not constitute City's deemed approval of Touro's request for issuance of the Certificate of Completion.

Touro may request that City issue a partial Certificate of Completion following Touro's satisfactory completion of a component part of the Project and/or Infrastructure Improvements. City's review of Touro's request and decision to issue or refuse issuance of such partial Certificate of Completion shall be conducted in the same manner set forth above for issuance of a final Certificate of Completion for all of the Project and Infrastructure Improvements. Issuance of a partial Certificate of Completion shall not be deemed to limit or otherwise affect Touro's obligations with respect to construction and development of the remainder of the Project and Infrastructure Improvements and any Partial Certificate of Completion shall so state.

#### **400. DEFAULTS AND REMEDIES**

**401. Default.** Failure by either party to perform any action or covenant required by this Acquisition Agreement within the time periods provided herein

following notice and opportunity to cure, as provided in this Section 401, shall constitute a "Default" under this Acquisition 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 Acquisition 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 thereafter diligently and continuously pursues such cure, correction or remedy to completion, where such default cannot be cured within thirty (30) days. In addition to the foregoing, any default by either party under one or more of the Transaction Documents which is not cured following notice and expiration of any applicable cure periods thereunder shall also constitute a Default under this Acquisition Agreement, and upon occurrence of such Default and without any right to further notice or additional cure period the non-defaulting party shall have all remedies available to it under this Acquisition Agreement. City acknowledges that any delays to Touro's performance under this Acquisition Agreement or the Transaction Documents caused by City's Default shall not constitute a Touro default nor shall such delays be grounds for termination or cancellation of this Acquisition Agreement. Touro acknowledges that any delays to City's performance under this Acquisition Agreement or the Transaction Documents caused by Touro's Default shall not constitute a City default nor shall such delays be grounds for termination or cancellation of this Agreement.

**402. 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 Acquisition Agreement. Such legal actions must be instituted in the Superior Court of the County of Solano, State of California, or in the Federal District Court for the Northern District of the State of California. 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.

#### **403. Remedies**

**403.1 Remedies Prior to Close of Escrow.** In the event of an uncured Default by either party prior to Close of Escrow, the parties shall have the following remedies:

a. **Touro Remedies.** In the event of a City uncured Default prior to Close of Escrow, Touro shall be entitled to either (i) terminate this Acquisition Agreement and recover the Deposit and all accrued interest thereon, or (ii) institute a legal action pursuant to Section 402, or (iii) bring an action for specific performance and/or an action pursuant to Section 402. Nothing herein shall be deemed to limit Touro's rights or remedies provided for under any of the Transaction Documents.

b. City Remedies. In the event of a Touro uncured Default prior to Close of Escrow, notwithstanding any provision in this Acquisition Agreement to the contrary, City's sole and exclusive remedy under this Acquisition Agreement shall be to retain Touro's Deposit and all accrued interest thereon as liquidated damages pursuant to Section 203.1 and to terminate this Acquisition Agreement. Nothing herein shall be deemed to limit City's rights or remedies provided for under any of the other Transaction Documents or to limit Touro's indemnity obligations under Sections 201.1a, 210.2, 310, 505, 509 and 518 of this Acquisition Agreement.

#### **403.2 Remedies After Close of Escrow.**

a. Touro Remedies. In the event of an uncured City Default after Close of Escrow, Touro shall have the right to institute a legal action pursuant to Section 402 and/or an action for specific performance. Nothing herein shall be deemed to limit Touro's rights or remedies provided for under any of the Transaction Documents.

b. City Remedies. In the event of an uncured Touro Default after Close of Escrow, City shall have the right to institute a legal action pursuant to Section 402 and/or to exercise its option to repurchase, reenter and take possession of the Property as set forth in Section 405. Nothing herein shall be deemed to limit City's rights or remedies provided for under any of the other Transaction Documents.

**404. Termination of Agreement.** This Acquisition Agreement may be terminated in the following circumstances: (i) as set forth in Section 403.1 above; (ii) if there is a failure of a City Condition Precedent or a Touro Condition Precedent (which is not waived by the party whom the condition benefits) by timely notice from the party whom the condition benefits; (iii) by mutual written agreement of the parties; or (iv) at any time by Touro prior to expiration of the Feasibility Period. Notwithstanding anything herein to the contrary, a Default shall not exist in the event of a failure of an express condition as provided in clause (ii) above, provided the party asserting such failure has acted in good faith to fulfill or cause the fulfillment of such express condition. Upon any termination of this Acquisition Agreement as provided in clauses (i) through (iv) above, the Development Agreement and other Transaction Documents shall also automatically terminate and be of no further force or effect and, except as otherwise provided in the Transaction Documents with respect to those obligations which survive termination thereof, Touro shall have no obligation to perform or fund the performance of the Demolition Activities or the construction of the Infrastructure Improvements or the Project.

**405. Additional City Remedy Following Conveyance - Option to Repurchase, Reenter and Repossess.** Subject to the time limitation set forth below, City shall have the right at its option to repurchase, reenter and take possession of the Property (with all improvements thereon including the Project) ("*City Option*"), if after Closing and prior to City Council's acceptance of the Infrastructure Improvements in accordance with Section 21 of the Public Improvements Construction Agreement, Touro:

a. Fails to commence construction of the Project as required by this Acquisition Agreement or the Infrastructure Improvements as required by the Public Improvements Construction Agreement for a period of sixty (60) days after written notice thereof from City; or

b. Abandons or substantially suspends construction of the Project or the Infrastructure Improvements for a period of sixty (60) days after written notice of such abandonment or suspension from City; or

c. Is in Default under this Acquisition Agreement and/or the Development Agreement, provided, however, that this subparagraph c. shall not include any such Default based on a default by Touro under either the Public Improvements Construction Agreement or the Right of Entry and Demolition Agreement or a default by Touro under the Development Agreement in connection with the Demolition Activities or the Infrastructure Improvements except as otherwise provided in subparagraphs 405a and 405b above.

**405.1 City Option Limited.** This City Option shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit: (a) any first mortgage, deed of trust or other security instrument permitted by this Acquisition Agreement; or (b) any rights or interests provided in this Acquisition Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

**405.2 Exercise of City Option.**

a. To exercise its Option, City shall provide Touro written notice of City's intent ("*Notice of Intent*") to exercise its option to repurchase the Property following the occurrence of any of the events set forth in Section 405. Subject to the procedures, terms and conditions set forth in this Section 405.2, City shall pay to Touro in immediately available funds an amount equal to: (a) 120% of the out-of-pocket, hard construction costs actually incurred by Touro and paid to third-parties for labor and materials solely for the construction of the Project, including fixtures (which the parties acknowledge shall not be deemed to include the particle beam equipment described in the Scope of Work), or that portion thereof existing at the time City exercises the option to purchase (exclusive of amounts financed, if any, to the extent such financing obligations are assumed by City) ("*Project Hard Costs*"); less (b) any net gains or net income withdrawn or made by Touro from the Property or Project; and less (c) the amount of unpaid liens on the Property or such portion thereof which City agrees to pay, and any unpaid current or past-due installments of taxes or assessments against the Property or such portion thereof which City agrees to pay. Project Hard Costs shall not include any soft costs for the Project or any hard or soft Infrastructure Improvement costs.

b. In the event that Touro has installed all or a portion of the particle beam equipment described in the Scope of Work prior to Touro's receipt of the City's Notice of Intent, Touro shall have one (1) year from the date of City's Notice of Intent ("*Option Negotiation Period*") during which time Touro may negotiate with third-

parties for the purchase of the particle beam equipment and/or Touro's interest in the Property. At any time during the Option Negotiation Period, Touro may enter into an agreement with a third-party for the purchase of all or a portion of the particle beam equipment that has been installed on the Property and Touro understands and agrees that removal of such equipment from the Property shall be completed prior to the expiration of the Option Negotiation Period. In the alternative, during the Option Negotiation Period, Touro may submit to City a proposal to transfer all of Touro's interest in the Property and the Project to a third party. The City Manager, in his or her discretion, may agree to a reasonable extension of the Option Negotiation Period. If Touro has not caused the removal of the particle beam equipment or identified a proposed transferee of its interest in the Property and the Project on or prior to the expiration of the Option Negotiation Period and City elects to exercise its option to repurchase pursuant to this Section 405, Touro and City acknowledge and agree that subject to Section 405.2c below, Touro shall not be reimbursed, in whole or in part, for the cost of the particle beam equipment, and that City shall have no obligation to pay or reimburse Touro for any portion of Touro's costs therefor.

c. After the expiration of the Option Negotiation Period, the City shall have one (1) year to determine if it wishes to exercise its Option. In the event that City and a third-party have entered into an agreement providing for such third-party to purchase the particle beam equipment installed on the Property, then, following City's receipt of funds for the sale of such equipment, City agrees that it shall reimburse Touro for the actual, out-of-pocket costs incurred by Touro for the purchase of such particle beam equipment. If at any time after the expiration of the Option Negotiation Period City wishes to repurchase the Property and City has not entered into an agreement with a third-party to purchase the particle beam equipment installed on the Property then City shall have no obligation to reimburse Touro for any costs incurred by Touro for the purchase of such particle beam equipment. The parties acknowledge that the language set forth in this Section 405.2c shall not be interpreted as imposing any obligation on the City to make any effort to solicit and/or enter into an agreement with a third-party for the purchase of the particle beam equipment.

d. Touro shall, within thirty (30) days after receipt of City's Notice of Intent, provide City with a summary of all of Touro's labor and materials costs incurred as provided in Section 405.2a above. City, within thirty (30) days thereafter or, if applicable, within thirty (30) days following the expiration of the Option Negotiation Period, shall open an escrow for the repurchase Option and shall pay to Touro through such escrow all sums owing pursuant to this Section 405, and Touro shall execute and deliver to City through the escrow a form title company quitclaim deed transferring to City all of Touro's interest in the Property and Project.

e. Notwithstanding any of the foregoing, the City Option pursuant to the terms of this Section 405 shall expire upon the City Council's acceptance of the Infrastructure Improvements in accordance with Section 21 of the Public Improvements Construction Agreement which City shall not unreasonably withhold, condition or delay. In the event that City accepts the Infrastructure Improvements after City has sent Touro a Notice of Intent but prior to conveyance of Touro's interest in the



Property and/or Project, the City Option shall be deemed terminated and of no further force or effect.

**406. 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.

**407. No Waiver.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either 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.

## **500. GENERAL PROVISIONS**

**501. Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice which either party may desire to give to the other party under this Acquisition Agreement must be in writing and shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or reputable 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.

CITY: City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: Economic Development Program Manager  
Phone: (707) 648-4507

With copies to: City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: City Attorney  
Phone: (707) 648-4456

and: City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: City Manager  
Phone: (707) 648-4579

and: Gerald J. Ramiza, Esq.  
McDonough Holland & Allen PC  
1901 Harrison Street, 9th Floor  
Oakland, CA 94612-3501  
Phone: (510) 273-8780

TOURO: Touro Mare Island, LLC  
2121 Palomar Airport Road, Suite 206  
Carlsbad, CA 92011  
Attn.: Bruce Lang, CEO  
Phone: 760-431-8005  
Fax: 760-431-8083

And to: Touro University – California  
1310 Johnson Lane  
Vallejo, CA 94592  
Attn: Richard A. Hassel,  
Vice President, Administration  
Phone: (707) 638-5200

With a copy to: Nicholas Roscha, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, CA 94520  
Phone: (925) 602-1400

And to: Franklyn H. Snitow, Esq.  
Snitow Kanfer Holtzer & Millus, LLP  
575 Lexington Avenue, 14th Floor  
New York, NY 10022  
Phone: (212) 317-8500  
Fax: (212) 317-1308 Fax

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.

**502. Enforced Delay; Extension of Times of Performance.** Except as otherwise set forth in this Acquisition Agreement, and subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Acquisition Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terror, epidemics; quarantine restrictions; freight embargoes; litigation; unusually severe

weather; unavailability of labor or materials; or acts or failures to act of any public or governmental agency (other than City which shall not excuse non-performance by City) (the "*Force Majeure Conditions*"). An extension of time for any such cause shall be for the period of the enforced delay, but in any event not more than ninety (90) days, and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Touro expressly agrees that, except as caused by Force Majeure Conditions, adverse changes in economic conditions, either of Touro or its Managing Member specifically or the economy generally, changes in market conditions or demand, and/or Touro's inability to obtain financing or other lack of funding for the Project shall not constitute grounds of enforced delay pursuant to this Section. Except as caused by Force Majeure Conditions, Touro expressly assumes the risk of such adverse economic or market conditions and/or financial inability, whether or not foreseeable as of the Date of Agreement.

**503. Successors and Assigns.** Subject to the restrictions on transfers set forth in Section 103 above, all of the terms, covenants and conditions of this Acquisition Agreement shall be binding upon Touro and City and their respective successors and assigns. Whenever the term "**Touro**" is used in this Acquisition Agreement, such term shall include any permitted successors and assigns as herein provided.

**504. Approvals.** Unless provision is made for a specific time period, whenever approval, consent or satisfaction (collectively, an "approval") is required of a party pursuant to this Acquisition Agreement (or any Exhibit hereto), approval or disapproval shall be given within thirty (30) days after written request therefor and receipt of all information required in connection with said request. If a party fails to act within the 30-day period, or other time period for approval as may be specified in this Acquisition Agreement or Exhibit hereto, the party requesting the approval, consent or satisfaction may send a second and final Notice, together with a clear statement indicating that if the other party does not act upon such request within twenty (20) days following receipt of this second Notice, the request shall be deemed approved. Failure of a party to act within this 20-day period shall be deemed an approval of the request, provided the requesting party has included the statement to that effect in its Notice and has provided in a timely manner all other information required in connection with said request. All approvals (including conditional approvals) and disapprovals shall be given or made in writing. If a party disapproves, the reasons therefor shall be stated in reasonable detail in writing.

**505. Relationship Between City and Touro.** It is hereby acknowledged that the relationship between City and Touro is not that of a partnership or joint venture and that City and Touro shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. Touro shall indemnify, protect, hold harmless and defend City from any Claims made against City arising from a claimed relationship of partnership or joint venture between City and Touro with respect to the development, operation, maintenance or management of the Project. Touro's indemnity obligations under this Section shall survive issuance of the Certificate of Completion.

**506. City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

**507. Counterparts.** This Acquisition Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

**508. Integration.** This Acquisition Agreement, including the Exhibits hereto, and the other Transaction Documents, contain the entire understanding between the parties relating to the transactions contemplated by this Acquisition Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, other than the Transaction Documents, are merged in this Acquisition Agreement and shall be of no further force or effect. Each party is entering into this Acquisition Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**509. Brokerage Fees.** City and Touro each represents to the other that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the Transfer of the Property. Each party shall indemnify, defend, protect and hold the other party harmless from and against any and all Claims based upon any assertion that such commissions or fees are allegedly due from the party making such representations.

**510. Interpretation.** As used in this Acquisition 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 words "include" and "including" shall be construed as if followed by the words "without limitation." The parties acknowledge that each party and its respective counsel have reviewed and revised this Acquisition Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Acquisition Agreement or any document executed and delivered by either party in connection herewith. The captions in this Acquisition Agreement are for convenience of reference only and shall not be used to interpret this Acquisition Agreement. Reference to section numbers are to sections in this Acquisition Agreement, unless expressly stated otherwise. References to specific section numbers shall include all subsections which precede and follow the referenced section.

**511. Modifications.** Any alteration, change or modification of or to this Acquisition Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. Any amendment to this Acquisition Agreement which, in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Acquisition Agreement, (ii) permitted uses of the Property, (iii) the purchase price or other consideration for the Property, (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, (vi) the scope or quality of the Infrastructure Improvements, or

(vii) monetary contributions by Touro, 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. The City Manager shall have the authority to execute an Insubstantial Amendment or, in his or her discretion, seek approval of an Insubstantial Amendment by City resolution.

**512. Severability.** If any term, provision, condition or covenant of this Acquisition Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Acquisition Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**513. Computation of Time.** The time in which any act is to be done under this Acquisition Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" means all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**514. Time of Essence.** Time is expressly made of the essence with respect to the performance by City and Touro of each and every obligation and condition of this Acquisition Agreement.

**515. Cooperation.** Each party agrees to cooperate with the other in connection with the Transfer and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Acquisition Agreement.

**516. Conflicts of Interest.** No member, official or employee of City shall have any personal interest, direct or indirect, in this Acquisition Agreement, nor shall any such member, official or employee participate in any decision relating to this Acquisition Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**517. Time for Acceptance of Agreement by City.** This Acquisition Agreement, when executed by Touro and delivered to City, must be authorized, executed and delivered by City on or before forty-five (45) days after signing and delivery of this Acquisition Agreement by Touro or this Acquisition Agreement shall be void, except to the extent that Touro shall consent in writing to a further extension of time for the authorization, execution and delivery of this Acquisition Agreement.

**518. Touro's Indemnity.** Subject to Section 210.7, Touro shall indemnify and hold City and City Parties harmless from and against any and all Claims, including Claims for any bodily injury, death, or property damage, directly or indirectly resulting from the development and construction of the Project by or on behalf of Touro, and/or from any acts or omissions of Touro under this Acquisition Agreement, whether such acts

or omissions were by Touro or any Touro Parties, except to the extent such Claims arise from the active negligence or willful misconduct of City or City Parties, and excepting suits or actions brought by Touro for City's Default under this Acquisition Agreement. Touro's indemnity obligations under this Section shall survive issuance of the Certificate of Completion and any termination of this Acquisition Agreement.

**519. Cooperation in the Event of Legal Challenge.** In the event any third party or other governmental entity or official institutes a court action challenging the validity of any provision of this Acquisition Agreement, City and Touro shall cooperate in the defense of such action in the same manner as set forth in Section 907 of the Development Agreement with respect to third party challenges of the Development Agreement.

**520. Conflict with Transaction Documents.** The provisions of this Acquisition Agreement are in addition to those set forth in the Transaction Documents. In the event of any conflict between the Transaction Documents and this Acquisition Agreement, this Acquisition Agreement shall control, except as to those provisions of the Development Agreement extending to Touro vested rights in the Project Approvals (as defined in the Development Agreement). Capitalized terms not otherwise defined in this Acquisition Agreement are as defined in the Development Agreement; provided, however, if certain capitalized terms are defined differently in either the Transaction Documents or the Acquisition Agreement, the definition used in each such agreement shall control for that agreement only.

**521. Nonliability of Officials and Employees of City.** No employee, elected or appointed official or other representative of City shall be personally liable to Touro, or any successor in interest of Touro, in the event of any Default or breach by City of its obligations under this Acquisition Agreement or for any amount which may become due to Touro or its successors under the terms of this Acquisition Agreement. Touro hereby waives and releases any claim it may have against the employees, elected or appointed officials or other representatives of City with respect to any Default or breach by City or for any amount which may become due to Touro or its successors under the terms of this Acquisition Agreement.

**522. Reserved.**

**523. Plans and Data.** If Touro does not proceed with the Transfer or development of the Project, or if this Acquisition Agreement is terminated for any reason whatsoever, Touro shall assign to City all of Touro's right, title and interest in any non-privileged Infrastructure Improvements plans and data, and use reasonable efforts to secure such other permissions such that City or any other person or entity designated by City shall be free to use such plans and data, including plans and data previously delivered to City, for any reason whatsoever without cost or liability therefor to Touro or any other person or entity. The Parties acknowledge that if this Acquisition Agreement terminates the City shall take ownership of the Highway 37 public improvement plans and Touro hereby remises, releases quitclaims, disclaims and waives any right, title, possession or any other interest in or to such plans. Except as otherwise provided above,

Touro shall retain all right, title and interest in and to any and all other plans and data concerning the Project.

**524. Applicable Law.** The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Acquisition Agreement.

**525. Materiality; Survival.** Touro acknowledges and agrees that the covenants and obligations contained in Section 208 relating to payment of property taxes and assessments; Section 209 relating to the formation of CFDs; and the defense, indemnification, protection and hold harmless obligations of Touro under Sections 201.1a, 210.2, 309, 505, 509 and 518 are material elements of the consideration to City, and that City would not have entered into this Acquisition Agreement unless such obligations were as provided for herein. The covenants and obligations identified in Sections 208 and 209 shall survive issuance of the Certificate of Completion. The defense, indemnification, protection and hold harmless obligations of Touro under Sections 201.1a, 210.2, 309, 505, 509 and 518 shall survive termination of this Agreement as well as issuance of the Certificate of Completion. The City obligations under Sections 211.2 and Section 405.2 shall survive termination or expiration of this Acquisition Agreement as well as the issuance of the Certification of Completion. Notwithstanding the foregoing, if following the termination or expiration of this Acquisition Agreement Touro remains obligated to perform its obligations under the Public Improvements Construction Agreement, then the City obligations under Sections 211.1, 211.2, 211.3, 211.4, 211.5, 211.6, 211.7, 211.8 and 211.9 shall survive termination or expiration of this Acquisition Agreement and such City obligations shall terminate upon City's acceptance of the Infrastructure Improvements in accordance with Section 21 of the Public Improvements Construction Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City and Touro have executed this Acquisition Agreement on the respective dates set forth below.

Dated: \_\_\_\_\_, 2008

CITY:

City of Vallejo, a California municipal corporation

By: \_\_\_\_\_  
Joseph M. Tanner, City Manager

ATTEST:

\_\_\_\_\_  
Mary Ellsworth, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick G. Soley, City Attorney

APPROVED AS TO INSURANCE REQUIREMENTS

By: \_\_\_\_\_  
Harry B. Maurer, Risk Manager

Dated: \_\_\_\_\_, 2008

TOURO:

Touro Mare Island, LLC, a California limited liability company

By: Touro College, a New York non-profit educational corporation

Its: Member-Manager

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

Print Name: Dr. Bernard Lander

Its: President

By:

Print Name:

Its:





Exhibit B  
Description of Property

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

ALL THAT PROPERTY AS SHOWN AS "PARCEL TWO:XV-A (SOUTHERN PORTION)" IN THAT CERTAIN QUITCLAIM DEED FROM THE UNITED STATES OF AMERICA TO THE CITY OF VALLEJO, RECORDED ON OCTOBER 17, 2001, RECORDER'S SERIES NO. 2001-120695, AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"A PARCEL OF LAND, BEING A PORTION OF THE "RECORD OF SURVEY SHOWING PARCEL XV FOR ECONOMIC DEVELOPMENT CONVEYANCE FOR BENEFIT OF THE CITY OF VALLEJO" DATED JULY 6, 2001, AND RECORDED ON SEPTEMBER 24, 2001, RECORDERS SERIES NO. 2001-109704, IN BOOK 24 OF SURVEYS PAGES 60 AND 61, SOLANO COUNTY RECORDS, REFERRED TO AS "PARCEL XV", DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATE ON THE FORMER MARE ISLAND NAVAL SHIPYARD, CITY OF VALLEJO, COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING A PORTION OF THE LAND SHOWN WITHIN THE BOUNDARY OF THAT PARCEL SHOWN AND SO DELINATED ON THE MAP FILED FOR RECORD ON NOVEMBER 14, 1996 IN BOOK 21 OF LAND SURVEY MAPS, AT PAGES 94 TO 98 INCLUSIVE, COUNTY OF SOLANO OFFICIAL RECORDS, SAID MAP TITLED "RECORD OF SURVEY FOR LANDS OWNED BY THE UNITED STATES OF AMERICA PER THE 1938 UNITED STATES SUPREME COURT DECISION "UNITED STATES VERSUS O'DONNELL 303 U.S. 501"" AND FURTHER DESCRIBED AS "RETRACEMENT OF TRACT 38 OF THE JOY SURVEY TITLED "FRACTIONAL TOWNSHIP 3 NORTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, CALIFORNIA" APPROVED BY THE U.S. SURVEY GENERAL'S OFFICE OCTOBER 24, 1923, ACCEPTED NOVEMBER 8, 1923 AND FILED WITH THE BUREAU OF LAND MANAGEMENT", SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LYING N31°09'48"W, 13,647.57 FEET FROM A STANDARD USC&GS BRASS DISC STAMPED "MARE ID SE 1852 1932" LOCATED ON THE HIGHEST AND MOST EASTERLY OF THE TWO PEAKS ON MARE ISLAND AND REFERRED TO AS "SEMARE" WITH NAD 83 ZONE II COORDINATES OF N1789849.0637, E6488254.0248, AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN BOOK 24 R.S. AT PAGES 12 THROUGH 13 INCLUSIVE, SOLANO COUNTY RECORDS, FROM WHICH A 2 1/2" ALUMINUM DISK STAMPED "MARE ISLAND CONTROL POINT, MCGILLMARTINSELF, INC. ORINDA, CA., 3" AND REFERRED TO AS "HCN3" ON SAID MAP BEARS N35°54'10"W, 17,225.54 FEET; SAID POINT OF COMMENCEMENT ALSO BEING THE EASTERNMOST POINT

OF SAID "PARCEL XV"; THENCE FROM SAID POINT OF COMMENCEMENT ALONG THE SOUTHERN LINE OF SAID "PARCEL XV" S54°18'02"W, 51.13 FEET TO THE TRUE POINT OF BEGINNING;

- 1) THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUING ALONG SAID SOUTHERN LINE S54°18'02"W, 1,138.98 FEET;
- 2) THENCE LEAVING SAID SOUTHERN LINE N36°31'46"W, 1,032.72 FEET;
- 3) THENCE N54°06'55"E, 836.46 FEET;
- 4) THENCE N36°44'23"E, 70.38 FEET;
- 5) THENCE N54°14'14"E, 62.11 FEET;
- 6) THENCE N37°34'49"W, 148.39 FEET;
- 7) THENCE N53°59'44"E, 184.06 FEET;
- 8) THENCE S36°07'51"E, 1,205.94 FEET TO THE TRUE POINT OF BEGINNING

Exhibit C  
Scope of Work

A. General.

The Project shall be of high architectural quality, well-landscaped, effectively and aesthetically designed and shall be constructed in a workmanlike manner and in professionally rendered finishes. The Project shall be designed and constructed in accordance with the Project Design Plans and Construction Drawings submitted to and approved by the City and all Project Approvals as defined in the Development Agreement. Touro's plans submitted to the City shall describe in detail the architectural character intended for the Project. Touro and its supervising architect, engineer and contractor shall work with City staff to coordinate the overall design and architecture of the Project.

B. Project.

The Project consists of an approximately 125,000 square foot two- three and four-story cancer-treatment center building measuring a maximum of 65-feet in height and containing an advanced particle beam device; a three-story (four-level) 117,000 square foot parking structure containing approximately 444 parking spaces; an enclosed utility yard and outdoor storage area; approximately ten acres of on-site landscaping; an approximately 1.5-acre on-site storm water detention basin; and an approximately 20-foot high, 50-foot wide, 615-foot long earthen berm to be constructed adjacent to certain exterior walls of the main building. The main cancer treatment center building shall be constructed to house a number of integrated medical facilities and devices including: four treatment rooms, two CT scanners, computer networks, information technology, a dedicated synchrotron accelerator, and ancillary supporting technologies.

C. Off-Site Infrastructure Improvements.

In addition to the private and public on-site improvements, Touro shall construct and install the off-site area-wide street and related Infrastructure Improvements including portions of G Street, Azuar Drive, I Street, Railroad Avenue, and construction of the planned State Route 37 interchange improvements at North Mare Island, as more particularly described in the Development Agreement and Public Improvements Construction Agreement, and pursuant to the timeframes and subject to the conditions set forth in those documents. The State Route 37 interchange improvements are to be constructed in accordance with currently approved Caltrans improvement plans and consistent with the "State Road 37/Mare Island Interchange Improvement Project-Initial Study Mitigated Negative Declaration," adopted by the City of Vallejo in 2002.

D. Demolition.

Prior to constructing the Project and the Infrastructure Improvements, Touro shall demolish all existing buildings (approximately 393,287 square feet total) and other improvements existing on the Property and the land underlying the Infrastructure

Improvements in accordance with the Transaction Documents and in conformance with the Mare Island Specific Plan. As provided in the Project Infrastructure and Demolition Schedule (Exhibit D to the Development Agreement), Touro shall commence demolition of Buildings 897, 1013, and 1015 prior to Closing. All other Demolition Activities shall be performed within the times and subject to the conditions provided in the Project Infrastructure and Demolition Schedule.

E. Adjacent Infrastructure Improvements. The Adjacent Infrastructure Improvements consist of portions of the off-site public frontage improvements surrounding the Project on: Azuar Avenue north of G Street to the I Street intersection; Railroad Avenue north of G Street to the I Street intersection; I Street between Railroad Avenue and Azuar Avenue; and G Street north of the north curb. The Adjacent Infrastructure Improvements are also referred to as the Ordinary Frontage Improvements as defined in the Development Agreement and Public Improvements Construction Agreement.

F. Applicable Codes and Approvals.

The Project, Infrastructure Improvements and Demolition Activities shall be performed in accordance with all conditions of approval imposed by the City Council, the Planning Commission and any other governmental body exercising jurisdiction over the Project, Infrastructure Improvements and Demolition Activities. In addition, the Project and Infrastructure Improvements shall be constructed in accordance with the Uniform Building Code (in effect in City with modifications thereto made by City) and the City Municipal Code and all other Governmental Requirements.

G. Mitigation Measures.

In connection with the development of the Project and Infrastructure Improvements and performance of the Demolition Activities, Touro shall observe and comply with all of the mitigation measures set forth in the Touro Cancer Treatment and Research Center Initial Study/Environmental Assessment and Mitigated Negative Declaration and Mitigation and Monitoring Plan, which has been adopted by the Planning Commission by Resolution No. \_\_\_\_\_.

Exhibit D  
Schedule of Performance

	<u>Action</u>	<u>Date</u>
1.	<p><u>Execution and Delivery of Agreement by City.</u></p> <p>City shall consider approval of this Agreement and, if approved, shall deliver one executed original to Touro.</p>	<p>Within fifteen (15) days after Touro's execution and delivery of the Acquisition Agreement. (§517)</p>
2.	<p><u>Touro Feasibility Period.</u></p> <p>Touro shall have the right to inspect the Property, review the Documents and approve the condition of the Property. (§201.1)</p>	<p>Commencing on the Date of Agreement and expiring 90 days thereafter.</p>
3.	<p><u>Delivery of Title Report.</u></p> <p>Touro shall cause Title Company to deliver to Touro and City the Title Report, together with copies of the exceptions. (§207.1)</p>	<p>Within five (5) business days after the Date of Agreement.</p>
4.	<p><u>Delivery of Title Notice.</u></p> <p>Touro shall deliver to City and Escrow Agent written notice of Touro's approval or disapproval of the legal description and every item or exception disclosed by the Title Report and Survey, if any, and of any title insurance endorsements which Touro requires. (§207.2)</p>	<p>No later than sixty (60) days after the later of Touro's receipt of the Title Report, Survey (if requested by Touro) and copies of all of the documents underlying the exceptions.</p>

	<u>Action</u>	<u>Date</u>
5.	<p><u>Delivery of Notice of Approval.</u></p> <p>If Touro elects to proceed with the purchase of the Property and development of the Project, Touro shall deliver the written Notice of Approval to City and Escrow Agent. (§201.1.f.)</p>	No later than ninety (90) days after the Date of Agreement.
6.	<p><u>Memorandum of Agreement.</u></p> <p>The Memorandum of Agreement shall be recorded.</p>	Immediately following Touro's delivery of Notice of Approval to City and Escrow Agent.
7.	<p><u>Escrow.</u></p> <p>City shall open the Escrow for the Transfer with First American Title Company. (§202)</p>	Within ten (10) days after the Date of Agreement.
8.	<p><u>Deposit.</u></p> <p>Touro shall deposit the Deposit into Escrow. (§203.1)</p>	Within ten (10) days after the Date of Agreement.

	<u>Action</u>	<u>Date</u>
9.	<p><u>Touro's Project Budget/Financing Plan.</u></p> <p>Touro shall obtain approval of its Project Budget/Financing Plan by Touro's construction lender and the City Manager. (§305.1)</p>	No later than thirty (30) days following Touro giving Notice of Approval.
10.	<p><u>Evidence of Loan/Equity Commitments.</u></p> <p>Touro shall obtain City Manager's approval of Touro's Loan/Equity Commitments. (§305.2)</p>	No later than Closing.
11.	<p><u>Submission and Approval – Project Design Plans.</u></p> <p>Touro shall submit Project Design Plans for City's review and approval. (§306.1)</p>	No later than thirty (30) days following Touro's Notice of Approval.
12.	<p><u>Submission and Approval– Construction Drawings.</u></p> <p>Touro shall obtain City building department approval of the Construction Drawings. (§306.2)</p>	Prior to Closing.



	<u>Action</u>	<u>Date</u>
13.	<u>City and Other Government Permits.</u>  Touro shall have secured or caused to be secured all land use and other entitlements, permits and approvals, including building permits, necessary for the development of the Project. (§304)	Prior to Closing.
14.	<u>Closing.</u>  Escrow for Transfer of the Property shall close. (§203.1)	Within thirty (30) days after the satisfaction or written waiver by the appropriate party, of all of City's and Touro's Conditions Precedent to Transfer, but in any event no later than the Outside Date (§206).
15.	<u>Demolition Activities.</u>  Touro shall commence and complete the Demolition Activities. (Right of Entry and Demolition Agreement)	Within the times set forth in the Project Infrastructure and Demolition Schedule (Exhibit D to the Development Agreement).
16.	<u>Commencement of Construction.</u>  Touro shall commence construction of the Project and Infrastructure Improvements. (§302)	No later than 30 days following the Closing Date.

	<u>Action</u>	<u>Date</u>
17.	<u>Completion of Construction.</u>  Touro shall complete construction of the Project and Infrastructure Improvements. (§302)	Within 48 months following commencement of construction thereof.
18.	<u>Certificate of Completion.</u>  City shall provide a Certificate of Completion to Touro. (§316)	Within 30 days following Touro's written request therefor and satisfactory completion of the Project and Infrastructure Improvements and satisfaction of the other conditions in Section 316.

Exhibit E  
Certificate of Completion

Recording Requested By )  
And When Recorded Mail To: )  
 )  
City of Vallejo )  
P.O. Box 3068 )  
555 Santa Clara Street )  
Vallejo, CA 94590 )  
Attn: City Clerk )

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*(Space Above This Line for Recorder's Use Only)*  
[Exempt from recording fee per Gov. Code § 27383]

**CERTIFICATE OF COMPLETION**

THIS CERTIFICATE OF COMPLETION ("Certificate") is made by the CITY OF VALLEJO, a California municipal corporation ("City"), in favor of TOURO MARE ISLAND, LLC, a California limited liability company ("Touro"), as of the date set forth below. Certain terms used but not defined herein shall have the meaning provided in Section 101 of the Acquisition Agreement described in Recital A below.

**RECITALS**

A. City and Touro have entered into that certain Acquisition Agreement ("Acquisition Agreement") dated \_\_\_\_\_, 2008, concerning the transfer and development of certain real property constituting an approximately \_\_\_\_\_ acre portion of Mare Island Reuse Area 1A, as more fully described in Attachment No. 1 attached hereto and made a part hereof (the "Property"), with an approximately 125,000 square foot advanced particle beam cancer treatment center and ancillary related research and administrative/office space.

B. As referenced in Section 316 of the Acquisition Agreement, upon Touro's satisfactory completion of the Project and Infrastructure Improvements and fulfillment of its other obligations under the Acquisition Agreement and the Transaction Documents, City is required to furnish Touro or its successors with a Certificate of Completion, which Certificate is required to be in such form as to permit it to be recorded in the Recorder's Office of Solano County. This Certificate is conclusive determination of Touro's satisfactory completion of the Project and Infrastructure Improvements.

C. City has conclusively determined that such construction and development of the Project and Infrastructure Improvements have been satisfactorily completed.

NOW, THEREFORE, City hereby certifies as follows:

Exhibit E

1. The Project and Infrastructure Improvements to be constructed by Touro have been fully and satisfactorily completed in conformance with the Acquisition Agreement.

2. The Acquisition Agreement is of no further force and effect and, except for those obligations which by their terms survive termination of the Acquisition Agreement, City and Touro shall have no further rights, duties, obligations or liabilities thereunder.

3. This Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of Touro to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction of the Project or Infrastructure Improvements. This Certificate of Completion is not a notice of completion as referred to in section 3093 of the California Civil Code.

4. Except for those covenants which by their terms expire, all covenants set forth in the Grant Deed from City to Touro recorded on \_\_\_\_\_, 200\_\_, as Instrument No. \_\_\_ in the Recorder's Office of Solano County, shall remain in effect and enforceable according to their terms.

IN WITNESS WHEREOF, City has executed this Certificate this \_day of \_\_\_\_\_, 20\_\_.

CITY OF VALLEJO, a California municipal corporation

By: \_\_\_\_\_ Joseph M. Tanner, City Manager

ATTEST:

\_\_\_\_\_  
Mary Ellsworth, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick G. Soley, City Attorney

Attachment No. 1

**Property Legal Description**

### Legal Description of Property

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

ALL THAT PROPERTY AS SHOWN AS "PARCEL TWO:XV-A (SOUTHERN PORTION)" IN THAT CERTAIN QUITCLAIM DEED FROM THE UNITED STATES OF AMERICA TO THE CITY OF VALLEJO, RECORDED ON OCTOBER 17, 2001, RECORDER'S SERIES NO. 2001-120695, AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"A PARCEL OF LAND, BEING A PORTION OF THE "RECORD OF SURVEY SHOWING PARCEL XV FOR ECONOMIC DEVELOPMENT CONVEYANCE FOR BENEFIT OF THE CITY OF VALLEJO" DATED JULY 6, 2001, AND RECORDED ON SEPTEMBER 24, 2001, RECORDERS SERIES NO. 2001-109704, IN BOOK 24 OF SURVEYS PAGES 60 AND 61, SOLANO COUNTY RECORDS, REFERRED TO AS "PARCEL XV", DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATE ON THE FORMER MARE ISLAND NAVAL SHIPYARD, CITY OF VALLEJO, COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING A PORTION OF THE LAND SHOWN WITHIN THE BOUNDARY OF THAT PARCEL SHOWN AND SO DELINATED ON THE MAP FILED FOR RECORD ON NOVEMBER 14, 1996 IN BOOK 21 OF LAND SURVEY MAPS, AT PAGES 94 TO 98 INCLUSIVE, COUNTY OF SOLANO OFFICIAL RECORDS, SAID MAP TITLED "RECORD OF SURVEY FOR LANDS OWNED BY THE UNITED STATES OF AMERICA PER THE 1938 UNITED STATES SUPREME COURT DECISION "UNITED STATES VERSUS O'DONNELL 303 U.S. 501"" AND FURTHER DESCRIBED AS "RETRACEMENT OF TRACT 38 OF THE JOY SURVEY TITLED "FRACTIONAL TOWNSHIP 3 NORTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, CALIFORNIA" APPROVED BY THE U.S. SURVEY GENERAL'S OFFICE OCTOBER 24, 1923, ACCEPTED NOVEMBER 8, 1923 AND FILED WITH THE BUREAU OF LAND MANAGEMENT", SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LYING N31°09'48"W, 13,647.57 FEET FROM A STANDARD USC&GS BRASS DISC STAMPED "MARE ID SE 1852 1932" LOCATED ON THE HIGHEST AND MOST EASTERLY OF THE TWO PEAKS ON MARE ISLAND AND REFERRED TO AS "SEMARE" WITH NAD 83 ZONE II COORDINATES OF N1789849.0637, E6488254.0248, AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN BOOK 24 R.S. AT PAGES 12 THROUGH 13 INCLUSIVE, SOLANO COUNTY RECORDS, FROM WHICH A 2 1/2" ALUMINUM DISK STAMPED "MARE ISLAND CONTROL POINT, MCGILLMARTINSELF, INC. ORINDA, CA., 3" AND REFERRED TO AS "HCN3" ON SAID MAP BEARS N35°54'10"W, 17,225.54 FEET; SAID POINT OF COMMENCEMENT ALSO BEING THE EASTERNMOST POINT OF SAID "PARCEL XV"; THENCE FROM SAID POINT OF COMMENCEMENT ALONG THE SOUTHERN LINE OF SAID "PARCEL XV" S54°18'02"W, 51.13 FEET TO THE TRUE POINT OF BEGINNING;

- 1) THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUING ALONG SAID SOUTHERN LINE S54°18'02"W, 1,138.98 FEET;
- 2) THENCE LEAVING SAID SOUTHERN LINE N36°31'46"W, 1,032.72 FEET;
- 3) THENCE N54°06'55"E, 836.46 FEET;
- 4) THENCE N36°44'23"E, 70.38 FEET;
- 5) THENCE N54°14'14"E, 62.11 FEET;
- 6) THENCE N37°34'49"W, 148.39 FEET;
- 7) THENCE N53°59'44"E, 184.06 FEET;
- 8) THENCE S36°07'51"E, 1,205.94 FEET TO THE TRUE POINT OF BEGINNING

Exhibit F  
Grant Deed

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Touro Mare Island, LLC  
2121 Palomar Airport Road  
Suite 206  
Carlsbad, CA 92011  
Attention: Bruce Lang

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY  
[Exempt from recording fee per Gov. Code § 27383]

**GRANT DEED (INCLUDING COVENANTS)**

(APN:66-021-04)

WHEREAS, the CITY OF VALLEJO, a California municipal corporation ("**Grantor**"), and TOURO MARE ISLAND, LLC, a California limited liability corporation ("**Grantee**"), are parties to that certain Acquisition Agreement dated \_\_\_\_\_, 2008 ("**Acquisition Agreement**"), which provides, among other things, for the purchase and sale of certain Property hereinafter described by Grantor to Grantee and Grantee's development thereon of an approximately 125,000 square foot advanced particle beam cancer-treatment center and ancillary related research and administrative/office space ("**Project**") (or, subject to Grantor's approval in its sole discretion, an Alternate Project that meets the requirements set forth in Section 301.1 thereof), together with on-site and off-site public improvements, including the Infrastructure Improvements, all as provided therein. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Acquisition Agreement.

AND WHEREAS, a Memorandum of the Acquisition Agreement was recorded on \_\_\_\_\_, 2008, Series No. 2008 \_\_\_\_\_ in the Official Records of the County of Solano.

AND WHEREAS, by Quitclaim Deed dated September 26, 2001, recorded on October 17, 2001, Series No. 2001 00120695 ("**Navy Quitclaim Deed**"), in the Official Records of the County of Solano, the City of Vallejo received title to the Property from the United States of America, acting by and through the Department of the Navy pursuant to the provisions of 42 U.S.C. 9620(h)(3)(C) and a Finding of Suitability for Transfer ("**FOST**") which authorized the transfer of the Property and found, among other things, that certain Mare Island property, including the Property and other portions of Reuse Area 1A, was environmentally suitable for transfer in accordance with and subject to Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9620 et seq. ("**CERCLA**").

AND WHEREAS, The Navy Quitclaim Deed, the FOST and all documents and agreements referred to in this recital are collectively referred to herein as the "**Transfer Documents**," and together with any other documents of record, govern the respective rights and obligations of the



parties thereto and their successors and assigns for completion of environmental response actions with respect to the Property, including the covenants, warranties and indemnifications made and to be made by the Navy in connection therewith pursuant to 42 U.S.C. 2620(h)(C).

AND WHEREAS, as contemplated by the Acquisition Agreement, Grantor and Grantee desire for Grantor to convey the Property to Grantee and for Grantee to develop the Project thereon (or, subject to Grantor's approval in its sole discretion, an Alternate Project), all as provided in the Acquisition Agreement.

NOW THEREFORE, FOR VALUE RECEIVED, Grantor grants to Grantee, all that certain real property ("**Property**") situate in the City of Vallejo, County of Solano, State of California, more particularly described in **Attachment No. 1** attached hereto and by this reference incorporated herein.

EXCEPTING AND RESERVING THEREFROM THE FOLLOWING:

1. Those portions of the water, sewer and storm drainage utility systems located on, under and about the Property, which are part of the operational trunk utility systems serving the Property and/or other portions of Mare Island (collectively, "**Wet Utilities**"). The Wet Utilities reserved by Grantor shall not include any of the lateral water, sewer or storm drainage pipes or conduits connecting buildings and improvements located on or about the Property to the operational trunk water, sewer and storm drainage utility systems. The location of the Wet Utilities existing as of the effective date hereof is depicted generally on those certain Wet Utilities diagrams prepared by LFR Reimer dated March 14, 2002, on file with the City Clerk of the City of Vallejo ("**Wet Utilities Diagrams**"). The foregoing reservation of Wet Utilities by Grantor shall in no event release Grantee from any of its obligations, pursuant to the Transfer Documents, to cause the remediation of hazardous materials contamination that may be discovered in, on, under or about the Wet Utilities. The actual pipes, conduits and improvements constituting the Wet Utilities may be modified, added to, or abandoned from time to time in accordance with the applicable provisions of the Acquisition Agreement and that certain Development Agreement between Grantor and Grantee recorded on \_\_\_\_\_, 2008, Series No. 2008-\_\_\_\_\_, Solano County Official Records ("**Development Agreement**") or, to the extent not covered thereby, by mutual consent not to be unreasonably withheld.

2. Non-exclusive, perpetual easements for ingress and egress and utility purposes, on, over, across and under (a) those portions of the Property which presently contain road, street, alley and other customary appurtenant access improvements (including, without limitation, streetlights, curbs, gutters, drain inlets, signs, signals, benches and sidewalks) as shown on that certain Roadways diagram prepared by LFR Reimer dated March 14, 2002, on file with the City Clerk of the City of Vallejo (collectively, "**Roadways**") and (b) those portions of the Property which contain Wet Utilities, as existing from time to time in accordance with Section 1, above. The foregoing reserved easements shall be subject to replacement, from time to time, as provided in Section 2.4, below.

2.1. The easements reserved hereby are reserved for the public purposes of: (a) providing public right-of-way ingress and egress, including, without limitation, vehicular and pedestrian access, to and from properties located on Mare Island; (b) maintaining, using, repairing and, subject to Section 2.5 below, replacing the Roadways, to provide access to and from properties located on Mare Island; and (c) maintaining, using, repairing and, subject to

Section 2.5 below, replacing the Wet Utilities, to provide such water, sewer and storm drain utility services to properties located on Mare Island. For purposes of this Section 2.1, "Roadways" shall also include any public road, street, alley or other access improvement constructed on the Property pursuant to Grantor approval and dedicated to and accepted by Grantor after the date hereof or otherwise placed into service with the express approval of the appropriate official of Grantor.

2.2. These easements are intended to be broadly construed so that neither the subdivision of Mare Island, the number of persons using the easement, the size, type and kind of utilities located within the easement, nor the intensity or type of use on any portion of Mare Island shall constitute a surcharge of the easements.

2.3. The Roadways are not, and shall not become by virtue of this reservation of easement, dedicated public rights of way and are not reserved to or accepted by the Grantor as such.

2.4. These easements shall be replaced, from time to time, with respect to specific portions of the Property, as and when specific easement locations and improvements have been determined and constructed for the specific portion of the Property being developed in accordance with the terms of the Development Agreement. Upon Grantee's written requests made from time to time following the replacement of the easements reserved hereby, Grantor shall execute, acknowledge and deliver to Grantee for recordation in the Official Records of Solano County, quitclaim deeds or other instruments evidencing the termination in whole or in part, as applicable, of the replaced easements.

2.5. Grantor hereby assumes, and Grantee shall have no obligation for, all usual and customary municipal responsibilities and obligations with respect to (a) the operation, maintenance and repair of the currently existing Roadways and Wet Utilities in substantially the same condition existing on the date hereof, and (b) the operation, maintenance and repair of any new pipes, conduits and improvements added to the Wet Utilities after the date hereof as provided in Section 1 above, and any new roads, streets, alleys or other appurtenant access improvements constructed or installed on the Property after the date hereof, in substantially the same condition as similar utility and roadway improvements located in other areas of the City of Vallejo; provided, however, Grantor shall have no obligation to upgrade the existing Roadways or Wet Utilities or to ensure that such existing Roadways or Wet Utilities meet current engineering, safety or design codes or standards, and further provided that Grantor shall have the right, at its option, to assign its municipal responsibilities and obligations with respect to operation, maintenance and repair of the Wet Utilities to the Mare Island Utilities District. The foregoing assumption of municipal responsibilities and obligations by Grantor shall in no event release Grantee from any of its obligations pursuant to the Acquisition Agreement and other Transaction Documents to cause the remediation of Hazardous Materials contamination that may be discovered in, on, under or about the Roadways or Wet Utilities. For purposes of this Section 2.5, "Roadways" shall also include any public road, street, alley or other appurtenant access improvement constructed on the Property pursuant to Grantor approval and dedicated to and accepted by Grantor after the date hereof or otherwise placed into service with the express approval of the appropriate official of Grantor.

3. Non-exclusive easements for ingress and egress on, over, across and under those portions of the Property as may be reasonably necessary for Grantor to maintain, use, repair and, at Grantor's sole option, replace the Wet Utilities located on, under or about the Property from time to time.

GRANTEE HEREBY COVENANTS AND AGREES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, AS FOLLOW:

A. That the initial improvements constructed by Grantee on the Property shall consist of the Project (or, subject to Grantor's approval in its sole discretion, an Alternate Project) as set forth in the Acquisition Agreement.

B. Prior to the issuance of the Certificate of Completion, Grantee shall not, except as permitted by the Acquisition Agreement, sell, transfer, convey, assign or lease the whole or any part of the Property without the prior written approval of the Grantor's City Manager.

C. That, except as to "Navy Retained Conditions" (as defined in the ESCA) on property adjacent to the Property, Grantee, at its expense, shall take any and all actions necessary to promptly prepare the Property for the uses contemplated by the Acquisition Agreement and the Development Agreement (or, subject to Grantor's approval in its sole discretion, an Alternate Project) including any additional remediation work required pursuant to applicable Environmental Laws . After Closing, Grantor shall continue to enforce the terms of the MIRA with respect to Weston's obligations concerning the property adjacent to the Property. Nothing herein shall be deemed to relieve Navy of its obligations with respect to Navy Retained Conditions.

D. That Grantee shall comply with all Environmental Laws concerning the Property and take all reasonably necessary precautions to prevent the release of any Hazardous Materials into the environment in violation of any Environmental Laws. In addition, Grantee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with Environmental Laws as to disclosure, storage, use, removal and/or disposal of Hazardous Materials.

E. That Grantee shall notify Grantor, and provide to Grantor a copy or copies, of any and all environmental permits, or applications relating to the Property, including notices of violation, notices to comply, citations, clean up or abatement orders, cease and desist orders, reports filed pursuant to self reporting requirements and reports filed or applications made pursuant to any Environmental Laws.

F. That in the event of a release of any Hazardous Materials onto or from the Property in violation of any Environmental Law, Grantee shall, as soon as possible after the release, furnish to Grantor a copy of any and all reports relating thereto and copies of all official correspondence with regulatory agencies relating to the release. Upon request of Grantor, Grantee shall furnish to Grantor a copy or copies of any and all other environmental work plans relating to or affecting the Property.

G. That the Property and the Project (or, if approved by Grantor in its sole discretion, an Alternate Project), and all improvements, equipment and contents located therein and thereon shall be and remain subject to the assessment and payment of real and personal property taxes, including possessory interest taxes, and that Grantee shall not apply for or otherwise accept any exemption from the payment of any real or personal property taxes, including possessory interest taxes. In the event Grantee or its operators or lessees or its and their successors or assigns are granted any exemption from the payment of real or personal property taxes of any nature, Grantee shall pay annually to the City and the Greater Vallejo Recreation District a payment in lieu of taxes in an amount determined by the City to be equal to the portion of the real and personal property tax levy the City and the Greater Vallejo Recreation District would have received but for the exemption. The payment in lieu of taxes shall be payable on the date that the second installment of property taxes would otherwise have been due and payable. Any payment in lieu of taxes which is not paid when due shall accrue interest at the lesser of ten percent (10%) per annum or the highest rate allowed by Applicable Law. To the extent Grantee fails to timely make any payment in lieu of taxes, or accrued interest thereon, Grantor, in addition to its other rights and remedies, shall be entitled to record a lien upon the Property and the Project for the amount of such delinquent payment.

H. That City shall have the option to repurchase the Property and all improvements thereon upon the occurrence of certain specified events and under the conditions and requirements all as set forth in Section 405 of the Acquisition Agreement. Grantee shall comply with all of the obligations of Touro under Section 405 of the Acquisition Agreement, which provides as follows:

**"405. Additional City Remedy Following Conveyance - Option to Repurchase, Reenter and Repossess.** Subject to the time limitation set forth below, City shall have the right at its option to repurchase, reenter and take possession of the Property (with all improvements thereon including the Project), if after Closing and prior to the issuance of the Certificate of Completion, Touro:

a. Fails to commence construction of the Project as required by this Acquisition Agreement or the Infrastructure Improvements as required by the Public Improvements Construction Agreement for a period of sixty (60) days after written notice thereof from City; or

b. Abandons or substantially suspends construction of the Project or the Infrastructure Improvements for a period of sixty (60) days after written notice of such abandonment or suspension from City; or

c. Is in Default under this Acquisition Agreement."

a. 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 Acquisition Agreement; provided, however, that any successor of Grantee to the Property 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.

b. Grantee's covenants contained in this Grant Deed shall remain in effect until the issuance of the Certificate of Completion for the Project and Infrastructure Improvements, and upon the issuance of the Certificate of Occupancy City shall concurrently record a quitclaim deed or other instrument to eliminate Grantee's covenants, except for the following:

The covenants pertaining to taxability of the Property and the Project, as set forth in Paragraph G, shall remain in effect until the later of the end of the useful life of the Project, or December 31, 2058.

c. Grantor is deemed the beneficiary of the terms and provisions of this Grant Deed and of the covenants running with the land, for and in its own right 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 Grant Deed and the covenants running with the land have been provided, without regard to whether Grantor has been, remains or is an owner of any land or interest therein on Mare Island. Grantor shall have the right, if the Grant Deed or 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 Grant Deed and covenants may be entitled.

d. In the event of any express conflict between this Grant Deed and the Acquisition Agreement, the provisions of the Acquisition Agreement shall control.

THE PROPERTY IS CONVEYED TO GRANTEE WITHOUT WARRANTY OR COVENANT OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT THAT GRANTOR COVENANTS THAT GRANTOR HAS NOT CONVEYED THE SAME ESTATE OR ANY RIGHT, TITLE OR INTEREST THEREIN TO ANY PERSON OTHER THAN GRANTEE.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Grant Deed to be executed on their behalf by their respective officers thereunto duly authorized as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**GRANTOR:**  
**CITY OF VALLEJO**

By: \_\_\_\_\_  
Name: Joseph M. Tanner  
Its: City Manager

**ATTEST:**

\_\_\_\_\_  
Mary Ellsworth, City Clerk

**APPROVED AS TO FORM:**

---

Frederick G. Soley, City Attorney

THE PROVISIONS OF THIS GRANT DEED ARE HEREBY APPROVED AND ACCEPTED.

**GRANTEE:**

**TOURO MARE ISLAND, LLC**, a California limited liability company

By: Touro College, a New York non-profit educational corporation

Its: Managing Member

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION**

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

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"A PARCEL OF LAND, BEING A PORTION OF THE "RECORD OF SURVEY SHOWING PARCEL XV FOR ECONOMIC DEVELOPMENT CONVEYANCE FOR BENEFIT OF THE CITY OF VALLEJO" DATED JULY 6, 2001, AND RECORDED ON SEPTEMBER 24, 2001, RECORDERS SERIES NO. 2001-109704, IN BOOK 24 OF SURVEYS PAGES 60 AND 61, SOLANO COUNTY RECORDS, REFERRED TO AS "PARCEL XV", DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATE ON THE FORMER MARE ISLAND NAVAL SHIPYARD, CITY OF VALLEJO, COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING A PORTION OF THE LAND SHOWN WITHIN THE BOUNDARY OF THAT PARCEL SHOWN AND SO DELINATED ON THE MAP FILED FOR RECORD ON NOVEMBER 14, 1996 IN BOOK 21 OF LAND SURVEY MAPS, AT PAGES 94 TO 98 INCLUSIVE, COUNTY OF SOLANO OFFICIAL RECORDS, SAID MAP TITLED "RECORD OF SURVEY FOR LANDS OWNED BY THE UNITED STATES OF AMERICA PER THE 1938 UNITED STATES SUPREME COURT DECISION "UNITED STATES VERSUS O'DONNELL 303 U.S. 501"" AND FURTHER DESCRIBED AS "RETRACEMENT OF TRACT 38 OF THE JOY SURVEY TITLED "FRACTIONAL TOWNSHIP 3 NORTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, CALIFORNIA" APPROVED BY THE U.S. SURVEY GENERAL'S OFFICE OCTOBER 24, 1923, ACCEPTED NOVEMBER 8, 1923 AND FILED WITH THE BUREAU OF LAND MANAGEMENT", SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LYING N31°09'48"W, 13,647.57 FEET FROM A STANDARD USC&GS BRASS DISC STAMPED "MARE ID SE 1852 1932" LOCATED ON THE HIGHEST AND MOST EASTERLY OF THE TWO PEAKS ON MARE ISLAND AND REFERRED TO AS "SEMARE" WITH NAD 83 ZONE II COORDINATES OF N1789849.0637, E6488254.0248, AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN BOOK 24 R.S. AT PAGES 12 THROUGH 13 INCLUSIVE, SOLANO COUNTY RECORDS, FROM WHICH A 2 1/2" ALUMINUM DISK STAMPED "MARE ISLAND CONTROL POINT, MCGILLMARTINSELF, INC. ORINDA, CA., 3" AND REFERRED TO AS "HCN3" ON SAID MAP BEARS N35°54'10"W, 17,225.54 FEET; SAID POINT OF COMMENCEMENT ALSO BEING THE EASTERNMOST POINT OF SAID "PARCEL XV"; THENCE FROM SAID POINT OF COMMENCEMENT ALONG THE SOUTHERN LINE OF SAID "PARCEL XV" S54°18'02"W, 51.13 FEET TO THE TRUE POINT OF BEGINNING;

Exhibit F



- 1) THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUING ALONG SAID SOUTHERN LINE S54°18'02"W, 1,138.98 FEET;
- 2) THENCE LEAVING SAID SOUTHERN LINE N36°31'46"W, 1,032.72 FEET;
- 3) THENCE N54°06'55"E, 836.46 FEET;
- 4) THENCE N36°44'23"E, 70.38 FEET;
- 5) THENCE N54°14'14"E, 62.11 FEET;
- 6) THENCE N37°34'49"W, 148.39 FEET;
- 7) THENCE N53°59'44"E, 184.06 FEET;
- 8) THENCE S36°07'51"E, 1,205.94 FEET TO THE TRUE POINT OF BEGINNING

ACKNOWLEDGMENTS

State of California

County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

State of California

County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

Exhibit F

State of California

County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**ATTACHMENT NO. 1**  
**LEGAL DESCRIPTION**

*ACKNOWLEDGMENTS*

State of California

County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

State of California

County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

State of California

County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

Exhibit G

Memorandum of Agreement

Recording Requested By )  
 And When Recorded Mail To: )  
 )  
 City of Vallejo )  
 P.O. Box 3068 )  
 555 Santa Clara Street )  
 Vallejo, CA 94590 )  
 Attn: City Clerk )

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*(Space Above This Line for Recorder's Use Only)*  
 [Exempt from recording fee per Gov. Code § 27383]

**MEMORANDUM OF ACQUISITION AGREEMENT**

THIS MEMORANDUM OF ACQUISITION AGREEMENT ("Memorandum"), dated for identification purposes as of \_\_\_\_\_, 2008, is entered into by and between the CITY OF VALLEJO, a California municipal corporation ("City"), and TOURO MARE ISLAND, LLC, a California limited liability company ("Touro").

**1. Acquisition Agreement.** City and Touro have entered into an Acquisition Agreement ("Acquisition Agreement") dated for identification purposes as of \_\_\_\_\_, 2008, which provides, among other things, for: (i) City's conveyance to Touro of certain real property consisting of approximately \_\_\_\_\_ acres located in Reuse Area 1A on Mare Island in the City of Vallejo, as more particularly described in Attachment No. 1 attached hereto and incorporated herein (the "Property"); (ii) Touro's construction and development on the Property of an approximately 125,000 square foot advanced particle beam cancer-treatment center and ancillary related research and administrative/office space together with onsite and offsite public improvements; and (iii) certain remedies to City, including the right to repurchase, reenter and repossess the Property following the Closing upon certain events of default by Touro. The Acquisition Agreement imposes certain conditions on the Property, including but not limited to, construction requirements and transfer restrictions. The Acquisition Agreement is available for public inspection and copying at the office of the City Clerk, City of Vallejo, 555 Santa Clara Street, Vallejo, CA 94590. All of the terms, conditions, provisions and covenants of the Acquisition Agreement are incorporated in this Memorandum by reference as though written out at length herein, and the Acquisition Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Acquisition Agreement.

**2. Purpose of Memorandum.** This Memorandum is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants of the Acquisition Agreement. In the event of any inconsistency between the terms, conditions, provisions and covenants of this Memorandum and the Acquisition Agreement, the terms, conditions, provisions and covenants of the Acquisition Agreement shall prevail.

The parties have executed this Memorandum on the dates specified immediately adjacent to their respective signatures.

Dated: \_\_\_\_\_, 2008

CITY:

CITY OF VALLEJO, a California municipal corporation

By: \_\_\_\_\_  
Joseph M. Tanner, City Manager

ATTEST:

\_\_\_\_\_  
Mary Ellsworth, Interim City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick G. Soley, City Attorney

Dated: \_\_\_\_\_, 2008

TOURO:

TOURO MARE ISLAND, LLC, a California limited liability company

By: Touro College, a New York non-profit educational corporation

Its: Member-Manager

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_



**ATTACHMENT NO. 1**  
**LEGAL DESCRIPTION OF PROPERTY**

Exhibit H  
Quitclaim Deed

Recording Requested By )  
And When Recorded Mail To: )  
 )  
City of Vallejo )  
P.O. Box 3068 )  
555 Santa Clara Street )  
Vallejo, CA 94590 )  
Attn: City Clerk )

*(Space Above This Line for Recorder's Use Only)*  
[Exempt from recording fee per Gov. Code § 27383]

**QUITCLAIM DEED**

By this instrument dated \_\_, 200\_\_, for valuable consideration,

TOURO MARE ISLAND, LLC, a California limited liability company ("Touro") does hereby forever remises, releases and quitclaims to

CITY OF VALLEJO, a California municipal corporation ("City")

all right, title and interest in the real property in the State of California, County of Solano, City of Vallejo, described in Attachment No. 1, attached hereto, proposed to be transferred by City to Touro under that Acquisition Agreement dated \_\_\_\_\_, 2008, between City and Touro, including any rights under the Memorandum of Acquisition Agreement that was recorded on \_\_\_\_\_, 2008, in the Official Records of Solano County, California as \_.

IN WITNESS WHEREOF, Touro has caused this Quitclaim Deed to be executed in its name and on its behalf by its officer thereunto duly authorized as of the date first above written.

TOURO:

Touro Mare Island, LLC, a California limited liability company

By: Touro College, a New York non-profit educational corporation

Its: Member-Manager

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT NO. 1**  
**LEGAL DESCRIPTION OF PROPERTY**

Exhibit I  
Escrow Instructions Regarding Quitclaim Deed

To: First American Title Company ("Title Company")  
Escrow No. \_\_\_\_\_  
Vallejo, California  
\_\_\_\_\_, Escrow Officer

These instructions are by Touro Mare Island, LLC, a California limited liability company ("Touro") and City of Vallejo, a California municipal corporation ("City") to Title Company.

1. City is the owner of real property located in the City of Vallejo, County of Solano (the "County"), State of California, described as:

see Attachment No. 1, attached

2. City has agreed to transfer and Touro has agreed to acquire and develop the Property upon the terms and conditions contained in that Acquisition Agreement entered into between Touro and City dated \_\_\_\_\_, 2008 (the "Agreement") and the other Transaction Documents (as defined in the Agreement).

3. Concurrently with the execution of the Agreement, City and Touro will execute and hand you in recordable form a Memorandum of the Agreement covering the Property (the "Memorandum").

4. Concurrently with the execution of the Agreement, Touro shall execute and hand you in recordable form a quitclaim deed in the form attached to the Agreement as Exhibit H ("Quitclaim Deed").

5. If Touro fails to give the Notice of Approval pursuant to Section 201.1.e of the Agreement, Title Company shall return the Memorandum to City and the Quitclaim Deed to Touro.

6. If Touro gives the Notice of Approval pursuant to Section 201.1.e of the Agreement, Title Company will record the Memorandum in the Official Records of Solano County.

7. If Touro does not close Escrow for Transfer of the Property on or before the Outside Date or the Agreement is terminated pursuant to Section 404 thereof, Title Company shall record the Quitclaim Deed in the Official Records of Solano County, without further instructions of the parties.

8. If Touro closes Escrow for Transfer of the Property, Title Company shall return the unrecorded Quitclaim Deed to Touro at the Close of Escrow.

9. Touro will pay the cost of recording the Memorandum and Quitclaim Deed and your reasonable fee for complying with these instructions.

City of Vallejo, a California municipal corporation

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

Joseph M. Tanner, City Manager

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

Touro Mare Island, LLC, a California limited liability company

By: Touro College, a New York non-profit educational corporation

Its: Its Member-Manager

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Vallejo )  
 P.O. Box 3068 )  
 555 Santa Clara Street )  
 Vallejo, CA 94590 )  
 Attention: City Clerk )  
 )

(Space Above This Line for Recorder's Use Only)  
 Exempt from recording fee per Gov. Code § 27383.

**PUBLIC IMPROVEMENTS  
 CONSTRUCTION AGREEMENT**

THIS PUBLIC IMPROVEMENTS CONSTRUCTION AGREEMENT ("**Agreement**") is made this \_\_\_ day of \_\_\_\_\_, 200\_\_, by and between CITY OF VALLEJO, a California municipal corporation ("**City**"), and TOURO MARE ISLAND, LLC, a California limited liability company ("**Touro**").

**RECITALS**

The following recitals are a substantive part of this Agreement:

A. Pursuant the Navy's approval of a Finding of Suitability for Transfer ("**FOST**"), the Navy conveyed by quitclaim deed certain Mare Island property, including a portion of Reuse Area 1A, to City on or around September 2001.

B. City and Touro have entered into an Acquisition Agreement dated \_\_\_\_\_, 2008 ("**Acquisition Agreement**"), setting forth, among other things, the terms and conditions for Touro's acquisition from City of that approximately 27.89 acre portion of Reuse Area 1A described in Attachment No. 1 attached hereto ("**Property**") and Touro's development thereon of an approximately 125,000 square foot advanced particle beam cancer-treatment center and related ancillary research and administrative/office space ("**Project**").

C. Concurrently with the Acquisition Agreement, City and Touro have entered into a Development Agreement dated \_\_\_\_\_, 2008 ("**Development Agreement**"), which, among other things, sets forth the applicable fees, policies and zoning requirements that will apply to Touro's development of the Project; provides Touro with a vested right to develop the Project subject to the requirements set forth therein; and subject to the terms and conditions of the Development Agreement and the Acquisition Agreement, obligates Touro to construct or cause construction of certain Infrastructure Improvements, including North Mare Island Backbone Infrastructure Improvements and Ordinary Frontage Improvements (as such terms are defined in the Development Agreement) (collectively, the "**Public Improvements**"). Section 5.04 of the Development Agreement provides that Touro and City will, prior to or concurrent with Closing, enter into a Public Improvements Construction Agreement setting forth the parties' respective rights and obligations as to the required Public Improvements, but that Touro is not obligated to construct the Public Improvements until Touro closes escrow and acquires the Property.

D. As contemplated by Section 5.04 of the Development Agreement and applicable provisions of the Acquisition Agreement, Touro and City desire to enter into this Agreement prior to or concurrent with closing for transfer of the Property to set forth Touro's obligations with respect to the financing, construction, installation, and dedication of the Public Improvements, all as set forth herein.

## A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed between the parties as follows:

1. **Purpose.** The purpose of this Agreement is to guarantee Touro's satisfactory and timely security, design, construction, installation and dedication of the Public Improvements as required under the Development Agreement, and to ensure that Touro meets the conditions and requirements of the Planning Commission and City Council's approval of the Project. Except as otherwise expressly provided in Section 5.05 of the Development Agreement and Section 211.2 of the Acquisition Agreement, all costs of designing, constructing and installing the Public Improvements shall be borne by Touro.

2. **Schematic Drawings and Preliminary Cost Estimates.** Prior to the date of this Agreement, Touro has submitted to City, and City has reviewed, the Unit Plan Application drawings dated January 21, 2008 and the Design Development Drawings for the Public Improvements prepared by Arcadis U.S., Inc, dated \_\_\_\_\_ ("*Design Development Drawings*") for the sole purpose of establishing preliminary cost estimates ("*Preliminary Cost Estimates*") for the Public Improvements. The Design Development Drawings are on file in the office of the City Engineer. The Preliminary Cost Estimates were prepared and submitted to the City by Touro prior to the date of this Agreement, and are attached hereto as Attachment No. 2.

3. **Construction Drawings for Public Improvements.** Within the time set forth in the Infrastructure Schedule attached hereto as Attachment No. 3 ("*Infrastructure Schedule*"), Touro, at its expense, shall prepare or cause to be prepared and deliver to the City Engineer construction drawings and specifications (collectively, "*Construction Drawings*") for the Public Improvements in blueprint and CD-ROM formats, with line work in AutoCAD 2007 Drawing format according to the CAD Line Work Specifications set forth in paragraph 19 below. The Construction Drawings shall be consistent in all respects with the Design Development Drawings previously submitted to the City, except as otherwise determined by the City Engineer. The City Engineer shall not unreasonably withhold or delay approval of the Construction Drawings and in any event shall either approve or disapprove the Construction Drawings within the time set forth in the Infrastructure Schedule. Any disapproval of the submitted Construction Drawings shall be accompanied by a description of all of the changes or additional information that the City Engineer requires. This procedure shall be repeated until the Construction Drawings have been approved by the City Engineer. Approved Construction Drawings are not a representation by City that they are in compliance with the requirements of applicable law, and it shall be Touro's responsibility to meet and comply with all Federal, State, and local law and code requirements. No changes to the approved Construction Drawings shall be made without the written consent of



the City Engineer or Public Works Inspector or his or her designee, which consent shall not be unreasonably delayed, conditioned or withheld.

4. **Modifications to the Drawings.** City review of the Design Development Drawings and approval of the Construction Drawings shall not release Touro of its responsibility to correct mistakes, errors or omissions in the Design Development Drawings and/or Construction Drawings. If, at any time, in the opinion of the City Engineer, the Design Development Drawings and/or Construction Drawings are deemed inadequate in any respect, Touro agrees to make such modifications, changes or revisions as necessary in order to complete the Public Improvements work in accordance with accepted design and construction standards.

5. **Conformance with Specifications.** Touro shall complete all Public Improvements in a good and workmanlike manner, in accordance with the Construction Drawings and accepted construction practices, without cost to the City, within the time set forth in the Infrastructure Schedule; and in conformance with the "City of Vallejo Regulations and Standard Specifications for Public Improvements," dated August 1992, and the "Vallejo Sanitation and Flood Control District, Master Bid Document and Project Specific Supplement," dated March 2007, and any approved revisions thereto (collectively referred to as "*Specifications*") all of which are incorporated herein by this reference.

6. **Construction Contract for Public Improvements.** Following final approval of the Construction Drawings and within the time set forth in the Infrastructure Schedule, Touro shall enter into a contract ("*Construction Contract*") for construction of the Public Improvements with a general contractor qualified to perform such work. The time periods specified in the Construction Contract for performance of the work of Public Improvements shall in all events be consistent with the Infrastructure Schedule. Touro shall provide City with a complete copy of the fully executed Construction Contract promptly following execution thereof.

7. **Schedule of Completion.** Following Touro's receipt of all permits and approvals required for construction of the Public Improvements, Touro shall commence and complete the work of Public Improvements within the time periods set forth in the Infrastructure Schedule, subject to paragraph 36 below. Touro shall notify City's Public Works Department forty-eight (48) hours prior to commencement of construction of the Public Improvements. Notwithstanding any other provision hereof to the contrary, prior to issuance of any Certificate of Occupancy for the Project, Touro must satisfactorily complete the work of Public Improvements in accordance with the terms of this Agreement and obtain either (i) City's final acceptance thereof, (ii) City's acceptance of maintenance responsibility therefor, or (iii) City Engineer's written confirmation that the Public Improvements are substantially complete, subject only to minor punch list items.

8. **Supervision of Work.** Touro shall give attention to the Public Improvements work and shall at all times maintain proper facilities. A competent foreman or superintendent with authority to act for and on behalf of Touro, shall be on the worksite at all times during the Public Improvements work. In the event the City Engineer determines an employee of the general contractor or subcontractor to be performing its duties in an incompetent manner or acting in a disorderly or improper manner, the City Engineer may address such concerns with Touro's foreman or superintendent.

9. **Progress & Daily Reports.** Touro shall submit, or cause its General Contractor to submit, progress reports and weekly reports generated by the Project soils engineer, soils technicians and other firm representatives of the soils engineer regarding site grading, to the City in a timely manner and no later than a week after generation of such reports to provide the City with current information relative to the grading operation. Prior to placement of aggregate base and asphaltic concrete, Touro shall provide, or cause its general contractor to provide, compaction test data and a letter from the soils engineer declaring that the intent of the soils report has been met. Acceptance of mass grading by the City is subject to submittal of a complete and comprehensive final soils report from the Project soils engineer to the reasonable satisfaction of the City Engineer.

10. **Approval of Permits.** Prior to commencement of any portion of the Public Improvements, Touro, at its expense, shall be responsible for obtaining all permits and approvals required for construction and installation of that portion of the Public Improvements, including encroachment permits and grading permits for mass grading operations. City and Touro agree to act promptly and in good faith to expedite the issuance of permits necessary for the work of Public Improvements.

11. **Water Supply.** Touro shall provide a water supply to all contractors and subcontractors constructing the Public Improvements. Touro will use treated effluent (non-potable water) water when such water is available from the Vallejo Sanitation and Flood Control District ("*VSFCD*") or, when such water is not available, Touro will use potable water to be furnished from the nearest approved City water line or hydrant upon receipt of proper permit and payment of fees and deposit by Touro for metering and water usage.

12. **Street Lights & Utilities.** Touro, at its expense, shall construct a street lighting, power, telephone and Cable TV conduit system for the Project, complete with standards and bases therefor, the overall design and methods of construction of which shall be subject to approval by the City Engineer and shall be in conformance with applicable requirements of Island Energy and SBC/AT&T (or other provider) and City's cable television franchisee. Touro agrees that the operation and maintenance costs for any non-City standard street lights shall be paid for through a Community Facilities District, Landscape and Lighting District, or other similar funding mechanism mutually acceptable to City and Touro.

13. **Recyclable/Salvageable Materials.** Touro shall submit a Waste Management Plan ("*WMP*") for the construction of the Public Improvements to the City's Recycling Coordinator for approval. Touro shall list in the WMP the materials resulting from construction of the Public Improvements that will be recycled, reused or disposed of. Touro shall recycle or reuse a minimum of seventy five percent (75%) of asphalt and concrete, and fifty percent (50%) of all other demolition debris generated by the construction of the Public Improvements. Hazardous materials shall be discounted in the calculation of the recycle and reuse requirement.

14. **Examination of Work.** Subject to the provisions of this Section 14 and Section 308 of the Acquisition Agreement, City and its authorized agents shall, at all times during the progress of the Public Improvements work, have free access to the work and shall be allowed to examine the work and all materials used and to be used in connection therewith. Touro shall at all times maintain safe access for inspection of the Public Improvements by City. City

acknowledges that construction activities are inherently dangerous and, therefore, for safety reasons, once construction activities commence, City and its employees, agents and representatives involved in code enforcement or inspection shall give notice of their presence on the work site immediately upon entering and coordinate any physical access to the Public Improvements work site through Touro or its agents or contractors and shall observe proper safety protocols at all times. All other access to the Public Improvements worksite areas where construction activities are occurring by City or its employees, agents or assigns shall be following 24 hours prior notice pursuant to Section 308 of the Acquisition Agreement. The parties acknowledge that the notice requirement in the previous sentence shall not apply to any City access to areas that are designated as public right-of-ways.

15. **Payment of City Costs.** Touro shall pay to City all fees and costs for inspection, administration and testing services furnished by City in connection with this Agreement, including all fees to cover the cost of engineering review and inspection of the Public Improvements.

16. **Damage to Public or Private Property.** Touro agrees to repair or have repaired, replace or have replaced, as the case may be, at its sole cost and expense, all public roads, streets, improvements, public utilities facilities, surveying monuments or other public or private property to the extent damaged or destroyed as a result of or incidental to the Public Improvements work by Touro or its employees, contractors, subcontractors or agents (collectively, "*Touro Parties*"), or to pay to the property owner of any such damaged road, street or property the full cost of such repair to the extent damaged by Touro or any Touro Parties. City shall be under no obligation whatsoever to accept any Public Improvements work as complete until such time as all repairs and replacements have been completed or have been paid for in a manner acceptable to the City Engineer.

17. **Damage to Public Improvements.** Until the earlier to occur of (i) City's acceptance of the Public Improvements, or (ii) City's acceptance of maintenance responsibility for the Public Improvements or portion thereof, Touro shall be responsible for and bear the risk of loss to any of the Public Improvements constructed or installed, and shall be responsible for the care and maintenance thereof. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring to the work or Public Improvements prior to the completion and acceptance thereof by City, excepting those losses caused by the sole negligence or willful misconduct of the City or City Parties (as defined, *infra*).

18. **Notice of Completion and Certification Regarding Liens.** After Touro satisfactorily completes the Public Improvements work, or phase or component thereof, in accordance with this Agreement and repairs any road, street, or private or public property to the extent damaged as a result of that phase of the Public Improvements work or pays the full cost of such repair to the owner whose property was damaged by Touro or any Touro Parties, Touro will provide City with a written notice of completion. Concurrently with delivery of the notice of completion, and prior to any final acceptance by City, Touro shall certify that said phase of the Public Improvements work is free of liens and encumbrances.

19. **As-Built Drawings and Electronic Data.** Prior to City's acceptance of the Public Improvements, or any phase thereof, Touro shall provide "as-built" plans for all grading, improvements, landscape, street light and joint trench utilities prepared and certified by the Project engineer. These drawings shall be in a form acceptable to the City Engineer, shall be certified as being "as-built" and shall reflect the job as actually constructed, with any and all changes incorporated therein. Touro shall submit the following finalized and signed sets of as-built plans:

- a. One set of 3-mil photo wash off mylars and two sets of blue prints to the City Engineer's office;
- b. One set of re-producible and one set of blue lines to the VSFCDD; and
- c. One set of re-producible Public Improvements plans and one set of blue lines to the City Utility (Water) Department.

In addition to the foregoing signed plans, Touro shall submit to City, prior to City's acceptance of the Public Improvements, or any phase thereof, electronic data stored on a CD-ROM in the following formats:

- d. "As-built" construction plans and final map in TIFF format (300 DPI minimum); and
- e. "As-built" improvement and grading plans and final map in AutoCAD Drawing format based on the following CAD Line Work Specifications:
  - (i) Coordinate System: State Plane -- California Zone II
  - (ii) Horizontal Datum: North American Datum of 1983 (NAD83)
  - (iii) Vertical Datum: National Geodetic Vertical Datum of 1988 (NGVD88)
  - (iv) Units: U.S. Survey Feet

Layers shall be named based on the current U.S. National CAD Standard.

20. **Other Duties of Touro Prior to City's Acceptance of the Public Improvements.** Prior to City's acceptance of the Public Improvements, or any phase thereof:

a. Touro shall have its landscape architect for the Project perform a complete and thorough field review of the public and private landscape, irrigation, and planting within the Project and provide the City in writing, a certificate that all public and private landscaping, planting and irrigation within the Project is in full compliance with the City ordinances and guidelines and approved landscape, planting and irrigation plans;

b. Touro shall deliver to City a letter from Island Energy indicating the street lighting has been completed and is functioning;

c. Touro shall submit to the City the cost of construction for all street improvements (excluding sanitary sewer, storm drain and water line) and total mileage of all streets;

d. Touro shall provide cost of construction for all water lines to the City and a cost of construction of the sanitary sewer and storm drain system to VSFCDD;

e. Touro shall deliver one complete streetlight assembly (pole, luminaire and lamp) to City's corporation yard for every fifty (50) street lights, or fraction thereof, identified on the approved street light plan;

f. Touro shall provide the City with recorded copies of lot line adjustments, if any;

g. Touro shall submit to City a letter from the Project engineer/surveyor stating that all monuments as shown on the Record of Survey have been installed in their exact positions without any deviation from the Record of Survey and Touro has paid the Project engineer/surveyor for the installation;

h. Touro shall submit a final comprehensive soils report prepared by the soils engineer for the Project addressing compaction and that the general stability of any and all slopes are to his/her satisfaction and a final comprehensive report from either the soils engineer or Touro's contractor confirming that the erosion control measures in all open space areas have been installed; and

i. Touro shall submit a Record of Survey after all public street improvements have been constructed, which shall then be used as an exhibit for the dedication of the right of way areas or completed public street improvements to the City for use as public streets.

21. **Final Acceptance.** Within forty-five (45) days of receipt of Touro's written notice of completion fulfilling the requirements of paragraphs 18, 19 and 20, above, the City Engineer or his or her designee, shall inspect the applicable phase of the Public Improvements work and send Touro a written notice stating whether the applicable Public Improvements work and any required repairs are complete to the satisfaction of the City Engineer. If the applicable Public Improvements work and repairs are, in the opinion of the City Engineer, not complete, the City Engineer will list all the deficiencies that must be corrected to find the applicable Public Improvements work and repairs complete. Upon satisfactory completion of the applicable Public Improvements work and repairs, the City Engineer will send Touro a written notice of

satisfactory completion. City Engineer's failure to respond to Touro's written notification within forty-five (45) days will not be deemed satisfactory completion of the Public Improvements work. After sending Touro a written notice of satisfactory completion as provided above, the City Engineer will recommend acceptance of the applicable phase of Public Improvements to the City Council. After acceptance, the City Council may also take action to accept any offer of dedication related to the accepted Public Improvements that was previously rejected or not offered for dedication. The acceptance of the Public Improvements shall be by resolution, which resolution may include the acceptance of any offer of dedication. Upon adoption of such resolution, the City Engineer shall record a notice, in a form to be approved by the City Attorney, in the Official Records of Solano County. Upon adoption of the said resolution approving the Public Improvements or portion thereof on behalf of the City, ownership of said Public Improvements shall vest in the City.

22. **Warning Public of Dangerous Conditions.** Until the earlier to occur of (i) City's final acceptance of the Public Improvements, or (ii) City's acceptance of maintenance responsibility for the Public Improvements or portion thereof, Touro shall give reasonable warning to the public of each and every dangerous condition which, in Touro's good faith determination, gives rise to an immediate threat to public safety, health or welfare existent on or about said Public Improvements, and will take all reasonable actions to protect the public from such dangerous conditions.

23. **Post-Acceptance Use of Improvements.** After City's acceptance of the Public Improvements or portion thereof, Touro and Touro's contractors and subcontractors shall not use the accepted Public Improvements for staging building construction activities, including but not limited to, storage of construction material or equipment. Touro shall keep the accepted Public Improvements free of construction debris, mud, and other obstacles and the streets and sidewalks must remain open to vehicular and pedestrian traffic at all times. Touro shall bear the cost of replacement or repair of any damaged Public Improvements to the extent caused by Touro's or any Touro Parties' misuse of the Public Improvements after acceptance thereof by City, and shall indemnify, defend and hold City and City Parties harmless, pursuant to paragraph 28 below, from any claims to the extent arising from Touro's or Touro Parties' misuse of the Public Improvements after acceptance thereof by City.

24. **Duties Prior to Issuance of Building Permits for Project.**

a. **Grading Permit.** Prior to the issuance of any building permit for the Project, Touro shall be required to obtain a grading permit from the Public Works Department for disposition of foundation, trenches and other building spoils. Designated "open space" areas shall not be used as a spoil site unless approved by the City Engineer.

b. **Application of Vehicle Code.** Prior to issuance of any building permit for the Project, Touro shall file with the City, pursuant to the State of California Vehicle Code, a petition requesting that the provisions of said Vehicle Code be applied to private streets and alleys within the Project and post and maintain signs at the entrances to the private streets and alleys giving notice of enforcement of said Vehicle Code. All sign postings shall be coordinated with the Fire Department.

c. **Engineers' Certification Letter.** Prior to building permit issuance or acceptance of grading, compaction test results and a certification letter from the Project soils engineer and civil engineer confirming that the grading is in conformance with the approved plans must be submitted to the City Public Works Department for review and approval. Test values must meet minimum relative compaction recommended by the soils engineer.

d. **Plot Plans.** Prior to any building permit application submittal, Touro shall submit plot plans to the City Engineer for review and approval.

e. **Landscaping, Irrigation and Fencing Plans.** Prior to issuance of any building permits for the Project, Touro shall submit and obtain City Planning Manager and City Engineer approval of plans for the construction of landscaping, irrigation systems, and fencing in conformance with the City Landscape Guidelines.

25. **Duties Prior to Occupancy of Project Buildings.** Prior to occupancy of any portion of the Project, Touro shall cause:

a. All utilities and street improvements supporting the Project building(s) to be occupied to be substantially complete to the satisfaction of the City Engineer;

b. Parking enforcement signs and pavement markings to be installed within the boundaries of the Project;

c. Six inches of topsoil, or approved equivalent, to be provided on all landscape areas of the Project; and

d. Street trees to be installed as required by Vallejo Municipal Code Section 15.05.190 and in accordance with the landscape plans approved by City. The trees shall be selected from a City approved street tree list. Trees shall be planted so as to allow for clear lines of sight.

26. **Security Instrument.** Concurrent with execution of this Agreement, Touro shall furnish, or cause its general contractor to furnish, to City a security instrument ("**Security Instrument**") in the form of either (a) immediately available funds to be deposited by City at a

financial institution selected by City and reasonably acceptable to Touro, with all interest accruing to the benefit of Touro, or (b) a surety bond ("**Surety Bond**") in form and issued by a surety that meets the requirements set forth in this paragraph 26. The election between option (a) and (b) above shall be at the sole discretion of Touro. The Security Instrument shall be in the amount of \$ \_\_\_\_\_, which represents One Hundred Ten Percent (110%) of the sum total of the Preliminary Cost Estimates for all of the Public Improvements plus, only to the extent not yet completed, a good faith estimate of the costs of preparing the Construction Drawings, and shall serve as security for Touro's (i) faithful performance of the construction of the Public Improvements, including completion of construction drawings to the extent such drawings have not been sufficiently completed by the parties and (ii) payment of all persons performing labor and furnishing materials in connection therewith. If the Security Instrument is a Surety Bond, the surety issuing said bond shall be admitted in the State of California and shall be reasonably acceptable to the City. In addition, the Surety Bond, whether issued by individual or corporate surety, shall, among other required terms and conditions, contain conditions that (i) death of the named principal shall not operate as a release of the obligation hereunder of the surety and (ii) extensions of time, if any, granted by City to Touro or its contractor(s) for performance of the work of Public Improvements covered by the Surety Bond shall not exonerate said surety, but rather shall extend for a like time the period of limitations during which said surety shall remain bound by the undertaking. The use, application or retention of any proceeds of the Security Instrument by City shall not prevent City from exercising any other right or remedy provided by this Agreement or by any applicable law.

Touro shall continuously maintain the Security Instrument in effect until the last to occur of (1) Touro's satisfactory completion of the Public Improvements as determined by the City Engineer, (2) City's final acceptance of the Public Improvements, and (3) the expiration of applicable time periods for filing liens for payment of labor and materials claims, at which time City shall release and/or return to Touro the Security Instrument. Notwithstanding the foregoing, upon satisfactory completion of the Public Improvements and prior to City's final acceptance thereof, Touro shall furnish to City a surety bond or other form of cash or security acceptable to the City in an amount equal to ten percent (10%) of the amount of the approved Construction Contract (plus the amount of any outstanding liens), as security to guarantee performance of any corrective work throughout the warranty period described in paragraph 27 below.

27. **Warranty Period; Repair and Reconstruction**. If, within a period of one (1) year after City's final acceptance of the Public Improvements, all or any portion of the work of Public Improvements installed or constructed under this Agreement, fails to fulfill any of the requirements of this Agreement or the specifications referred to herein or in the Schematic Drawings, Construction Drawings or Specifications due to failure of or defect in materials or workmanship, Touro shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work to the satisfaction of the City Engineer. Should Touro fail to act promptly or in accordance with this requirement after written notice from City, or should the exigencies of the case require repairs, replacements or reconstruction to be made before Touro can be notified, City may, at its option, make the necessary repairs, replacements or perform the necessary reconstruction and Touro shall pay to the City the actual cost of such repairs, replacements and reconstruction, plus ten percent (10%) to cover City's administrative and other soft costs. Except where the exigencies of the case require immediate action, City agrees to notify Touro in writing if the Public Improvements fail



to fulfill any requirements of this Agreement and to specify the failure of or defect in materials or workmanship and the actions required to be taken by Touro to cure the deficiencies. Upon notification of any such defect, Touro shall correct, remedy or cure the defect within thirty (30) days or, if such defect cannot be cured within thirty (30) days, then within such longer period, provided Touro commences to cure the defect within such thirty (30) day period and thereafter diligently prosecutes said cure to completion.

28. **Indemnification.** Touro shall defend, indemnify and hold harmless City and VSFCO and its and their officers, officials, directors, employees, agents and volunteers (collectively, "***City Parties***") from and against any and all claims, demands, causes of action, damages, costs, expenses, attorney's fees, consultant's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever to the extent arising out of or in connection with Touro's acts, omissions, negligence or willful misconduct in connection with this Agreement or the work of Public Improvements, including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, to the extent caused or alleged to have been caused by any act, omission, negligence or willful misconduct of Touro or any Touro Parties, or anyone directly employed by any of them for the full period of time allowed by the law, regardless to any limitation by insurance, except to the extent caused by the sole negligence or willful misconduct of the City or any City Parties. Approval of insurance coverage does not in any way relieve Touro of its obligations under this paragraph 28. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

29. Acceptance by City of the Public Improvements or any portion thereof shall not constitute an assumption by City of any responsibility for any claims or damage covered by this paragraph. City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. Nothing contained in this paragraph is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to City or any City Parties by virtue of City's approval of the plans or design of the Public Improvements, including without limitation the protections and immunities afforded by Government Code Section 830.6. For a period of ten (10) years following the acceptance by the City of the Public Improvements, Touro shall remain obligated to eliminate any defect in design or dangerous condition but only to the extent caused by Touro or its contractors or subcontractors; however, Touro shall not be responsible for routine maintenance, or for any defects in design or dangerous conditions to the extent caused by others not acting within Touro's control. No improvement security shall be required to cover the provisions of this section.

30. **Insurance Requirements.** Touro shall procure and maintain, or cause its contractor(s) to procure and maintain, for the duration of this Agreement Commercial General Liability, Automobile Liability and Workers Compensation insurance policies covering the work of Public Improvements as required by the Development Agreement. Such insurance shall not be construed to relieve Touro or its contractor(s) of any liability in excess of such coverage.

31. **Compliance with Laws.** Touro, at its expense, shall carry out the work of Public Improvements in conformity with all applicable laws, including State Labor Code and Public Contracts Code requirements; City zoning and development standards; building, plumbing,

mechanical and electrical codes; all other provisions of the City's Charter and Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

32. **Prevailing Wage Obligations.** Touro acknowledges and agrees that the work of Public Improvements will constitute "public works" as defined in Labor Code Section 1720 *et seq.* Accordingly, Touro shall comply with all State Labor Code requirements and other applicable laws, regulations, ruling and requirements pertaining to public works, including those pertaining to payment of "prevailing wages" (collectively, "**Prevailing Wage Laws**"). Touro shall (i) require its contractors and subcontractors to submit certified copies of payroll records to Touro; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to the City and its designees for inspection and copying during regular business hours at the Property or at another location within the City of Vallejo. Touro shall also include in Touro's Construction Contract a provision, in a form acceptable to City, obligating Touro's general contractor to require its contractors and/or subcontractors to comply with all such Prevailing Wage Laws.

Touro shall indemnify and defend City and City Parties from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) arising out of or in any way connected with Touro's obligation to comply with all Prevailing Wage Laws with respect to the work of Public Improvements, including all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and/or 1781.

33. **Notice of Breach and Default.** Subject to written notice and opportunity to cure as specified herein, and subject to paragraph 36 below, the following events shall constitute a "Default" by Touro hereunder: (a) Touro's refusal or failure to complete and obtain City's approval of the Construction Drawings within the times specified herein, provided such approval is not unreasonably withheld, conditioned or delayed by City; (b) Touro's failure to commence construction of the Public Improvements within the time specified herein; (c) Touro's failure to complete construction of the Public Improvements within the time specified herein; (d) Touro's failure to timely cure any defect in the Public Improvements; (e) Touro's failure to perform substantial construction work for a period of twenty (20) consecutive days after commencement of construction of the Public Improvements; (f) Touro's creation of any immediate threat to the public safety, health or welfare as determined by the City Engineer; (g) Touro's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Touro fails to discharge within thirty (30) days; (h) the commencement of any foreclosure action against the Property or the Project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or (i) Touro fails to comply with any of its other obligations under this Agreement. Upon the occurrence of any of the foregoing events, City may provide written Notice of breach and Default to Touro. Except in the event of a Default arising out of clauses (d) or (f) above, where the time to cure shall be ten (10) days, Touro shall have thirty (30) days following receipt of such Notice to cure the specified breach or Default; provided, however, if the breach is of a type that cannot be cured within the applicable ten (10) or thirty (30) days, Touro shall not be in Default provided Touro (i) commences to cure the

breach within such applicable ten (10) or 30-day period, (ii) notifies City within the initial applicable ten (10) or 30-day period of the time it will take to cure such breach which shall be a reasonable period under the circumstances, and (iii) at all times diligently and continuously prosecutes such cure to completion. If, following Notice, Touro fails to cure the breach or Default within the time period specified above, City, in addition to its other rights and remedies, may proceed to complete the Construction Drawings (to the extent such drawings have not already been completed) and perform the work of Public Improvements by contract or other method City considers advisable, all at the expense of Touro. Touro shall be obligated to pay the actual, out-of-pocket costs and charges related to said work, together with a ten percent (10%) overhead charge. In such event, City, without liability for doing so, may take possession of and utilize in completing the work such building and construction materials belonging to Touro as may be on or about the Property and necessary for completion of the work of Public Improvements. In the event of Default, the financial institution holding or issuing the Security Instrument shall be liable to City to pay the face amount of the obligations specified under paragraph 26 above.

City reserves to itself all remedies available to it at law or in equity for breach of Touro's obligations under this Agreement. The right of City to utilize the Security Instrument is additional to and not in lieu of any other remedy available to City. It is specifically agreed that the amounts of the Preliminary Cost Estimate, Construction Contract and Security Instrument may not reflect the actual cost of construction or installation of the Public Improvements and, therefore, City's damages for Touro's Default may exceed the amount of the Security Instrument.

In the event of Touro's Default and following notice and expiration of the applicable cure period, City shall not be obligated to issue any further building permits or certificates of occupancy for the Project, unless and until such Default has been cured. The failure of City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach of Touro.

34. **Remedies; Attorney's Fees.** Following Notice and expiration of applicable cure periods, either party may bring legal action to: (a) compel performance of this Agreement by the defaulting party and/or (b) recover damages as a result of the defaulting party's failure to perform its obligations hereunder. The parties agree that if legal action is brought by any party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover all of the costs of suit and reasonable attorney's fees, and all other expenses of litigation as determined by the court. No failure on the part of a party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that said party may have hereunder.

35. **Notices, Demands and Communications between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by first-class mail, personal delivery or overnight courier, 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.

To City: City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: Public Works Director  
Phone: (707) 649-5452  
Fax: (707) 648-4499

and: City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: City Attorney  
Phone: (707) 648-4456  
Fax: (707) 648-4687

and: City of Vallejo  
P.O. Box 3068  
555 Santa Clara Street  
Vallejo, CA 94590  
Attn: City Manager  
Phone: (707) 648-4576  
Fax: (707) 648-4499

Touro: Touro Mare Island, LLC  
2121 Palomar Airport Road, Suite 206  
Carlsbad, CA 92011  
Attn.: Bruce Lang, CEO  
Phone: 760-431-8005  
Fax: 760-431-8083

and: Touro University – California  
1310 Johnson Lane  
Vallejo, CA 94592  
Attn: Richard A. Hassel  
Vice President, Administration  
Phone: (707) 638-5200  
Fax: (707) 638-5255

and: Nicholas Roscha, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, CA 94520  
Phone: (925) 602-1400  
Fax: (925) 825-0143

Any Notice shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, postage prepaid, and on the next business day 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.

36. **Enforced Delay; Extension of Times of Performance.** Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; acts of terror; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation, including court delays; unusually severe weather; acts or omissions of the other party; or acts or failures to act of other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City) (the "*Force Majeure Conditions*"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within forty-five (45) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Touro. Touro expressly agrees that, except as caused by Force Majeure Conditions, adverse changes in economic conditions, either of Touro specifically or the economy generally, changes in market conditions or demand, and/or Touro's inability to obtain financing or other lack of funding to complete the work of Public Improvements shall not constitute grounds of enforced delay pursuant to this paragraph 36. Except as caused by Force Majeure Conditions, Touro expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the date of this Agreement.

37. **No Assignment.** Because of the necessity to coordinate the development of the entirety of the Property pursuant to the Mare Island Specific Plan, as amended, particularly with respect to the provision of on- and off-site public improvements and public services, the Acquisition Agreement and Development Agreement each impose restrictions on the right of Touro to assign or transfer its interest with respect to the Property, or any portion thereof, in order to ensure the achievement of the goals, objectives and public benefits of the Specific Plan and the Acquisition Agreement and Development Agreement. Accordingly, Touro may not assign or transfer any of its rights or obligations under this Agreement to any person, partnership, joint venture, firm, company or corporation without the prior written consent of the City Manager.

38. **Miscellaneous Terms and Provisions.**

a. **Incorporation of Recitals.** The foregoing recitals are incorporated into and made part of this Agreement.

b. **Entire Agreement.** This Agreement, including the Attachments attached hereto, the Development Agreement, the Acquisition Agreement, and the encroachment and grading permits to be obtained by Touro, contain the full, final, and exclusive statement of the contract of Touro and City regarding the work of Public Improvements and supersedes all previous negotiations between them pertaining to the subject matter thereof.

c. **Touro Not Agent of City.** Neither Touro nor any Touro Parties shall be deemed agents of City in connection with the performance of Touro's obligations under this Agreement.

d. **Severability.** If any provision of this Agreement is adjudged invalid, the remaining provisions of it shall not be affected.

e. **Multiple Signers.** If there is more than one signer of this Agreement as Touro, their obligations are joint and several.

f. **Headings.** The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope of interpretation of the Agreement.

g. **Authority to Enter into Agreement.** Each person or entity executing this Agreement on behalf of a party represents and warrants that such person or entity is duly and validly authorized to do so on behalf of the entity it purports to bind and if such entity is a partnership, corporation or limited liability company, that such partnership, corporation or limited liability company has full right and authority to enter into this Agreement and perform all of its obligations hereunder

h. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

i. **Successors.** All covenants, promises and agreements contained in this Agreement shall pertain to and hereby expressly run with the Property. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Concurrently with closing for conveyance of the Property by City to Touro, this Agreement shall be recorded in the Official Records of Solano County.

j. **Time is of the Essence.** Time is of the essence with respect to the performance by Touro and City of each and every obligation and condition of this Agreement.

k. **Ambiguity.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, this Agreement shall be interpreted as though

drafted by both parties and neither party may rely upon Civil Code Section 1654 to interpret any uncertainty in the meaning of the Agreement.

l. **No Third Party Beneficiaries.** With the exception of VSFCD, there are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person or entity whatsoever.

m. **No Waiver.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

n. **Governing Law.** This Agreement shall in all respects be governed by the law of the State of California, without reference to its choice of law provisions. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such court, and consent to service of process issued by such courts.

o. **Additional Documents.** The parties shall sign any additional documents which are reasonably necessary to carry out this Agreement or to accomplish its intent.

p. **Amendment.** This Agreement may only be modified or amended by mutual written agreement of both parties.

*[Signatures on following page]*

IN WITNESS WHEREOF, City and Touro have executed this Agreement on the respective dates set forth below.

CITY:

CITY OF VALLEJO, a California municipal corporation

Dated: \_\_\_\_\_, 2008

By: \_\_\_\_\_  
Joseph M. Tanner, City Manager

ATTEST:

\_\_\_\_\_  
Mary Ellsworth, City Clerk

APPROVED AS TO INSURANCE REQUIREMENTS:

\_\_\_\_\_  
Harry B. Maurer, Risk Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick G. Soley, City Attorney

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Gary Leach, Public Works Director

- AND -

TOURO:  
TOURO MARE ISLAND, LLC, a California limited liability company

By: Its Member-Manager,  
Touro College, a New York non-profit educational corporation,

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Dated: \_\_\_\_\_ 2008

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTACHMENT NO. 1**

Legal Description of Property

Real property in the City of Vallejo, County of Solano, State of California, described as follows:

ALL THAT PROPERTY AS SHOWN AS "PARCEL TWO:XV-A (SOUTHERN PORTION)" IN THAT CERTAIN QUITCLAIM DEED FROM THE UNITED STATES OF AMERICA TO THE CITY OF VALLEJO, RECORDED ON OCTOBER 17, 2001, RECORDER'S SERIES NO. 2001-120695, AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"A PARCEL OF LAND, BEING A PORTION OF THE "RECORD OF SURVEY SHOWING PARCEL XV FOR ECONOMIC DEVELOPMENT CONVEYANCE FOR BENEFIT OF THE CITY OF VALLEJO" DATED JULY 6, 2001, AND RECORDED ON SEPTEMBER 24, 2001, RECORDERS SERIES NO. 2001-109704, IN BOOK 24 OF SURVEYS PAGES 60 AND 61, SOLANO COUNTY RECORDS, REFERRED TO AS "PARCEL XV", DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATE ON THE FORMER MARE ISLAND NAVAL SHIPYARD, CITY OF VALLEJO, COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING A PORTION OF THE LAND SHOWN WITHIN THE BOUNDARY OF THAT PARCEL SHOWN AND SO DELINEATED ON THE MAP FILED FOR RECORD ON NOVEMBER 14, 1996 IN BOOK 21 OF LAND SURVEY MAPS, AT PAGES 94 TO 98 INCLUSIVE, COUNTY OF SOLANO OFFICIAL RECORDS, SAID MAP TITLED "RECORD OF SURVEY FOR LANDS OWNED BY THE UNITED STATES OF AMERICA PER THE 1938 UNITED STATES SUPREME COURT DECISION "UNITED STATES VERSUS O'DONNELL 303 U.S. 501"" AND FURTHER DESCRIBED AS "RETRACEMENT OF TRACT 38 OF THE JOY SURVEY TITLED "FRACTIONAL TOWNSHIP 3 NORTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, CALIFORNIA" APPROVED BY THE U.S. SURVEY GENERAL'S OFFICE OCTOBER 24, 1923, ACCEPTED NOVEMBER 8, 1923 AND FILED WITH THE BUREAU OF LAND MANAGEMENT", SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LYING N31°09'48"W, 13,647.57 FEET FROM A STANDARD USC&GS BRASS DISC STAMPED "MARE ID SE 1852 1932" LOCATED ON THE HIGHEST AND MOST EASTERLY OF THE TWO PEAKS ON MARE ISLAND AND REFERRED TO AS "SEMARE" WITH NAD 83 ZONE II COORDINATES OF N1789849.0637, E6488254.0248, AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN BOOK 24 R.S. AT PAGES 12 THROUGH 13 INCLUSIVE, SOLANO COUNTY RECORDS, FROM WHICH A 2 1/2" ALUMINUM DISK STAMPED "MARE ISLAND CONTROL POINT, MCGILLMARTINSELF, INC. ORINDA, CA., 3" AND REFERRED TO AS "HCN3" ON SAID MAP BEARS N35°54'10"W, 17,225.54 FEET; SAID POINT OF COMMENCEMENT ALSO BEING THE EASTERNMOST POINT OF SAID "PARCEL XV"; THENCE FROM SAID POINT OF COMMENCEMENT

ALONG THE SOUTHERN LINE OF SAID "PARCEL XV" S54°18'02"W, 51.13 FEET TO THE TRUE POINT OF BEGINNING;

- 1) THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUING ALONG SAID SOUTHERN LINE S54°18'02"W, 1,138.98 FEET;
- 2) THENCE LEAVING SAID SOUTHERN LINE N36°31'46"W, 1,032.72 FEET;
- 3) THENCE N54°06'55"E, 836.46 FEET;
- 4) THENCE N36°44'23"E, 70.38 FEET;
- 5) THENCE N54°14'14"E, 62.11 FEET;
- 6) THENCE N37°34'49"W, 148.39 FEET;
- 7) THENCE N53°59'44"E, 184.06 FEET;
- 8) THENCE S36°07'51"E, 1,205.94 FEET TO THE TRUE POINT OF BEGINNING

**ATTACHMENT NO. 2**

**Preliminary Cost Estimates – Public Improvements**

	<b>North Island Backbone Infrastructure Improvements (Preliminary Cost Estimate)</b>	<b>Ordinary Frontage Improvements (Preliminary Cost Estimate)</b>
Azuar Avenue North of G Street to intersection of Railroad Avenue	\$9,295,514	\$833,701
Railroad Avenue - Parcel XV- A(2) Improvements	\$4,135,729	\$165,572
Existing Railroad Avenue - Interim Improvements	\$233,323	
I Street - Intersection with Railroad Avenue to intersection with Azuar Avenue	\$1,736,707	\$242,114
Offsite Storm Drain to Mare Island Strait	\$743,457	
Route 37 Interchange Improvements	\$4,500,000	
Cancer Treatment Center - G Street Frontage Improvements (north of north curb)		\$137,322
	\$20,644,730	\$1,378,709

### ATTACHMENT NO. 3

#### Infrastructure Schedule

<b><u>Backbone Infrastructure &amp; Associated Frontage Improvements</u></b>	
Touro to complete and obtain City Engineer's approval of Construction Drawings for North Island Infrastructure Improvements	Prior to Commencement of Construction
Touro to commence Azuar Avenue – North of G Street to Intersection of Railroad Avenue	First Quarter , 2009, but in any event following close of escrow.
Touro to complete Azuar Avenue – North of G Street to Intersection of Railroad Avenue	By Fourth Quarter, 2009, but does not include potential IR-17 remediation and delays.
Touro to commence Railroad Avenue – Interim Improvements	First Quarter, 2010, but in any event following close of escrow and prior to closure or demolition of Walnut Avenue.
Touro to commence Railroad Avenue – ‘G’ Street to ‘I’ Street	Third Quarter, 2009, but in any event following close of escrow.
Touro to complete Railroad Avenue – ‘G’ Street to ‘I’ Street	By Third Quarter, 2009.
Touro to commence I Street – Intersection with Railroad Avenue to Intersection with Azuar Avenue	Fourth Quarter 2009, but in any event following close of escrow.
Touro to complete I Street – Intersection with Railroad Avenue to Intersection with Azuar Avenue	By First Quarter, 2010
Touro to commence Offsite Storm Drain to Mare Island Strait	Third Quarter of 2009, but in any event following close of escrow
Touro to complete Offsite Storm Drain to Mare Island Strait	Fourth Quarter of 2009
Touro to commence Route 37	Third Quarter 2009, but in any event following close

Interchange Improvements	of escrow.
Touro to complete Route 37 Interchange Improvements	By Second Quarter, 2010
Touro to commence Cancer Treatment Center G Street Frontage Improvements	First Quarter, 2010 but in any event following close of escrow
Touro to complete Cancer Treatment Center G Street Frontage Improvements (north of north curb)	Second Quarter, 2010

## RIGHT OF ENTRY AND DEMOLITION AGREEMENT

This RIGHT OF ENTRY AND DEMOLITION AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, ("Effective Date") by and between TOURO MARE ISLAND, LLC, a California limited liability company ("Touro"), and City of Vallejo, a California municipal corporation ("City").

### Recitals

A. The United States of America ("Government") has declared certain real and personal property surplus at the former Mare Island Shipyard, Vallejo, California, and City and Government have agreed upon the terms and conditions for conveyance of said property from Government to City pursuant to that certain Lease in Furtherance of Conveyance Between the United States of America and the City of Vallejo, dated September 30, 1999 ("LIFOC").

B. The property in Reuse Area 1A subject to the LIFOC includes that property currently owned by the Government depicted on the map attached hereto as **Exhibit A** as the "Government-Owned Property." Pursuant to prior transfers from the Government, City owns that portion of Reuse Area 1A depicted on **Exhibit A** attached hereto as the "City-Owned Property." Together, the Government-Owned Property and City-Owned Property are referred to collectively herein as "Reuse Area 1A."

C. City and Touro University, a California non-profit public benefit corporation ("Touro University"), entered into an Exclusive Right to Negotiate Agreement dated January 9, 2007, providing, among other things, for City and Touro University to negotiate with each other regarding the potential acquisition and development by Touro University or its affiliate of a portion of Reuse Area 1A.

D. On or about October 2, 2007, City and Touro University entered into a First Amendment to Exclusive Negotiating Agreement pursuant to which the parties agreed, among other things, to (i) extend the exclusive negotiating period, (ii) negotiate one or more agreements addressing acquisition and development of that certain approximately 27.89 acre portion of Reuse Area 1A known as Parcel XV-A(2) ("Property") as more particularly described in the Acquisition Agreement and (iii) defer negotiation of agreements addressing the balance of Reuse Area 1A to a later date, due in part to the uncertainty of reaching agreement with the Navy for the remediation of Hazardous Materials on the portion of Reuse Area 1A still owned by the Navy and the subsequent transfer of that property from the Navy to the City. The Exclusive Right to Negotiate Agreement, as amended by the First Amendment, has been replaced by an Amended and Restated Exclusive Right to Negotiate Agreement dated April 1, 2008, between City and Touro University pursuant to which the parties agreed, among other things, to extend the exclusive negotiating periods for the Property and the balance of Reuse Area 1A. The Amended and Restated Exclusive Right to Negotiate Agreement is hereinafter referred to as the "ERN."

E. Concurrently herewith, City and Touro are entering into an Acquisition Agreement ("Acquisition Agreement") and a Development Agreement ("Development Agreement") which, among other things, set forth the terms and conditions of Touro's acquisition and development of the Property.

F. Prior to or concurrent with the Closing (as defined in the Acquisition Agreement), City and Touro will enter into a Public Improvements Construction Agreement ("Public Improvements Construction Agreement") which authorizes and obligates Touro to construct or cause the construction of certain Infrastructure Improvements and Ordinary Frontage Improvements (as such terms are defined in the Development Agreement).

G. Touro and City have entered into a right of entry agreement dated September 25, 2007, which provides Touro and its contractors and subcontractors permission to enter upon portions of Reuse Area 1A for the purpose of conducting demolition-grade asbestos surveys and non-destructive inspections of buildings in preparation for the planned demolition of certain buildings located on the City-Owned Property.

H. Subject to the terms and conditions of this Agreement, the Acquisition Agreement authorizes and obligates Touro to demolish, at Touro's risk and expense, certain buildings and improvements located on the City-Owned Property.

I. City is willing to grant Touro access to the City-Owned Property, including to the extent necessary to gain such access the right to cross over the Government-Owned Property, for the purpose of conducting demolition activities on the City-Owned Property, subject to the terms and conditions set forth below.

#### Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter made by the parties to this Agreement, City hereby grants to Touro and its contractors and subcontractors access to the City-Owned Property, including to the extent necessary to gain such access the right to cross over the Government-Owned Property, in order to perform the Demolition Activities (defined below) on the City-Owned Property, subject to the following terms and conditions:

1. **Purpose.** This Agreement is limited to the purpose of granting Touro and its contractors and subcontractors the nonexclusive and temporary right to enter the City-Owned Property, including to the extent necessary to gain such access the right to cross over the Government-Owned Property, to conduct the demolition activities identified in **Exhibit B** attached hereto ("Demolition Activities") and no other purpose. Nothing in this Agreement shall authorize demolition work on the Government-Owned Property or demolition of Island Energy-owned electrical and gas utility facilities on the City-Owned Property or the Government-Owned Property. Touro and City agree to work together in good faith to negotiate with Island Energy an agreement providing Touro the right, at its sole risk and expense, to remove and replace certain electrical and gas utility improvements owned by Island Energy and located on the City-Owned Property.

2. **Conditions to Commencement of Demolition Activities.** Prior to commencing any portion of the Demolition Activities, Touro, at its expense, shall: (i) obtain all necessary federal, state and City permits; (ii) provide City with five (5) days prior notice, or less if agreed upon by City staff, prior to commencement of any Demolition Activities; (iii) cause all utilities to be properly disconnected from those buildings and improvements to be demolished; and



(iv) deliver the applicable Letter of Credit (defined below) to the City. City shall use good faith efforts to assist Touro in promptly processing any City permits required for the Demolition Activities. Notwithstanding the foregoing, the Parties understand that to the extent any buildings or improvements to be demolished as part of the Demolition Activities contain any existing electrical utilities, Touro's obligation to proceed with or commence such demolition under this Agreement shall not arise until and shall be contingent upon Touro entering into one or more agreements with Pittsburg Power Company Joint Powers Authority doing business as Island Energy, GST Telecom Company, Inc. ("Island Energy") authorizing Touro or its contractors or subcontractors to enter upon the Property and demolish such existing electrical utilities located thereon.

**3. Term; Termination.** The "Term" of this Agreement shall commence on the Effective Date and shall terminate on August 31, 2009 ("Expiration Date"), provided however that this Agreement shall terminate automatically and prior to the Expiration Date if: (i) Touro does not deliver Notice of Approval prior to the time set forth in Section 201.1(e) of the Acquisition Agreement; or (ii) Touro fails to close Escrow (as defined in the Acquisition Agreement) for Transfer of the Property, regardless of whether such failure constitutes a default by Touro; or (iii) the Acquisition Agreement and Development Agreement are terminated for any reason, regardless of whether such termination occurs before or after Close of Escrow (as defined in the Acquisition Agreement).

**4. Touro Obligations.** Touro, and its contractors and subcontractors, shall meet the following obligations in connection with the Demolition Activities:

a. Touro shall conduct the Demolition Activities at Touro's sole cost and expense, and at no cost, expense or liability to City or Government. Subject to Section 2 and Touro's right to terminate this Agreement pursuant to this Section 3(i), (ii), and (iii), Touro shall commence and complete the Demolition Activities and fulfill all of its obligations set forth in Sections 4, 5 and 6 of this Agreement in accordance with the schedule attached hereto as **Exhibit C** ("Project Demolition Schedule"). Notwithstanding the foregoing, Touro shall have no obligation to demolish any buildings prior to Closing, except for those three buildings described in the Project Demolition Schedule as Buildings 897, 1013, and 1015. Touro shall have no obligation to commence demolition of any building or improvement after termination of this Agreement.

b. Prior to demolishing any building or improvement Touro shall cause its contractor(s) to remove and properly dispose of any existing Hazardous Materials (defined below) on and/or within the designated buildings and improvements, including asbestos, lead paint, and polychlorinated biphenyls in light ballasts, if any, all in accordance with applicable laws. Hazardous Materials shall mean those materials designated as Hazardous Materials in the Acquisition Agreement. Nothing herein shall be construed to require Touro to be responsible to investigate, remove, remediate, abate, dispose of or monitor any Hazardous Materials in the soils, soil-gas or groundwater at, on, under or emanating from the City-Owned Property or the Government-Owned Property, that existed prior to Touro's Demolition Activities or in any way assume liability for such Hazardous Materials.

c. Touro shall be deemed to be the generator of all waste materials, whether qualifying as Hazardous Materials or not, to the extent produced by the Demolition Activities, and Touro shall promptly remove all such waste materials within ninety (90) days of generation of said wastes, and in accordance with all other local, state and federal laws. Notwithstanding the foregoing, under no circumstance shall Touro be considered to be the generator of any waste materials, hazardous or otherwise, or be responsible for the removal of such, to the extent such waste materials existed in the soils or groundwater prior to Touro's Demolition Activities.

d. Touro shall make no claim against City or Government directly or indirectly for reimbursement of any costs incurred by Touro in connection with the Demolition Activities or performance of any of its obligations under this Agreement, except to the extent caused by the sole negligence or willful misconduct of City, Government, City Parties, or Government Parties.

e. If Touro commences demolition of a building or improvement and then fails to complete demolition of such particular building or improvement within the time set forth in the Project Demolition Schedule, City, after notice to Touro and expiration of the applicable cure period, may complete such demolition at Touro's expense and may draw on the Letter of Credit (defined in Section 6 below) to pay the costs thereof. If Touro's failure to complete such demolition is based on a termination of this Agreement pursuant to Section 3(i),(ii) or (iii), Touro's obligation to complete such commenced demolition shall be limited to demolishing the particular building or improvement down to the slab and removing demolition debris as provided in Section 5 below, including any waste containing Hazardous Materials produced by the Demolition Activities in compliance with all applicable Environmental Laws (as defined in the Acquisition Agreement). Touro's obligations under this subsection 4.e shall survive the expiration or termination of this Agreement. Nothing herein shall be construed to require Touro to be responsible to investigate, remove, remediate, abate, dispose of or monitor any Hazardous Materials in the soils, soil-gas or groundwater at, on, under or emanating from the City-Owned Property or the Government-Owned Property, that existed prior to Touro's Demolition Activities, or in any way assume liability for such Hazardous Materials.

f. Subject to the limitations set forth below, the time period in which Touro must complete Demolition Activities following commencement thereof as provided in subsection 4.e. above shall be extended where delays are due to: unusually severe weather, riots, strikes, lockouts, war, acts of terror, fires, earthquakes, floods, natural disasters and other events not within the control of Touro, and conditions resulting therefrom. An extension of time for any such cause shall be for the period of the force majeure delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of one hundred eighty (180) days), if notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

**5. Demolition Debris.** Touro shall cause its contractors to manage construction and demolition debris in accordance with all regulatory requirements, including the City Construction and Demolition Waste Management Plan and Reporting requirements. Touro may opt to crush or grind all remaining concrete, masonry and other debris and materials into base rock/fill suitable for construction use. In such event, crushed materials shall be staged and stockpiled at approved locations on Reuse Area 1A, but not on the Property, in a manner and

condition reasonably acceptable to City and compliant with Touro's reasonable geotechnical consultant requirements. In the event the Acquisition Agreement terminates prior to conveyance of the Property, City at its option, by written notice to Touro given at any time within one hundred twenty (120) days following the termination of the Acquisition Agreement, may require Touro to remove all stored base rock/fill materials remaining on the City-Owned Property and either sell or donate as CMB/fill material or dispose at an appropriate landfill or other suitable disposal facility, all at Touro's sole cost and expense. If City elects to require removal of such base rock/fill materials, Touro shall complete the removal thereof within sixty (60) days following City's written notice to Touro. If Touro fails to remove said materials within such 60-day period, City may do so at Touro expense and may draw on the Letter of Credit (defined in Section 6 below) to pay the costs of such removal. Touro's obligations under this Section 5 shall survive the expiration or termination of this Agreement.

**6. Security for Performance of Obligations.** Prior to commencement of any Demolition Activities, Touro shall deliver to City an irrevocable standby letter of credit issued by a financial institution doing business in Solano County selected by Touro and reasonably acceptable to City, naming City as beneficiary in the amount of Eight Hundred Thirty Three Thousand Dollars (\$833,000) ("Letter of Credit") as Touro's security for the full and faithful performance by Touro of its initial obligation under this Agreement to demolish those three buildings described in the Project Demolition Scheduled as Buildings 897, 1013, and 1015. The Letter of Credit shall be substantially in the form attached hereto as **Exhibit D**. Upon the earlier to occur of (i) Touro's commencement of any further demolition described in the Project Demolition Schedule beyond Buildings 897, 1013, and 1015, or (ii) Closing, Touro shall either increase such Letter of Credit, or obtain a new letter of credit substantially in the form attached hereto as **Exhibit D** naming City as beneficiary, in the amount of the total estimated cost of the Demolition Activities remaining to be performed. The total estimated costs of Demolition Activities remaining to be performed shall be Four Million Five Hundred Thousand Dollars (\$4,500,000) less any reduction based upon the percentage of completion of the Demolition Activities as determined by Touro and reasonably approved by City. Touro shall continuously maintain the applicable Letter of Credit in effect until it completes performance of all of its obligations under this Agreement. At least forty-five (45) days prior to expiration of the term of the initial Letter of Credit or any extension thereof or any replacement Letter of Credit, Touro shall deliver to City a replacement Letter of Credit issued by a lender reasonably acceptable to City. The replacement Letter of Credit shall be in the form of **Exhibit D**, but shall have an expiration date at least one year following the expiration date of the Letter of Credit which it is intended to replace. If, following notice and expiration of the applicable cure period, Touro is in default of any of its obligations under this Agreement or fails to timely deliver a replacement Letter of Credit as provided above, City, in addition to its other rights and remedies under this Agreement, may draw on the Letter of Credit to pay costs and expenses incurred by City in curing Touro's default or to hold and apply the proceeds thereof as necessary to ensure performance of Touro's obligations under this Agreement. The use, application or retention of any proceeds of the Letter of Credit by City shall not prevent City from exercising any other right or remedy provided by this Agreement or by any applicable law.

**a. Reduction of Security.** After commencement of Demolition Activities the Letter of Credit may be reduced from time to time, but not more frequently than monthly, based upon the percentage of completion of the Demolition Activities, provided that in no event

shall the Letter of Credit be reduced to less than 110% of the total estimated cost of the Demolition Activities remaining to be performed as determined by Touro and reasonably approved by City. If this Agreement terminates or expires after Touro's performance of the Demolition Activities has commenced, then City, prior to releasing the Letter of Credit upon Touro's fulfillment of its obligations as set forth in Sections 4, 5 and 6 of this Agreement, shall promptly reduce the Letter of Credit to 110% of the total estimated cost of the Demolition Activities remaining to be performed which, pursuant to Section 4.e., is limited to demolishing down to the slab those particular buildings or improvements for which demolition has commenced and removing demolition debris as provided in Section 5 above.

**b. Release of Security.** Notwithstanding the stated term of any Letter of Credit provided by Touro under this Section 6, City shall promptly release such Letter of Credit if: (i) prior to commencement of the Demolition Activities, this Agreement terminates pursuant to Section 3; or (ii) after commencement of the Demolition Activities, this Agreement terminates or expires and Touro has fulfilled its obligations set forth in Sections 4, 5 and 6 of this Agreement.

**7. Assumption of Risk and Releases.** Each person entering upon City-Owned Property under this Agreement shall do so at his or her own risk. Touro, on behalf of itself and its affiliates and its and their members, shareholders, principals, partners, officers, agents, representatives, assigns, successors-in-interest, employees, consultants, contractors and subcontractors (collectively, the "Releasees"), hereby assumes all risk of entering City-Owned Property and agrees that City and its officers, elected officials, employees, agents, representatives, assigns, successors, consultants, contractors, subcontractors, and volunteers (collectively, "City Parties") and Government and its officers, elected officials, employees, agents, representatives, assigns, successors, consultants, contractors, subcontractors, and volunteers (collectively, "Government Parties") are released and shall not be liable in any manner for injury to or death of Touro or its Releasees or to damage to property of Touro or the Releasees arising from Touro's or its contractors' or subcontractors' entry upon City-Owned Property and/or performance of any Demolition Activities, except to the extent caused by the sole negligence or willful misconduct of City, Government, City Parties or Government Parties. City acknowledges that Demolition Activities are inherently dangerous, and therefore for safety reasons, City acknowledges that once Demolition Activities on City-Owned Property commence, City and its employees, agents and assigns are required to coordinate any physical access to such City-Owned Property through Touro or its agents, contractors or assigns and to observe proper safety protocol at all times.

This release applies to all potential and future claims and Touro, on behalf of itself and Releasees hereby waives any and all rights pursuant to Section 1542 of the California Civil Code, which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

**8. Indemnification.** Except to the extent caused by the sole negligence or willful misconduct of City, Government, City Parties or Government Parties, Touro shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City, Government, City Parties and Government Parties from and against any and all demands, causes of action, claims,

damages, costs, expenses, attorney's fees, contractor fees, expert fees, losses and/or liabilities (collectively, "Claims"), including, but not limited to, Claims for bodily injury, sickness, disease or death of any person or damage to or loss of any property (tangible or intangible) produced by the Demolition Activities of every kind and nature whatsoever to the extent arising out of or in connection with the Demolition Activities or entry upon the City-Owned Property by Touro or Releasees including Claims related to waste containing Hazardous Materials produced by the Demolition Activities. This indemnification shall survive the expiration or termination of this Agreement. Notwithstanding the foregoing, under no circumstance shall the assumption of risk and release in Section 7 or the indemnity in this Section 8 apply to any Hazardous Materials in the soils, soil-gas or groundwater at, on, under or emanating from the City-Owned Property or the Government-Owned Property that existed prior to Touro's Demolition Activities.

**9. Insurance Requirements.**

a. Touro shall procure and maintain, or cause its contractor(s) to procure and maintain, for the duration of this Agreement insurance policies set forth in subsection b. below. Such insurance shall not be construed to relieve Touro or its contractor(s) of any liability in excess of such coverages.

b. The required insurance coverages shall include:

- i Commercial General Liability insurance at least as broad as Insurance Services Office Commercial General Liability form CG 0001 ("occurrence" form).
- ii Automobile liability insurance at least as broad as Insurance Services Office form number CA 0001 (Ed. 12/92) covering Automobile Liability, code 1 (any auto).
- iii Workers' compensation insurance as required by the State of California and employer's liability insurance.

c. The limits of the required insurance shall be no less than:

- i General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage, with the provision that such limit may be satisfied with a \$1,000,000 per occurrence policy and the remaining \$4,000,000 covered by an excess policy. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Demolition Activities or the general aggregate limit shall be twice the required occurrence limit.
- ii Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- iii Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

**d.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, Government, City Parties and Government Parties; or Touro shall cause its contractor to provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**e.** The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

- i** Each policy shall include City, Government, City Parties and Government Parties (and Touro, if policy is obtained by Touro's contractor) as additional insureds with respect to the liability, including defense costs, arising out of (a) work or operations in connection with the Demolition Activities by or on behalf of Touro or its contractor(s) including materials, parts or equipment furnished in connection with such work or operations, and (b) automobiles owned, leased, hired or borrowed by or on behalf of Touro or its contractor(s). The coverage shall contain no special limitations on the scope of protection afforded to the City, Government, City Parties and Government Parties.
- ii** For any claims related to this Agreement and/or the Demolition Activities, the insurance coverage shall be primary insurance as respects the City, Government, City Parties and Government Parties. Any insurance or self-insurance maintained by the City, Government, City Parties or Government Parties shall be excess of the insurance required hereunder and shall not contribute with it.
- iii** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, Government, City Parties and Government Parties.
- iv** The insurance required to be maintained by Touro or its contractor(s) hereunder shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v** Each insurance policy required by this Section 9 shall be endorsed to state that coverage shall not be cancelled by any party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City or ten (10) days' prior written notice by certified mail, return receipt requested for the non-payment of premium.

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

g. Touro shall furnish City with an original certificate of insurance and amendatory endorsements effecting coverage required by this Section 9. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements stated in this Section. The certificate of insurance and all endorsements must be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are required to be received and approved by the City before any work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting coverage required by these specifications at any time. All insurance documents are to be sent to:

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

h. Touro shall include or cause its contractor to include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

**10. Assignment.** Touro shall not assign or otherwise transfer any rights under this Agreement and any purported assignment or transfer shall be null and void unless approved in writing by the City. Notwithstanding the foregoing, Touro shall have the right to assign this Agreement to an affiliated entity under majority ownership or control of Touro, provided that Touro gives advance notice of its intent to assign to City and enters into an assignment and assumption agreement in form acceptable to the City Attorney.

**11. Compliance with Laws.** Touro, at its expense, shall obtain and maintain all permits and approvals required for the Demolition Activities and shall comply with all federal, state and local laws and regulations now in effect or that become effective during the Term, including all applicable Environmental Laws relating to any waste containing Hazardous Materials produced by the Demolition Activities. Should any release occur upon or from the City-Owned Property in violation of applicable Environmental Laws as a result of the Demolition Activities, then Touro, at its sole cost, shall investigate and remediate all affected property to the satisfaction of any governmental body having jurisdiction. Nothing herein shall be construed to require Touro to investigate, remove, remediate, abate, dispose of or monitor any Hazardous Materials in the soils, soil-gas or groundwater at, on, under or emanating from the City-Owned Property or the Government-Owned Property that existed prior to Touro's Demolition Activities.

**12. No Dedication.** Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the City-Owned Property or for the general public or for any public purpose whatsoever. This Agreement shall be strictly limited to and for the purposes expressed

within. This Agreement is subject to prior rights, conditions, covenants, easements and encumbrances to which the City-Owned Property is subject.

**13. Prevailing Wage Requirements.** Touro shall comply with all California Labor Code requirements, including implementing regulations of the Department of Industrial Relations, applicable to public works and payment of prevailing wages, as well as all applicable Federal prevailing wage laws, including the Davis-Bacon Act of 1931, as amended, and implementing regulations (collectively, "Prevailing Wage Laws") in connection with the Demolition Activities. Without limiting the generality of the foregoing, Touro shall (i) require its contractors and subcontractors to submit certified copies of payroll records to Touro; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to City and its designees for inspection and copying during regular business hours at Reuse Area 1A or at another location within the City of Vallejo. Touro shall defend (with counsel reasonably acceptable to the City), indemnify and hold harmless City and City Parties from and against any and all present and future Claims, arising out of or in any way connected with Touro's obligation to comply with all Prevailing Wage Laws in connection with the Project, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781. Touro's indemnity obligations under this Section 13 shall survive the expiration or termination of this Agreement.

**14. Notice.** Any approval, disapproval, demand or other notice which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means, including first class mail, personal delivery, or overnight courier, 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:

CITY: City of Vallejo  
555 Santa Clara Avenue  
Vallejo, CA 94590  
Attn: Gil Hollingsworth,  
Mare Island Conversion Program Manager  
Phone: (707) 649-5454  
Fax: (707) 648-4499  
E-mail: gil@ci.vallejo.ca.us

With copies to: Frederick G. Soley, Esq.  
City Attorney  
City of Vallejo  
555 Santa Clara Street  
P.O. Box 3068  
Vallejo, CA 94590  
Phone: (707) 648-4456  
Fax: (707) 648-4687  
E-mail: fsoley@ci.vallejo.ca.us

And a copy to: Gerald J. Ramiza, Esq.  
McDonough Holland & Allen PC



1901 Harrison Street, 9<sup>th</sup> Floor  
Oakland, CA 94612-3501  
Phone: (510) 273-8780  
Fax: (510) 839-9104  
E-mail: jramiza@mhalaw.com

TOURO: Touro Mare Island, LLC  
2121 Palomar Airport Road, Suite 206  
Carlsbad, CA 92011  
Attn.: Bruce Lang, CEO  
Phone: 760-431-8005  
Fax: 760-431-8083

And to: Touro University - California  
1310 Johnson Lane  
Vallejo, CA 94592  
Attn: Richard A. Hassel,  
Vice President, Administration  
Phone: (707) 638-5200  
Fax: (707) 638-5255  
E-mail: rhassel@touro.edu

And a copy to: Nicholas Roscha, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, CA 94520  
Phone: (925) 602-1400  
Fax: (925) 825-0143  
E-mail: nroscha@aandb.com

And a copy to: Pieter deMonchy  
ARCADIS  
1925 Palomar Oaks Way, Suite 105  
Carlsbad, CA 92008  
Phone: (760) 431-2263  
E-mail: Pieter.deMonchy@arcadis-us.com

Any notice shall be deemed received on the date of delivery if delivered by personal service, three (3) business days after mailing if sent by first class mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via overnight courier.

**15. Rights Limited.** Except as provided herein, this Agreement shall not be construed to grant any real property or other rights to Touro in the City-Owned Property or any other portion of Reuse Area 1A. By execution of this Agreement, the City is not committing to or agreeing to (1) the disposition of and transfer of any real property to Touro; or (2) 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 the Acquisition Agreement or Development Agreement.

**16. Entire Agreement.** This Agreement, including Exhibits hereto, constitutes the entire agreement between City and Touro pertaining to Touro's entry upon the City-Owned Property to perform the Demolition Activities.

**17. Relationship Between City and Touro.** The parties acknowledge that the relationship between City and Touro is not that of a partnership or joint venture and that City and Touro shall not be deemed or construed for any purpose to be the agent of the other.

**18. Governing Law; Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California. In the event that either party institutes any action, suit or other dispute resolution proceeding based on this Agreement against the other party, the prevailing party is entitled to receive all costs and expenses associated therewith, including but not limited to reasonable attorneys' fees and courts costs.

**19. Default; Remedies; Damages.** Touro's failure to comply with its obligations hereunder will be deemed a default by Touro under this Agreement. In the event of a default hereunder, City shall provide Touro with written notice of the default. Touro shall have ten (10) days from receipt of such notice in which to cure the default or, in the case of any default which cannot reasonably be cured within ten (10) days, to commence such cure within said ten- (10) day period and thereafter diligently pursue such cure to completion as soon as possible, but in any event within thirty (30) days of City's initial notice of default. In the event Touro fails to cure the default within the time period set forth above, City may: (1) draw on the Letter of Credit in accordance with Section 6 above; (2) terminate this Agreement by written notice to Touro; and/or (3) pursue any other legal or equitable remedies. Any waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City and Touro.

**20. Cooperation in the Event of Legal Challenge.**

a. City and Touro, at Touro's sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement and City shall, upon request of Touro, appear in the action and defend its decision, except that City shall not be required to be an advocate for Touro. To the extent that Touro determines to contest or defend such litigation challenges, Touro shall reimburse City, within ten (10) 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 Touro's counsel; or (b) retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget, and present such litigation budget to Touro prior to incurring obligations to pay legal fees in excess of Thirty Thousand Dollars (\$30,000). If Touro defends any such legal challenge, Touro shall indemnify, defend, and hold harmless City and its officials and employees from and against any Claims assessed or awarded against City by way of judgment, settlement, or stipulation. Nothing herein shall authorize Touro 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.

b. In addition, City shall have the right, but not the obligation, to contest or defend such litigation challenges, in the event that Touro elects not to do so. If City elects to contest or defend such litigation challenges, Touro shall bear all related costs and expenses, including City's attorney fees and costs, up to a maximum amount of One Hundred Thousand Dollars (\$100,000), and, in addition, shall indemnify, defend, and hold harmless City and its officials and employees from and against any and all Claims assessed or awarded against City by way of judgment, settlement, or stipulation, without regard to the above dollar amount cap.

21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

22. **Headings; Interpretation.** The headings or titles to the sections of this Agreement are for convenience only and do not in any way define, limit or construe the contents of such paragraphs. The parties agree that they have each had an opportunity, with counsel, to participate in the drafting of this Agreement, and that this Agreement will not be construed against either party on the basis of that party having responsibility for the drafting of this Agreement.

23. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the respective parties and their heirs, successors and assigns.

24. **Authority.** Each party and signatory hereto warrants and represents, as a material inducement to the others, that such signatory hereto is authorized to enter into and execute this Agreement on behalf of the party for which he, she or it signs, and has all necessary approvals and consents in that regard.

IN WITNESS WHEREOF, each party has executed this Agreement as of the date first set forth above.

"CITY":

CITY OF VALLEJO, a municipal corporation  
of the State of California

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

Joseph Tanner

Its: City Manager

"TOURO":

TOURO:

TOURO MARE ISLAND, LLC, a California  
limited liability company

By: Touro College, a New York non-profit  
educational corporation

Its: Member-Manager

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

Mary Ellsworth, City Clerk

APPROVED AS TO INSURANCE  
REQUIREMENTS:

Harry B. Maurer, Risk Manager

APPROVED AS TO FORM:

Frederick G. Soley, City Attorney



# EXHIBIT B

## DEMOLITION ACTIVITIES

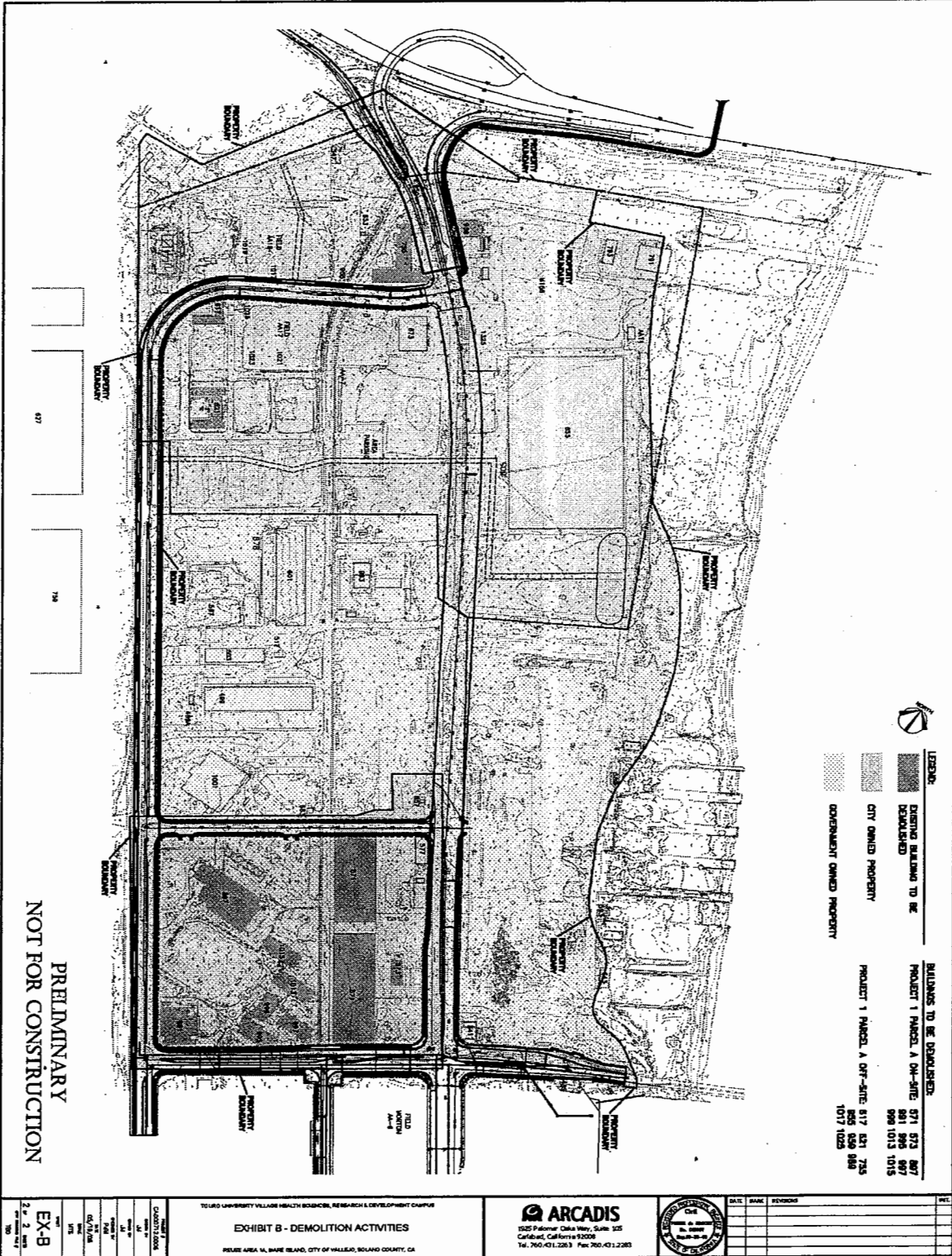


Exhibit B

EXHIBIT C

Project Demolition Schedule

**Project 1 Demolition Schedule**  
**Touro University Proposed Cancer Research Center - North Mare Island**  
 Prepared by Arcadis-US, Inc.  
 May 14, 2008

Project 1 Demolition Activity	Start Date	End Date
Contract Negotiation & Mobilization	7/15/2008	9/22/2008
<b>Project 1 Demolition</b>	9/23/2008	6/15/2009
<b>Project 1 Onsite Demolition</b>		
Project 1 West of Walnut Ave. (Includes Buildings 897, 1013, 1015)	9/23/2008	12/15/2008
Survey Pile Caps (Pre & Post Cut)	1/15/2009	6/15/2009
Remainder of the Project 1 On-Site Buildings (Includes Buildings 571, 573, 991, 995, 997, 999)	1/15/2009	6/15/2009
Walnut Ave within Project 1 Parcel A Demolition	1/15/2009	6/15/2009
<b>Project 1 Offsite Demolition</b>		
Prepare Staging/Recycling Area, east of existing Azuar Ave.	1/15/2009	6/15/2009
Azuar Avenue Demolition (Includes Building 617 & 621, 955, 1017, & 1025)	1/15/2009	6/15/2009
Railroad Ave, "I" St. Demolition	1/15/2009	6/15/2009
Highway 37 Interchange Improvements Demolition (Includes Buildings 755, 959, & 989)	1/15/2009	6/15/2009

*Dates for individual building demolition are undetermined at this time. Timing for individual building demolition will be predicated by contractor submittals & construction scheduling.*

EXHIBIT D

LETTER OF CREDIT

[Bank Name and Address]

SWIFT:

TELEX:  
TOLL FREE:  
FAX:

BENEFICIARY:  
CITY OF VALLEJO, A CALIFORNIA MUNICIPAL  
CORPORATION  
ECONOMIC DEVELOPMENT DIVISION  
555 SANTA CLARA STREET  
P.O. BOX 3068  
VALLEJO, CA 94590

APPLICANT:  
TOURO MARE ISLAND, LLC  
2121 PALOMAR AIRPORT ROAD, SUITE 206  
CARLSBAD, CA 92011  
ATTN.: BRUCE LANG, CEO

LETTER OF CREDIT NUMBER: \_\_\_\_\_  
INITIAL EXPIRY DATE: \_\_\_\_\_, 200\_\_  
AMOUNT: NOT TO EXCEED FOUR MILLION FIVE HUNDRED THOUSAND UNITED  
STATES DOLLARS (US\$4,500,000.00)

Ladies and Gentlemen:

We hereby issue this Irrevocable Standby Letter of Credit in Beneficiary's favor available with us at our above office by payment of Beneficiary's draft(s) drawn on us at sight accompanied by Beneficiary's signed and dated statement worded in either format (1) or (2) below:

(1) "THE UNDERSIGNED, EITHER THE CITY MANAGER OR OTHER AUTHORIZED REPRESENTATIVE OF THE CITY OF VALLEJO ("CITY") HEREBY CERTIFIES THAT THE CITY HAS PROPERLY MADE DEMAND UPON TOURO MARE ISLAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY ("TOURO"), FOR AMOUNTS OWED TO CITY UNDER THAT CERTAIN RIGHT OF ENTRY AND DEMOLITION AGREEMENT DATED \_\_\_\_\_, 2008, BY AND BETWEEN CITY AND TOURO, AND THAT TOURO HAS FAILED TO PAY SUCH AMOUNTS TO THE CITY WITHIN THE REQUIRED TIME PERIOD. ENCLOSED HEREWITH FOR YOUR REFERENCE ARE COPIES OF CITY'S WRITTEN NOTICE OF DEFAULT TO TOURO.

OR

(2) "THE UNDERSIGNED, EITHER THE CITY MANAGER OR OTHER AUTHORIZED REPRESENTATIVE OF THE CITY OF VALLEJO ("CITY") HEREBY CERTIFIES THAT THE CITY HAS RECEIVED NOTICE FROM \_\_\_\_\_ BANK THAT LETTER OF CREDIT NUMBER \_\_\_\_\_ WILL NOT BE EXTENDED BEYOND ITS CURRENT EXPIRATION DATE AND THE AMOUNT OF THE DRAFT ACCOMPANYING THIS CERTIFICATE DOES NOT EXCEED THE CITY'S GOOD FAITH ESTIMATE OF THE COST OF DEMOLITION RELATED WORK REMAINING TO BE PERFORMED BY



TOURO MARE ISLAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY ("TOURO") UNDER THAT CERTAIN RIGHT OF ENTRY AND DEMOLITION AGREEMENT DATED \_\_\_\_\_, 2008, BY AND BETWEEN CITY AND TOURO."

Drafts drawn under this letter of credit must bear the clause "Drawn under \_\_\_\_\_ Bank, Irrevocable Standby Letter of Credit No. \_\_\_\_\_." Partial and multiple drawings are allowed. Beneficiary must approve any reductions in the amount of this letter of credit.

This letter of credit initially expires at our above office on Month Day Year (e.g. December 31, 2008), but shall be automatically extended, without written amendment, to Month Day (e.g. December 31) in each succeeding calendar year unless you have received written notice sent by us to you at your address above by express courier that we elect not to renew this Letter of Credit beyond the date specified in such notice which date, will be Month Day Year (e.g. December 31, 2008) or any subsequent Month Day (e.g. December 31) and be at least thirty (30) calendar days after the date you receive such notice.

Except as otherwise provided in this Letter of Credit, this Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (the "UCP").

We hereby engage with you that draft(s) drawn in compliance with the terms of this letter of credit will be duly honored within one (1) business day after the business day of presentation to us.

Very truly yours

\_\_\_\_\_ BANK

By:  
Name:  
Title:

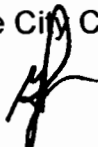
**PUBLIC HEARING**  
**ITEM "D"**  
**DELIVERED**  
**UNDER SEPARATE**  
**COVER**



ADMIN A

**Agenda Item No.****COUNCIL COMMUNICATION****Date:** June 24, 2008

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Gary A. Leach, Public Works Director 

**SUBJECT:** APPROVAL OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A SCOPE OF WORK AND FINANCIAL PLAN FOR THE PREDATOR MANAGEMENT PROGRAM ON MARE ISLAND

**BACKGROUND AND DISCUSSION**

The City of Vallejo or its designated agent is required to provide predator control on Mare Island, pursuant to the U. S. Fish and Wildlife Services Endangered Species Biological Opinion, of May 23, 1997, with the Department of the Navy. As a result of this requirement the City has entered into an agreement with the United States Department of Agriculture, Animal and Plant Health Inspection Service/Wildlife Services as authorized by Resolution No 03-158. This agreement is for a term of five (5) years beginning August 5, 2004.

The purpose of this agreement is to facilitate wildlife damage management program activities to provide timely and effective management and control of predators to protect the endangered California Clapper Rail and Salt Marsh Harvest Mouse, on Mare Island, in the City of Vallejo, Solano County, California.

Article 3 of this agreement requires an annual Scope of Work and Financial Plan be developed and signed by both parties. United States Department of Agriculture, Animal and Plant Health Inspection Service/Wildlife Services has submitted the annual plan for Council consideration to continue service through June 30, 2009.

At our annual meeting with Touro University and Animal Control Services we discussed the success of the Trap, Neuter, Release Program (TNR) that was introduced on Mare Island in an effort to humanely deal with the feral cat population on this complex. This is a program that monitors, traps, vaccinates, neuters, releases and feeds feral cats in their area of origin. Use of this type of a program provides for a humane method of reducing the feral cat population. Given that this is a new program it is expected to continue and take some time to begin to see the results of this effort, however, we have only had one feral cat trapped over the last year. Future Scope of Work and Financial plans required by our agreement with the Department of Agriculture as well as updated status on the TNR program will continue to be brought to Council for consideration.



**DOCUMENTS AVAILABLE FOR REVIEW**

- a. Copy of U. S. Fish and Wildlife Services Endangered Species Biological Opinion, of May 23, 1997, with the Department of the Navy.
- b. Copy of Resolution No. 03-158 which authorized the City to enter into an agreement with the Department of Agriculture for a five (5) year period.
- c. Copy of the existing Cooperative Services Agreement between the City of Vallejo and United States Department of Agriculture Animal and Plant Health Inspection Service/Wildlife Services for Predator Management Services on Mare Island.

**CONTACT PERSONS**

Gary A. Leach, Public Works Director  
(707) 648-4316  
[GARYL@ci.vallejo.ca.us](mailto:GARYL@ci.vallejo.ca.us)

John Cerini, Maintenance Superintendent  
(707) 648-4557  
[JCerini@ci.vallejo.ca.us](mailto:JCerini@ci.vallejo.ca.us)

JUNE 24, 2008  
J:\PUBLIC\A\PW\2008\Maintenance\PWSR4257.doc

**RESOLUTION NO. 08 - \_\_\_\_\_ N.C.**

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

THAT WHEREAS on May 1, 1998 the U. S. Navy accepted and published in the Federal Registry, the Mare Island Environmental Impact Statement/Environmental Impact Report for the Disposal and Reuse of the Mare Island Naval Shipyard, Vallejo, California; and

WHEREAS, said plan requires the City to implement an active predator management program and effectively manage predators upon transfer of the former Shipyard from the Navy to the City; and

WHEREAS, City has entered into an agreement with the United States Department of Agriculture, Animal and Plant Health Inspection Service/Wildlife Services as authorized by Resolution No 03-158 to facilitate wildlife damage management program activities; and

WHEREAS, this agreement requires signing of an annual Scope of Work and Financial Plan; and

WHEREAS, staff has prepared a proposed Scope of Work and Financial Plan for Fiscal Year (FY) 08/09 to provide this service through June 30, 2009; and

WHEREAS, the total estimated cost for providing this service during FY 08/09 is \$42,101.44; and

WHEREAS, this cost was considered during the preparation of the FY 08/09 Mare Island Community Facility District (CFD) budget;

NOW, THEREFORE, BE IT RESOLVED that the Vallejo City Council hereby authorizes the City Manager to sign the Scope of Work and Financial Plan for the Predator Management Program on Mare Island, as proposed, to continue service through June 30, 2009.

JUNE 24, 2008

J:\PUBLIC\A\PW2008\Maintenance\PWSR4257.doc

Agreement Number: 09-73-06-5357-RA

Accounting code: 973-7306-414

**SCOPE OF WORK/FINANCIAL PLAN  
BETWEEN  
CITY OF VALLEJO (COOPERATOR)  
UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
WILDLIFE SERVICES (WS)  
Agreement Period: 7/1/08 – 6/30/09**

**SCOPE OF WORK**

The purpose of this agreement is to provide for timely and effective management and control of predators as needed to protect the endangered California Clapper Rail and Salt Marsh Harvest Mouse at the former Mare Island Naval Shipyard (Mare Island). This action is required as the result of a U.S. Fish and Wildlife Service Biological Opinion regarding Navy disposal and subsequent community reuse of Mare Island. Literature information also suggests the potential for feral cat, non-native red fox, rats, raccoons, and (potentially) other predators, to have a disproportionate impact on these endangered species. Nuisance animals which are occupying structures, such as skunks, may also be taken as an incidental effort associated with this work.

**Guidelines:**

All work will be conducted in accordance with current WS policies including current environmental documentation prepared for the Wildlife Services program. This activity is covered by Navy Environmental and Natural Resources Program Manual (OPNAVINST 5090.1 B change - I, dated 2 February 1998), Categorical Exclusion for "Natural resources management actions undertaken or permitted under agreement with or subject to regulation by Federal, State, or local organizations having management responsibility and authority over the natural resources in question."

All work will be conducted on Mare Island. If field studies determine that certain predators of endangered species cannot be effectively controlled by efforts on Mare Island alone, the Representative will be notified in writing with a recommended action.

Control efforts will concentrate on targeted predators. At present the primary targeted predators are feral cats and potentially non-native red fox, rats, opossums, skunks, and raccoons. While feral cats are known to occur on Mare Island, the status of non-native red fox is unclear. Wildlife Services will search for signs of the presence of this species. Any modification to targeted predators will be coordinated in writing by the Representative.

General control efforts of native predatory birds are not required, nor anticipated at this time. Should subsequent information be found to suggest that predatory birds need to be controlled to protect endangered species, Wildlife Services will consult with the Representative in writing prior to initiating such an effort.

All activities will be completed according to appropriate Federal, State, and local laws, and regulations. All Wildlife Services personnel will regularly coordinate with Representative and will avoid areas where active hazardous materials or ordinance cleanup are occurring. The City representative will coordinate briefing of

**Agreement Number: 09-73-06-5357-RA**  
**Accounting code: 973-7306-414**

In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by WS are due and payable within 30 days of receipt. The DCIA requires that all debts older than 120 days be forwarded to debt collection centers or commercial collection agencies for more aggressive action. Debtors have the option to verify, challenge and compromise claims, and have access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

**CITY OF VALLEJO – MARE ISLAND**  
**Attention: Mr. John Cerini**  
**Maintenance Division**  
**111 Amador Street**  
**Vallejo, CA 94590**  
**Phone: (707)648-4302**  
**Tax Identification Number: 94-6000448**

---

City Representative, City of Vallejo

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**ANIMAL AND PLAN HEALTH INSPECTION SERVICE**  
**WILDLIFE SERVICES**  
**Craig Coolahan**  
**3419-A Arden Way**  
**Sacramento, CA 95825**  
**(916)979-2675**  
**Tax Identification Number: 41-0696271**

---

Craig Coolahan, California State Director      Date

---

Director, Western Region      Date

**VALLEJO REDEVELOPMENT AGENCY**  
**AUGUST 14, 2007**

**MINUTES**

A special meeting of the Vallejo Redevelopment Agency joint with the City of Vallejo and the Vallejo Housing Authority was held on the above date in the Council Chambers of the Vallejo City Hall. The meeting was called to order at 7:30 p.m. by Chairman Anthony Intintoli, Jr.

1. CALL TO ORDER

A. ROLL CALL

Present: Chairman Intintoli, Vice Chair Cloutier, Chairmembers Bartee, Davis, Gomes, Pearsall, Pitchford, and Sunga

Absent: Everheart

Staff: Executive Director Joseph Tanner  
City Attorney Fred Soley  
Assistant City Manager/Community Development Craig Whittom  
Laura Simpson, Housing Manager

2. ADMINISTRATIVE ITEMS

A. CONSIDERATION OF (1) A RESOLUTION BY THE VALLEJO HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONSULTANT AGREEMENT WITH EDEN HOUSING, INC. IN AN AMOUNT NOT TO EXCEED \$50,000 TO PERFORM AN ANALYSIS AND SELECTION OF SITES FOR THE ACQUISITION AND REHABILITATION OF AFFORDABLE RENTAL HOUSING, AND APPROVING EDEN HOUSING, INC. AS THE PREFERRED NON-PROFIT HOUSING DEVELOPER TO ACQUIRE AND REHABILITATE A SITE(S) FOR AFFORDABLE RENTAL HOUSING, AND (2) RESOLUTIONS BY THE VALLEJO CITY COUNCIL AND VALLEJO REDEVELOPMENT AGENCY APPROVING EDEN HOUSING, INC. AS THE PREFERRED NON-PROFIT HOUSING DEVELOPER TO ACQUIRE AND REHABILITATE A SITE(S) FOR AFFORDABLE RENTAL HOUSING

Mayor Intintoli referred to a letter received and made part of the record, from David Cates.

Laura Simpson, Housing Manager, said what is being proposed is an agreement with Eden Housing, Inc. to perform an analysis of sites throughout the City for potential acquisition and rehabilitation for rental affordable housing. She discussed the Housing Division's role, the Council's approval of a RFQ to search for a developer and conceptual proposals, and said staff received five responses from applicants in April. Staff reviewed proposals and Eden Housing ranked the highest among all applicants. In May, staff recommended the Council select



Eden as a preferred developer to pursue consideration of a site at Lemon Street and Curtola Parkway. Concerns were raised by neighbors and the public regarding density, traffic and safety at the site, as well as management of existing affordable housing developments and their concentration of units in the City.

Since that time staff has been following up on issues and concerns raised, has met every two weeks with multi-family property managers and reviewed calls for service with police and code enforcement. She reported increased security measures and seven evictions from Sereno Village since May. Staff has focused on the possibility of doing acquisition rehabilitation rather than new construction and has worked to find a way to perform neighborhood revitalization.

She presented a map of existing subsidized housing developments in the City, noted there was a larger concentration downtown near City Hall, transit and services and said over half of the developments were senior-restricted units. She felt one area to consider was all northern portions of the City away from the downtown and another area was east of I-80 between Springs Road and Tennessee.

The proposed action and recommendation of staff is to select Eden as the preferred developer to perform the site study and provide up to \$50,000 to them for pre-development work. She discussed their experience, their portfolio of 4,800 units in 65 developments, with a goal to return to the City Council with a report from Eden within the next six months that would recommend the most suitable sites for acquisition and rehabilitation. Eden would work with City staff to assess 40 opportune sites in several buildings, arrive at a development budget, conduct community outreach if a feasible site is found, and return within six months with their recommendation. She further explained the assessment, project management, relocation services, and financial analysis to be completed under the \$50,000 agreement.

Linda Mandolini, Executive Director, Eden Housing, presented a before-and-after photo from a project completed in Manteca, discussed their working closely with staff and police department on the existing resident population, screening standards, new management rules, and said they significantly reduced police calls at the property and would be looking at targeted neighborhoods and properties where they could add value in Vallejo.

The following individuals spoke in support of the project: Reverend Rey Bernardes, Christian Help Center, Marti Brown, David Brigode, Affordable Housing Affiliation, Terri Larkins, House of Joy

The following people spoke in opposition to the project: Thom Howard, John Osborne.

Diana Lang supported rehabilitating projects to create homeownership opportunities; asked that current projects be made more stabilized and safer, felt the long-term plan should spread out affordable income units and asked the City to look at community land trusts.

In response to comments, Craig Whittom noted the program did not involve eminent domain. The targeting of properties involves working with police and code enforcement in identifying deteriorating properties. He said they could review the property identified at Valle Vista and Sacramento and prior to returning with any recommended developments, staff would engage the community in a public dialogue.

Ms. Mandolini noted Eden's service programs focus on adults and children services, technology programming, homebuyer training, money management, counseling and they have been extremely successful. She also said they would review condominium conversion, noted their current work with the City of Petaluma and looking at the land trust models for homeownership, which could also be analyzed in Vallejo.

Councilmember Davis questioned whether the proposal was a minimum of 40 units or could there be more considered. Ms. Mandolini said the number is provided as an estimate and was dependent upon the site(s). Councilmember Davis said there were 3,693 subsidized units in Vallejo, felt the number was high and should be re-evaluated, felt the City was concentrating low income, affordable housing in one area, citing a recent homicide at Sereno Village, and problems at 201 Maine Street. He voiced concern with current police workloads and asked that units be spread throughout the community similar to the Section 8 program. He suggested rehab loans be considered to existing property owners in small units with an affordable housing covenant as a condition of the loan, and said he would not support the current proposal.

Craig Whittom said the proposed program would analyze a variety of sites, Eden would look at the types of units that cause the least harm to neighborhoods throughout the community, and dispersion of units would be focused on. He noted the Council currently allocates funds to rehab loans on an annual basis with VNHS and Eden will also look at apartment units that have a greater economy of scale in the investment of dollars and potential condo conversions.

Councilmember Bartee agreed with Councilmember Davis, thanked staff for identifying the percentage of rental versus ownership and comparisons to other communities, noted 1/3 of Vallejo's subsidized housing was significant, as well as the concentration of calls for service. He requested a comparison on where Vallejo stood among surrounding communities in providing affordable housing. He felt the site identified at Valle Vista and Sacramento should not be considered and until more information was received, he would also not support the request. He questioned whether Eden Housing could participate in some aspect of

subsidized housing management of Section 8 vouchers, as management of these units was not currently managed well, stating there were 1,900 vouchers in circulation.

Mr. Whittom stated he believes the Council should distinguish between the issues with property management as compared to the Section 8 program and said staff actively pursues termination when a Section 8 participant breaks the rules. He also believes that over time, Eden Housing would acquire a greater understanding of the City's overall program relative to affordable housing and said staff was still assembling Council-requested information relative to comparisons of other communities.

Councilmember Bartee said until more data was received, he did not feel comfortable moving forward.

Vice Mayor Cloutier stated that he did not see the matter as an issue of clustering but rather an issue of trying to improve housing that was not up to a certain standard. He agreed there was rental housing requiring upgrade and confirmed the City has rehabilitated Marina Tower and Marina Vistas through rehab funding while maintaining their affordability for 55 years. He confirmed Eden would identify opportunity sites in collaboration with police and code enforcement's assistance. He requested Eden consider the visibility of the sites such as along Mare Island Way that detracts from the City's image. He believes the study should consider condo conversion and possible ownership, supported improving Vallejo's housing stock. He confirmed with Ms. Simpson that the work proposed for Lemon Street and Curtola Parkway had been abandoned.

Councilmember Sunga confirmed what staff's recommendation encompassed, confirmed there was no current, in-house staff who could perform the feasibility analysis and review sites and that it would take the expertise of Eden Housing. Ms. Mandolini discussed the extent of the work to plan to perform the study, relocation work, financial feasibility and analysis which all required a team of experts.

Councilmember Pearsall agreed rentals and homeownership were needed, confirmed with Ms. Mandolini that the projects presented by Eden were all rental and at the requests of those cities. He referred to page 3 of the staff report and noted \$400,000 of 2007/2008 of CDBG monies were being removed and allocated toward ownership down-payment assistance and owner-occupied rehabilitation loans, which he felt was critical. He felt those neighborhoods extended into areas which have the highest concentration of subsidized rentals, and noted the highest crime rates were typically in those areas most concentrated with rentals and not homeownership.

Councilmember Pearsall suggested an amendment to a sentence in the resolution to add "affordable rental housing or owner-occupied housing" and Mr.

Whittom agreed this could be added to the resolution.

Councilmember Gomes confirmed Eden Housing was a 501C(3), confirmed that if they were a regular developer they would be paying the \$50,000 themselves, and questioned why the City was not sharing the cost with Eden Housing. Mr. Whittom said typically non-profit or for-profits have gathered a variety of financing sources to make the project pencil out, and typically the local agency was an important part of making this work. He said often cities provide pre-development funding in the form of assistance and staff feels the outcome would add real value to the City's understanding of affordable housing opportunities and acquisition rehab in the community, noting the future update to the City's Housing Element next year. He stated that if a site was identified and staff brought a recommendation to move forward, Eden Housing would also be out of pocket with additional design costs and other costs they would fund as part of any housing development. Ms. Mandolini confirmed it was more or less a City's investment in how it invests its affordable housing dollars.

Councilmember Gomes acknowledged the struggle to providing affordable housing. She believes this is a start toward update of the City's Housing Element, confirmed with staff that public dialogue and outreach would occur through neighborhood meeting(s) near the potential site, as well as public advertisement and noticing, provisions for residents living in existing buildings, management training, and increased management standards.

Councilmember Gomes referred to adding new rental units and confirmed rent levels were being restricted for 55 years on properties that were currently not restricted. Ms. Mandolini also agreed that they could develop a generic new construction pro forma for homeownership so the City could look at a potential site's density, dollars, and specifics relating to financing. She also acknowledged that the City could come to the end of the study and conclude nothing was feasible. However, they do not like to come to those conclusions but rather come up with choices that meet the City's overall goals for their Housing Element. She confirmed Councilmember Gomes was interested in Eden looking at doing construction rehabilitation of existing units and conversion to ownership.

Councilmember Gomes said she was concerned that the focus would be on rental units due to the market not quite being in place for condos and asked that Eden base what will be needed 10 years from now, as well. She also felt it was ironic to make cuts to the police department while a lot more new housing is being planned that does not cover the cost of City services. She felt the City also needed to look at taking some of the blighted rental projects, rehabilitating them, her preference being to convert them into condo for sale products and not rentals, and that a 10-year strategy be looked at versus a longer term. She agreed the funding was not coming from the General Fund, that it would contribute toward updating the City's Housing Element and provide a good analysis of those areas most blighted and in need of upgrade, and voiced her

support with the caveat to add to the resolution, "focusing on owner-occupied rehabilitation homeownership units." She also requested the public process be very open and transparent and she wanted the Council to hear what concerns neighbors have.

Mr. Whittom said staff could adjust the paragraph in the resolution to read, "rental and ownership acquisition and conversion opportunities" and would provide Council with all public comments or correspondence received at each public meeting.

Councilmember Bartee confirmed with Mr. Whittom that Vice Mayor Cloutier was proposing only rehabilitating existing multi-family housing projects and he suggested limiting the scope to existing subsidized housing that requires upgrade. Mr. Whittom said staff would not recommend this, as staff was engaged with property owners and would further benefit from Eden's experience on renovations strategies; that the purpose was not to limit the scope to existing subsidized rental housing on the list.

Councilmember Bartee felt if the City were to limit it to existing subsidized housing that needed renovation and could have a new management company, it would be a positive step, as well as following up on the opportunity for ownership conversion of condos. He could then support the request; otherwise he could not. He felt the concept of converting condos was economically feasible depending on how they were priced.

Mr. Whittom noted there were HUD restrictions on existing subsidized units where staff would not want to put themselves in an acquisition mode, and said the recommendation was clear for properties not currently subsidized.

Vice Mayor Cloutier said he still did not understand why the money could not be limited to already existing affordable housing stock.

Ms. Simpson confirmed rental housing was different than subsidized rental housing; the request would be for existing rental housing. Vice Mayor Cloutier questioned why existing subsidized housing could not also be included, and Ms. Simpson said there would be redundancy; the City would not gain any value in preserving units, but would be adding to the subsidy and investment already put into it. However, possibly older units could be looked at.

Ms. Mandolini felt they could also look at something owned by a private landlord that had no prior City subsidy that might be 100 percent HUD subsidized; however, she did not know what that stock might look like in Vallejo. They would also need to review HUD rules in their conversion to condos and said they were similarly looking at this in San Leandro. They could also look at buildings that have a high concentration of vouchers in them that might not necessarily be project-based vouchers.

Vice Mayor Cloutier said they were only looking at 40 units, and he found it difficult to understand why it would not be feasible to identify 40 units that were in trouble and try to target those. Ms. Mandolini said there were 1,900 housing choice vouchers that go with the households and not attached to units, with 1,700 units which were restricted. If landlords do not choose to participate in the program they would not be able to utilize the vouchers, so those were not project-based vouchers. They have looked at properties where there are housing choice voucher-tenants residing, these are privately owned, non-subsidized developments, and Eden is looking at whether or not the acquisition would be worthwhile.

Councilmember Pearsall requested an amendment to the resolution to do the feasibility study for subsidized and existing rental housing--look into owner-occupied ownership.

Mr. Whittom recommended the amendment include three categories; 1) The acquisition/rehab of the existing private rental for future rental; 2) Acquisition of existing apartments, multi-family rental for condominium conversion; and 3) Those developments on the east side of town that have covenants on them and the City has no money in, if there are opportunities in those existing subsidized for acquisition and if they are in need of substantial rehab, these could be looked at, as well.

Councilmember Sunga requested clarification of the amendment and asked that it be restated. Ms. Simpson felt the recommendation in the staff report was broad and could include subsidized rental or non-subsidized rental.

Councilmember Bartee felt having a broader approach would be better for the community and confirmed with staff that any specific project recommended would still return to the Council for approval.

#### RECESS/RECONVENE

At the request of Mayor Intintoli, the Council, Housing Authority and Redevelopment Agency recessed for ten minutes; and thereafter reconvened the special meeting. Upon reconvening, all members were present (Member Everheart absent/excused).

Mr. Whittom confirmed Councilmember Pearsall's recommended amendment for the City Council and the Redevelopment Resolutions was:

"Now, Therefore, Be it Resolved that the City Council, City of Vallejo, hereby approves Eden Housing as the preferred non-profit housing developer to acquire and rehabilitate a site or sites for affordable rental or affordable ownership housing."

The amendment to the Housing Authority Resolution was:

“Now, Therefore, Be it Resolved that the Housing Authority of the City of Vallejo hereby authorizes the Executive Director to enter into a consultant agreement with Eden Housing in a form acceptable to Authority counsel, and in an amount not to exceed \$50,000 from Housing Authority Fund 122 to perform a Site Feasibility Study and recommend a site or sites for the acquisition and rehabilitation of existing subsidized or market rate rental housing for future affordable rental housing or conversion to affordable ownership housing; and approves Eden Housing as the preferred developer to acquire and rehabilitate a site or sites for affordable rental or affordable ownership housing.”

RESOLUTION NO. 07-09 offered by Member Pearsall as amended (1) authorizing the Executive Director to enter into a consultant agreement with Eden Housing in a form acceptable to Authority counsel, and in an amount not to exceed \$50,000 from Housing Authority Fund 122 to perform a Site Feasibility Study and recommend a site or sites for the acquisition and rehabilitation of existing subsidized or market rate rental housing for future affordable rental housing or conversion to affordable ownership housing; and (2) approves Eden Housing as the preferred developer to acquire and rehabilitate a site or sites for affordable rental or affordable ownership housing.

The resolution was adopted by the following vote (7-1-1):

AYES: Chairman Intintoli, Vice Chairman Cloutier, Members Bartee, Gomes, Pearsall, Pitchford and Sunga  
NOES: Davis  
ABSENT: Everheart  
ABSTAINING: None

RESOLUTION NO. 07-218 N.C., offered by Vice Mayor Cloutier, as amended, providing approval by the City Council of Eden Housing, Inc. as the preferred non-profit housing developer to acquire and rehabilitate a site or sites for affordable rental or affordable ownership housing.

The above resolution was approved by the following vote (6-1):

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

RESOLUTION NO. 07-16 offered by Member Gomes, providing approval by the Redevelopment Agency of Eden Housing, Inc. as the preferred non-profit housing developer to acquire and rehabilitate a site or sites for affordable rental

or affordable ownership housing.

The above resolution was approved by the following vote (6-1):

AYES: Chair Intintoli, Vice Chair Cloutier, Agencymembers Bartee,  
Gomes, Pearsall, Sunga  
NOES: Davis  
ABSENT: None  
ABSTAIN: None

11. ADJOURN HOUSING AUTHORITY AND REDEVELOPMENT AGENCY  
MEETING; RECONVENE TO THE VALLEJO CITY COUNCIL MEETING

The joint meeting was adjourned at 9:40 p.m. to the regular meeting of the Vallejo City Council. The City Councilmember reconvened at 9:40 p.m. All Councilmembers were present.

3. ADJOURN TO THE CITY COUNCIL MEETING

The meeting adjourned at 10:00 P.M.

\_\_\_\_\_  
ANTHONY J. INTINTOLI, JR., CHAIRMAN

ATTEST: \_\_\_\_\_  
JULIA ERICKSON, EXECUTIVE ASSISTANT  
TO THE CITY MANAGER



**VALLEJO REDEVELOPMENT AGENCY**  
**SPECIAL MEETING**  
**FEBRUARY 26, 2008**  
**MINUTES**

**1. CALL TO ORDER**

A special meeting of the Vallejo Redevelopment Agency was called to order at 7:23 p.m. by Chairman Osby Davis.

**2. ROLL CALL**

Present: Chairman Davis, Vice Chair Bartee, Members Gomes, Hannigan, Schivley, Sunga and Wilson

Absent: None

Staff: Executive Director Joseph Tanner  
City Attorney Fred Soley  
Secretary Mary Ellsworth

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

Hearing no additions, corrections or deletions, the Agenda was approved and the following resolution was offered by Vice Chairman Bartee:

**RESOLUTION NO. 08-03 ADOPTING 1) THE REDEVELOPMENT AGENCY'S STATEMENT OF INVESTMENT POLICY PURSUANT TO GOVERNMENT CODE SECTION 53646 AND 2) DELEGATION OF INVESTMENT AUTHORITY TO CITY FINANCE DIRECTOR/TREASURER**

The above resolution was adopted by the following vote:

AYES: Chairman Davis, Vice Chairman Bartee, Councilmembers Gomes, Hannigan, Schivley, Sunga and Wilson

NOES: None

ABSENT: None

ABSTENTIONS: None

**4. ADJOURNMENT**

The meeting adjourned at 7:26 p.m.

\_\_\_\_\_  
OSBY DAVIS, MAYOR

ATTEST: \_\_\_\_\_  
MARY ELLSWORTH, CITY CLERK



**BOARD COMMUNICATION**

**Date:** June 24, 2008

**TO:** Chairperson and Members of the Redevelopment Agency

**FROM:** Craig Whittom, Assistant City Manager/Community Development *CW*  
Robert Stout, Finance Director *RS*  
Susan McCue, Economic Development Program Manager *SMC*

**SUBJECT:** CONSIDERATION OF FLOSDEN PROJECT AREA PAYMENT OF AGENCY-WIDE 20% HOUSING SET-ASIDE OBLIGATION AND REPAYMENT OF \$400,000 DEBT FROM THE REDEVELOPMENT AGENCY TO THE CITY OF VALLEJO

BACKGROUND & DISCUSSION

During the life of the Redevelopment Agency, the City's General Fund has extended loans to the various project areas that became the Merged Project Area in 2006 (formerly the Marina Vista, Central and Waterfront project areas). In light of the City's current financial condition, the repayment of a portion of the outstanding debt is recommended. In order to facilitate the Redevelopment Agency's repayment of \$400,000 in debt service that the Merged Project Area owes the City's General Fund, staff is proposing that the Flosden Project Area assume payment of the Merged Project Area's FY 2007-08 20% housing set-aside obligation. The Flosden Project Area would continue to make its own 20% set-aside payments while assuming the payment for the Merged Project Area.

The Flosden Project Area's fiscal outlook remains healthy. The projected fund balance in the Flosden Capital Projects as of June 30, 2008 is approximately \$4.5 million. The economic condition of the Merged Project Area is challenged. The Merged Project Area's projected tax increment growth is flat based upon the economic downturn and delays to the recently entitled downtown and waterfront development projects.

Staff will return to the Redevelopment Agency Board during FY 2008-09 with a proposed amortization schedule for the repayment of debt from the Redevelopment Agency to the City of Vallejo.

*Fiscal Impact*

The Flosden Project Area payment of the Merged Project Area's FY 2007-08 20% set-aside obligations would increase the total Flosden set-aside payment to approximately \$769,000. This amount includes the Merged Project Area's obligation which is approximately \$400,000. The total set-aside obligation does not negatively impact the Agency's ability to carry out the Flosden Project Area's FY 2007-08 activities.

RECOMMENDATION

Adopt the attached resolution authorizing the payment of Merged Project Area's 20% housing set-aside obligation with funds from Flosden Project Area in order to facilitate the Merged Project Area's \$400,000 repayment of debt service to the City's General Fund in both FY 2007-08 and in FY 2008-09.

ENVIRONMENTAL REVIEW

There is no environmental review required for the Redevelopment Agency's action.

PROPOSED ACTION

Approve the resolution authorizing the payment of Merged Project Area's 20% housing set-aside obligation with funds from Flosden Project Area in order to facilitate the Merged Project Area's \$400,000 repayment of debt service to the City's General Fund in FY 2007-08.

DOCUMENTS ATTACHED

Attachment A - Resolution

CONTACT

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

-or-

Susan McCue, Economic Development Program Manager  
(707) 553-7283, [smccue@ci.vallejo.ca.us](mailto:smccue@ci.vallejo.ca.us)

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**RESOLUTION NO. \_\_\_\_\_ N.C.**

BE IT RESOLVED by the Redevelopment Agency of the City of Vallejo as follows:

THAT WHEREAS, the City's General Fund has extended loans to the various project areas that became the Merged Project Area in 2006 (formerly the Marina Vista, Central and Waterfront project areas); and

WHEREAS, in light of the City's current financial condition, the repayment of a portion of the outstanding debt is recommended; and

WHEREAS, the Agency hereby finds and determines that the use of taxes allocated from the Flosden Project Area for the purpose of increasing, improving, and preserving the community's low- and moderate-income housing available at affordable housing cost outside the Flosden Project Area will be of benefit to the Project; and

WHEREAS, staff is proposing that the Flosden Project Area assume payment of the Merged Project Area's FY 2007-08 20% housing set-aside obligation; and

WHEREAS, this total set-aside obligation does not negatively impact the Agency's ability to carry out the Flosden Project Area's FY 2007-08 activities; and

NOW, THEREFORE, BE IT RESOLVED, that the Redevelopment Agency Board of the City of Vallejo hereby approves the resolution authorizing the payment of Merged Project Area's 20% housing set-aside obligation with funds from Flosden Project Area; and

BE IT FURTHER RESOLVED, that the Redevelopment Agency Board of the City of Vallejo hereby approves the Merged Project Area's \$400,000 repayment of debt service to the City's General Fund in FY 2007-08.

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**CITY OF VALLEJO REDEVELOPMENT AGENCY**  
**BOARD COMMUNICATION**

**Agenda Item No.**

**A**

**Date:** June 24, 2008

**TO:** Chairman and Members of the Redevelopment Agency

**FROM:** Craig Whittom, Assistant City Manager/Community Development *W*  
Robert Stout, Finance Director *Am for RS*  
Susan McCue, Economic Development Program Manager *SMS*

**SUBJECT:** APPROVAL OF FISCAL YEAR 2008-2009 ANNUAL BUDGET FOR THE  
REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO

**BACKGROUND AND DISCUSSION**

Community Redevelopment Law requires the governing board of the Redevelopment Agency to adopt an annual budget containing specific information, including all activities to be financed by the Low and Moderate Income Housing Fund. The attached Redevelopment Agency Budget includes the following required budget information:

- (a) The proposed expenditures and anticipated revenues for the Agency
- (b) The proposed indebtedness to be incurred by the Agency
- (c) A description of Fiscal Year 2007-2008 (FY 2007-08) achievements and the goals and objectives proposed for Fiscal Year 2008-2009 (FY 2008-09).

The proposed FY 2008-09 Budget includes revenues in the amount of \$4,392,634 and expenditures in the amount of \$5,988,966.

The collapse of the housing market and resulting delay in private development has resulted in flat tax increment revenue to the Redevelopment Agency. The economic downturn has particularly affected the Merged Project Area's revenue picture. In order to continue to meet the Redevelopment Agency's obligations in the Merged Project Area, staff is proposing that the Floden Project Area assume payment of the Agency's 20% set-aside for both the Floden and Merged Project Areas. This will facilitate the Merged Project Area's repayment of \$400,000 in debt service to the City's General Fund. It should be noted that the Merged Project Area will begin annual debt service repayments of \$400,000 in FY 2007-08 (see separate staff report) and continue in FY 2008-09.

While the agency can look forward to a future of increasing tax increment revenues from the planned waterfront development, the Merged Project Area is likely to continue to experience a

number of lean years. In the intervening years, the waterfront developer will continue to make progress on this important 92-acre mixed-use project. That sustained effort, along with substantial new public investment in the Vallejo Station parking infrastructure, will ultimately create strong fiscal health for the Merged Project Area.

During Fiscal Year 2007-08 Redevelopment Agency achievements include the completion of the Empress Theater; the launch of design work for the Vallejo Station Parking Structure and Bus Transit Center; community workshops to generate the vision for the Northern Waterfront Park; Flosden dollars were indentified to match CDBG and new leases were negotiated in the various Project Areas.

Fiscal Year 2008-09 looks to see continued work on the Waterfront Plan, including design work on the planned northern waterfront park, and southern waterfront development; continued progress on the Vallejo Station Project and Bus Transfer Center; completion of design work for the 1,200-space parking structure and design of a paseo linking the Bus Transfer Center to the parking structure and ferry terminal. Staff will continue to work with downtown stakeholders to plan for parking improvements by building upon the foundation of the Parking Management Study completed in FY 2007-08. Staff continues to negotiate amendments to the Downtown Disposition and Development Agreement with Triad and is planning enhanced marketing and outreach for the Agency's Façade Improvement Program and assisting existing businesses through the Grow Vallejo Fund. In FY 2008-09, Flosden projects include potential design and implementation of streetscape and infrastructure improvements in the Country Club Crest neighborhood, ongoing initiatives in the Fairgrounds shopping center, and the allocation of \$1 Million of the Agency's obligation to Six Flags Discovery Kingdom for a future parking structure. The project area also carries forward prior year appropriations of \$1.7 Million for the North Vallejo Community Center.

The proposed FY 2008-09 Redevelopment Agency Budget is funded through revenues received by the Redevelopment Agency and through available fund balance. The collapse of the housing market and resulting delay in private development has resulted in flat tax increment revenue to the Redevelopment Agency, particularly in the Merged Project Area. The FY 2008-09 Budget reflects this slow-down. During FY 2008-09 staff will develop a funding plan to ensure a balance of revenues and expenditures in the merged project area in FY 2009-10.

The Low and Moderate Income Housing Fund budget is included in the proposed FY 2008-09 Redevelopment Agency Budget (Exhibit A). FY 2007-08 budgeted activities included compliance and preparation of the annual Housing and Community Development Report. Both the FY 2007-08 and the proposed FY 2008-09 Redevelopment Budgets include funding for the acquisition and rehabilitation of affordable housing. Staff anticipates reviewing options for the use of these funds with the RDA Board by September 30, 2008.

The proposed FY 2008-09 Redevelopment Agency Budget was reviewed with the City Council during its budget workshop on June 17, 2008.

FISCAL IMPACT

As it was in FY 2007-08, Redevelopment and Economic Development funding are segregated. The Economic Development budget is part of the General Fund. The Redevelopment Agency will draw down the \$4.97 million beginning fund balance by \$1.6 million in FY 2008-09. This will leave the Agency with minimal contingency and cash flow to support operations for the first six months of the fiscal year, until December property tax is received.

RECOMMENDATION

Approve the annual FY 2008-09 Budget for the Redevelopment Agency of the City of Vallejo.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with adopting the attached resolution approving the annual budget for the Redevelopment Agency; therefore, the California Environmental Quality Act does not apply.

ALTERNATIVES CONSIDERED

No alternative actions were considered. Adoption of an annual budget is a requirement under the California Community Redevelopment Law (Section 33606).

PROPOSED ACTION

Adopt the attached resolution approving the Fiscal Year 2008-2009 Annual Budget for the Redevelopment Agency of the City of Vallejo.

DOCUMENTS ATTACHED

Attachment A: Resolution with Exhibit A (FY 2008-09 Redevelopment Agency Budget)

CONTACT

Craig Whittom, Assistant City Manager/Community Development, 648-4579,  
[cwhittom@ci.vallejo.ca.us](mailto:cwhittom@ci.vallejo.ca.us)

Susan McCue, Economic Development Program Manager, 553-7283,  
[smccue@ci.vallejo.ca.us](mailto:smccue@ci.vallejo.ca.us)

**RESOLUTION NO. \_\_\_\_\_ N.C.**

BE IT RESOLVED by the Redevelopment Agency of the City of Vallejo as follows:

THAT WHEREAS, the Executive Director has submitted the Proposed Budget for Fiscal Year 2008-2009, consisting of the proposed expenditures and estimated revenues; and

WHEREAS, the Budget for Fiscal Year 2008-2009 contains all of the following specific information as required by Health and Safety Code Section 33606: (a) The proposed expenditures of the agency; (b) the proposed indebtedness to be incurred by the agency; (c) the anticipated revenues of the agency; (d) the work program for the coming year, including goals; and (e) an examination of the previous year's achievements and a comparison of the achievements with the goals of the previous year's work program; and

WHEREAS, the Redevelopment Agency of the City of Vallejo will incur indebtedness in the form of advances from other funds, a project budget of \$1,425,000 for projects which will be paid over multiple years, and is obligated to deposit twenty percent of tax increment revenue received during the fiscal year into a low- and moderate income housing fund. Additional indebtedness is not anticipated, although the Agency may authorize additional indebtedness as appropriate during the fiscal year; and

WHEREAS, the Budget for Fiscal Year 2008-2009 includes \$195,553 for planning and administrative costs charged to the Low- and Moderate Income Housing Fund, and the Redevelopment Agency of the City of Vallejo has reviewed and determined that such costs are necessary for the production, improvement or preservation of low- and moderate income housing, as required by Section 33334.3(d) of the State of California Health and Safety Code; and

WHEREAS, the City of Vallejo published a general summary of the Proposed Budget for Fiscal Year 2008-2009, including the proposed budget for the Vallejo Redevelopment Agency, and published information as to the times and places where copies of the budget are available for inspection by the public, and the time and place for a public hearing on the proposed budget; and

WHEREAS, the City of Vallejo conducted a budget study session and reviewed the proposed Redevelopment Agency budget on June 17, 2008.

NOW, THEREFORE BE IT RESOLVED, that the Vallejo Redevelopment Agency hereby adopts the Fiscal Year 2008-2009 Budget including revenues in the amount of \$4,392,634 and expenditures in the amount of \$5,988,966; and

The Budget for Fiscal Year 2008-2009, as submitted by the Executive Director, and attached as Exhibit A, is approved.

The Budget may be amended at such times as the Vallejo Redevelopment Agency may deem necessary, in accordance with the requirements and procedures contained in the Charter and



Municipal Code of the City of Vallejo. All expenditures and indebtedness of the agency must be in conformity with the adopted or amended budget.

The Executive Director is authorized to submit grant applications for activities within the jurisdiction of the Agency. The Executive Director is authorized to accept such grants, to expend grant funds if the funds have been appropriated, and to implement the actions required by any grant for projects and programs within the Agency's jurisdiction.

The Executive Director is authorized to amend the Budget to reflect all required debt service requirements and payments, bond covenants or other applicable requirements, laws and regulations; and

BE IT FURTHER RESOLVED, that the Redevelopment Agency of the City of Vallejo hereby finds and determines that \$195,553 for planning and administrative costs proposed to be charged to the Low- and Moderate Income Housing Fund in the Proposed Budget for Fiscal Year 2008-2009 are necessary for the production, improvement or preservation of low- and moderate income housing, as required by Section 33334.3(d) of the State of California Health and Safety Code. Such costs are limited to those that are permitted by Section 33334.3(e) of the State of California Health and Safety Code.

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**City of Vallejo  
Community Development  
Redevelopment Programs  
Combining Schedule  
FY 08-09**

	<u>Merged Area Debt Service</u>			<u>Merged Area Capital Projects</u>
	<u>Administration Fund #710</u>	<u>Marina Vista Fund #730</u>	<u>Waterfront Fund #732</u>	<u>Vallejo Central Fund #733</u> <u>(720, 722, 723) Fund #726</u>
<b>Beginning Available Fund Balance</b>				<b>\$728,356</b>
<b>Revenues</b>				
Taxes		\$585,693	\$702,613	\$861,682
Investment Income		6,528	5,839	3,343
Miscellaneous				
<b>Total Revenues</b>		<b>592,221</b>	<b>708,452</b>	<b>865,025</b>
<b>Expenditures</b>				
Services and Supplies	\$664,268	89,366	46,723	188,126
Interfund Allocation	(664,268)			331,323
Debt service		554,571	255,370	169,250
Projects				25,000
<b>Total Expenditures</b>		<b>643,937</b>	<b>302,093</b>	<b>431,682</b>
<b>Other Sources</b>				
Transfers in		51,716		839,702
Transfers out - Housing				
Transfers out - Debt Service				(51,716)
Transfers out - Projects			(406,359)	(433,343)
<b>Total Other Sources</b>		<b>51,716</b>	<b>(406,359)</b>	<b>787,986</b>
<b>Net Change</b>				<b>(156,463)</b>
<b>Ending Available Fund Balance</b>				<b>\$571,893</b>
<b>Project Balances, Including FY 08-09 Appropriations</b>				
Housing Development				
North Community Center				
Parking Structure/Six Flags				
Country Club Crest				

Merged Area Capital Projects		Flosden		20% Low/Mod Housing		Total
Waterfront DDA Fund #727	Downtown DDA Fund #728	Debt Service Fund #731	Capital Projects Fund #721	Special Revenue Fund #711	Debt Service Fund #735	
(\$212,816)	(\$90,000)		\$4,544,489			\$4,970,029
		\$1,843,350				3,993,338
			126,064	\$39,962	\$14,500	196,236
147,368			55,692			203,060
147,368		1,843,350	181,756	39,962	14,500	4,392,634
297,368	40,000	696,702	266,000	162,340	6,850	2,720,175
			299,732	33,213		
					464,600	1,843,791
			1,400,000			1,425,000
297,368	40,000	696,702	1,965,732	195,553	471,450	5,988,966
			347,981	798,667	456,950	2,495,016
		(798,667)				(798,667)
				(456,950)		(508,666)
		(347,981)				(1,187,683)
		(1,146,648)	347,981	341,717	456,950	
(150,000)	(40,000)		(1,435,995)	186,126		(1,596,332)
(\$362,816)	(\$130,000)		\$3,108,494	\$186,126		\$3,373,697
				\$750,000		\$750,000
			\$1,700,000			1,700,000
			1,000,000			1,000,000
			400,000			400,000
			\$3,100,000	\$750,000		\$3,850,000