

**AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF JUSTICE AND THE CITY OF VALLEJO THROUGH THE VALLEJO POLICE DEPARTMENT**

This Agreement (“the Agreement”) is made as of June 5, 2020 by and between the City of Vallejo (“the City”), through the Vallejo Police Department (“VPD”) and the California Department of Justice (“Cal DOJ”), collectively referred to herein as “the Parties.” This Agreement shall continue until June 5, 2023.

**RECITALS**

1. Over the past few years VPD officers have been involved in several high-profile uses of force, including a number of officer involved shootings. While the investigations of these matters are ongoing, the number and nature of the incidents has raised the concerns of the community and the Attorney General of the State of California.
2. In 2019, the City retained policing expert OIR Group to conduct an assessment of VPD, to analyze its policies and practices and to make recommendations addressed directly to VPD, on whether improvements are required.
3. Cal DOJ, the City, and VPD have agreed to collaborate on a comprehensive modernized policing plan that includes a review of the recommendations made by VPD’s expert consultants but that also includes additional assistance and review from Cal DOJ. Toward this end, Cal DOJ has retained a policing expert to assist in Cal DOJ’s review of the recommendations presented by VPD’s experts, expand upon and add any additional recommendations addressed directly to VPD that are needed to modernize the Department’s current policies and practices, assist with implementation of the recommendations, and evaluate VPD’s compliance with the recommendations.
4. The overall goal of this collaborative effort is to increase public trust and support effective, contemporary, and innovative policing practices through improvements in training, policy, transparency, professionalism and accountability, in alignment with national standards, best practices, current and emerging research, and community expectations.
5. The City and VPD are deeply committed to updating their policies and practices and implementing the recommendations that will be developed by the retained experts for VPD. The City and VPD are equally committed to working with Cal DOJ to repair community trust.

**THEREFOR, THE PARTIES MUTUALLY AGREE:**

**1. Recommendations and Review**

- a. Cal DOJ will serve as the independent reviewer of VPD’s implementation of the recommendations. Cal DOJ will work with its retained experts as set forth in Section 2, subparagraphs (a) - (e) below on the support and evaluation of VPD’s implementation of the recommendations. The Parties agree the standard of review for Cal DOJ’s evaluation of VPD’s implementation of the recommendations is substantial compliance.

- b. In serving as the independent reviewer and reporting agency, Cal DOJ will not supplant the roles and responsibilities of the City, including the City Attorney, the City Manager, the City Council or any City officials including its Chief of Police.
- c. In order to conduct a candid and effective review it may be necessary that the parties share confidential information and material as follows:
  1. Except for those documents that are attorney-client privileged, for which a privilege log will be submitted, Cal DOJ shall access all VPD related documents, including personnel files and records as described in paragraph 4, below.
  2. Cal DOJ has the authority to access personnel files and records of peace officers, under the provisions of California Penal Code section 832.7, subdivision (a), which reads:

*“Except as provided in subdivision(b), the personnel records of peace officers and custodial officers and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney’s office, or the Attorney General’s office.”* Cal. Pen Code 832.7 (a)
  3. The parties agree that any review of peace officer personnel files and records will be conducted on City of Vallejo premises, and no peace officer personnel files or records will be removed from the City and copies shall not be made. If a situation arises that necessitates the review of such files or copies of such files offsite by Cal DOJ, Cal DOJ and the City of Vallejo will meet and confer to reach a mutually agreeable solution.
  4. All documents will be requested and produced to Cal DOJ under this Agreement pursuant to Cal DOJ’s subpoena power set forth in Cal. Gov. Code sections 1181 and 1183. Documents produced pursuant to subpoena will be clearly labeled and deemed to be “official information” under California Evidence Code, section 1040, and protected under Government Code sections 11181 and 11183. Disclosure of these documents to Cal DOJ in the course of its review and pursuant to this Agreement shall not constitute a waiver of privilege as provided for under California Government Code, section 6254.5, subdivision (e).
  5. Except for personnel files and records identified in section (1)(c)(2) of this Agreement, or those documents that are otherwise privileged for which a privilege log is prepared, all other documents will be made available to Cal DOJ for the purpose of offsite review and reproduction as set forth in (1)(c)(3).

6. The City does not waive its right to consult with its attorney(s). Nothing herein constitutes a waiver of its attorney/client privilege in any communications, documents or reports.
- d. The Parties also agree that Cal DOJ's input resulting from its review of VPD prior to Cal DOJ issuing public report(s), if any, is confidential and shall also be subject to California Code of Evidence, section 1040 and California Government Code, section 6254.5. This confidentiality is necessary to allow and foster the type of open and frank discussion between the Parties that will ensure an effective collaboration and review. Nothing in this paragraph is intended to preclude Cal DOJ from issuing public reports or engaging with the public regarding VPD.
- e. The City shall make a good faith effort to implement all recommendations. If the City determines that it is not feasible to implement a recommendation, then the City will fully document with substantial supporting evidence the reasons that it is not feasible to implement a particular recommendation. If there is a disagreement between the City and Cal DOJ regarding the feasibility of a recommendation, City will provide in writing an alternative that addresses the shortcoming(s) meant to be addressed by the recommendation(s). Within 30 days of submitting that documentation to Cal DOJ, the Parties will engage in a meet and confer process regarding its implementation.

## **2. Consultant and Scope of Reviews**

- a. Cal DOJ will contract with an expert Consultant to assist in this collaborative effort. In consultation with its Consultant, Cal DOJ will develop a specifically tailored work plan for VPD that is mutually agreeable to the City. A work plan that sets forth the following will be finalized within 100 days of execution of this Agreement:
  1. The Consultant's role providing technical assistance and reviews assessing the recommendations and VPD's compliance with the recommendations, including those provided by the Consultant;
  2. Timetables for implementation of goals and deadlines for the implementation of the various recommendations based on the Parties' prioritization of the recommendations; and
  3. The general process by which the Consultant and Cal DOJ will evaluate whether VPD is in substantial compliance with the recommendations. Methods of evaluation may include, but are not limited to, reviews, audits, interviews, observations, site visits and document review.
- b. The City and VPD agree to cooperate with the Cal DOJ and its Consultant with all aspects of the Agreement and this collaborative effort, and will provide Cal DOJ and its Consultant with access to requested information necessary to conduct an informed review and support the Agreement. The parties agree Cal DOJ and the Consultant's access to information will include, but is not limited to, the following:
  1. Access to and interviews, on a confidential basis or otherwise, with any sworn and unsworn employees of VPD or City, and assistance with interviews of personnel in other City

departments and agencies. VPD shall facilitate engagement and provide suitable facilities and arrange for such interviews to be conducted under conditions satisfactory to Cal DOJ and its Consultant;

2. Compilation of statistics, reports, and any other information that may be directly related to the matters that are governed by the Agreement; and
  3. Access to any and all VPD records, files, and other materials Cal DOJ deems necessary to effectuate the terms of the Agreement, with the exclusion of attorney-client privileged information for which the City and/or VPD will provide a privilege log.
- c. The City and VPD will participate in regular status reporting updates and meetings with Cal DOJ and/or its Consultant at mutually convenient times.
  - d. The City and VPD agree that VPD will submit each plan, policy or procedure that VPD develops or implements in response to the recommendations to Cal DOJ for its review. Cal DOJ will timely review said plans, policies, and/or procedures and will provide its recommendations, comments, or edits to VPD in a timely manner. If Cal DOJ does not provide a response within 60 days, VPD need not wait to implement the proposed plans, policies, and/or procedures.
  - e. Cal DOJ may, at its sole discretion, issue periodic reports to the public and/or conduct public engagement sessions regarding those matters governed under this Agreement.

### **3. Allocation of Resources**

Cal DOJ will pay for all costs for the services of its Consultant. However, the City and VPD agree to commit sufficient resources and time as deemed necessary by Cal DOJ to comply with their responsibilities and obligations under the Agreement. A failure by the City and/or VPD to adequately resource both the implementation and maintenance of the corrective measures recommended by Cal DOJ will constitute a breach of the Agreement. The City and VPD agree to commit sufficient resources to timely give access to City and VPD documents, to timely submit materials demonstrating compliance with recommendations, and to timely communicate with Cal DOJ and/or its Consultant. Notwithstanding the foregoing, Cal DOJ is aware of the City's resource constraints and agrees to work with the City to ensure that implementation of the recommendations does not cause undue financial hardship to the City.

### **4. Open-Lines of Communication**

- a. The Parties agree to work collaboratively and in good faith in executing their responsibilities under this Agreement.
- b. VPD agrees to assign a primary point of contact for Cal DOJ within VPD's Command Staff for the duration of this Agreement. The City agrees to assign a primary point of contact for Cal DOJ within the City's senior executive leadership for the duration of this Agreement.

**5. Term of AGREEMENT**

- a. This Agreement shall be effective upon its execution by all Parties and shall continue until June 5, 2023.
- b. If any Party wishes to terminate the Agreement prior to its expiration, it shall initiate a meet and confer process regarding the Party's concerns upon written notice to the other parties. Upon receipt of such notice, all Parties agree to meet within 30 days to discuss the reason for concern and steps to remedy. If the Parties are unable to reach a mutually agreeable resolution, any Party may terminate the Agreement with no fewer than 15 days' notice by providing notice of same in writing.

**6. No Limitation on the Attorney General's Investigative or Enforcement Authority**

Nothing in this Agreement shall be deemed to limit or affect in any way the Attorney General's authority under the California Constitution or California law, including but not limited to California Civil Code, section 52.3, or to engage in investigations and/or enforcement for any purpose against the City or VPD in any context, including matters coming within the scope of this Agreement and matters outside of the scope of this Agreement.

**7. Severability**

If any one or more of the words, phrases, sentences, clauses or sections contained in this Agreement is deemed invalid, then it shall not affect the enforceability of the remaining portions of this Agreement or any part thereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses, or sections contained in this Agreement shall be declared invalid, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, or section or sections had not been inserted.

**8. Entire Agreement**

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings with respect thereto. This Agreement may only be amended in a written document executed by the Parties.

**9. Signing Authority**


By signing this Agreement, the persons executing this Agreement represent that they have the capacity and authority to execute this Agreement as the representatives of their respective agency, and to bind their respective agency to the terms of this Agreement.

**10. Counterparts and Facsimile/Electronic Signatures**

- a. This Agreement and any and all other documents or instruments referred to herein may be executed with counterpart signatures, all of which taken together shall constitute an original without the necessity of all Parties signing each documents.
- b. This Agreement may also be executed by signatures to facsimile or electronic transmittal documents in lieu of an original or machine generated or copied document.


Xavier Becerra, Attorney General of the  
State of California

Dated: June 5, 2020


By:   
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Nancy A. Beninati  
Supervising Deputy Attorney General

City of Vallejo

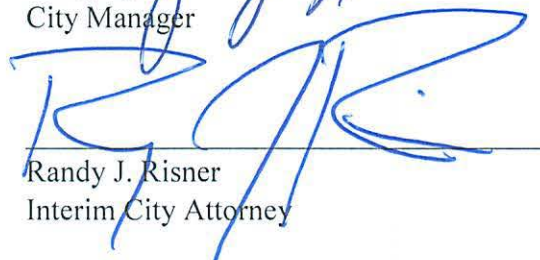
Dated: June \_\_, 2020

  
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Shawny Williams  
Chief of Police

Dated: June 5, 2020

  
\_\_\_\_\_  
Greg Nyhoff  
City Manager

Dated: June 5, 2020

  
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Randy J. Risner  
Interim City Attorney