

Execution Version 12-8-2011

**AMENDMENT NO. 2
TO THE
MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
ACTING BY AND THROUGH
THE SECRETARY OF THE NAVY
UNITED STATES DEPARTMENT OF THE NAVY
AND
THE ALAMEDA REUSE AND REDEVELOPMENT
AUTHORITY
FOR CONVEYANCE OF
PORTIONS OF THE NAVAL AIR STATION ALAMEDA
FROM
THE UNITED STATES OF AMERICA
TO
THE ALAMEDA REUSE AND REDEVELOPMENT
AUTHORITY**

4819-5347-1758.1

1 ("Reuse Plan"), the Parties agree to include in the Agreement an enforcement mechanism to
2 deter development different from that contemplated by the Reuse Plan;

3
4 WHEREAS, the Parties wish to enter into this Amendment in order to implement those
5 agreements contained in the Term Sheet; and

6
7 WHEREAS, subsequent to the execution and delivery of the Agreement, the Parties
8 determined that in accordance with the Reuse Plan, it will be desirable and necessary to include
9 within the scope of the Agreement certain additional submerged land and improvements (the
10 "Submerged Land"), described in Exhibit "K" attached hereto.

11
12 NOW, THEREFORE, in consideration of the foregoing premises and the respective
13 representations, agreements, covenants and conditions herein contained, and other good and
14 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the
15 Parties agree as follows.

16
17 **AGREEMENTS**

18
19 **Article 1. Conveyance Schedule.**

20
21 a. Article 3(b) of the Agreement is hereby deleted in its entirety and replaced with
22 the following:

23
24 "(b) The Property shall be conveyed in fee simple by one or more good and
25 sufficient Quitclaim Deeds. The Government shall use best efforts to convey all of its right, title
26 and interest in the Property in accordance with the conveyance schedule attached hereto as
27 Exhibit L ("Conveyance Schedule"). The Government shall prepare and submit to the Authority
28 an annual comprehensive and cumulative report that provides an update on the status of all
29 parcels not yet transferred in accordance with the Conveyance Schedule ("Conveyance Schedule
30 Report"). The Conveyance Schedule Report shall identify any amended dates for conveyance of
31 the Property, if necessary. The first Conveyance Schedule Report shall be provided to the
32 Authority on or before the one year anniversary of Amendment No. 2 to Agreement, and shall be
33 provided annually thereafter until such time as all of the Property is conveyed in fee to the
34 Authority."

35
36 **Article 2. Enforcement Mechanism to Ensure Compliance with the Reuse Plan.**

37
38 a. The following section (g) is hereby added at the end of Article 3 of the
39 Agreement:

40
41 "(g) The Parties recognize that the Reuse Plan contemplated a total of two
42 thousand seven hundred and thirty seven (2,737) residential units, with two thousand and eleven
43 (2,011) residential units being constructed on the Property subject to the Agreement (the
44 "Residential Base-Line Amount").

1 1. The Authority shall prepare and submit to the Government an
2 annual comprehensive and cumulative report that identifies the number of residential units for
3 which a certificate of occupancy has been issued on the Property during the reporting period
4 ("Unit Report").
5

6 2. The first Unit Report shall contain a cumulative count of the
7 existing residential units constructed on the Property and shall be provided to the Government on
8 September 30, 2012. Subsequent Unit Reports shall be provided to the Government annually
9 within ninety (90) days following the completion of the Authority's fiscal year and shall continue
10 until such time as the Property is fully developed.
11

12 3. In the event that a Unit Report identifies that the Residential Base-
13 Line Amount is exceeded on the Property, for every market-rate residential unit granted a
14 certificate of occupancy ("Excess Residential Unit"), the Authority shall pay the Government the
15 fixed sum of Fifty Thousand Dollars (\$50,000.00). Such sum shall be adjusted for inflation
16 based on the difference between the Case-Shiller Home Price Index for the San Francisco Bay
17 area (i) as of the date of the first conveyance of a portion of the Property in fee subsequent to the
18 execution of Amendment No. 2 to the Agreement, and (ii) as of the date that land for such
19 market-rate residential unit is conveyed to a third party by the Authority. Any such payments
20 due to the Government shall be paid by the Authority within three (3) months following the
21 submission of such Unit Report."
22

23 **Article 3. Use of Proceeds from Sale or Lease.**
24

25 a. Article 6 of the Agreement is hereby amended as follows:
26

27 1. In subparagraph (a): delete "during the first seven years after the
28 recordation of the first Deed for a part of the Property" and replace with "during the twenty-five
29 (25) year period following the execution of Amendment No. 2 to the Agreement".
30

31 2. Delete subparagraph (d) in its entirety and replace with the following:
32

33 "(d) Authority shall submit to the Government an annual financial statement
34 certified by an independent certified public accountant. The statement shall cover the
35 Authority's use of proceeds it receives from the sale, lease, or equivalent use of the Property.
36 The first statement shall cover the period beginning July 1, 2012, the first day of the Authority's
37 fiscal year, and ending on June 30, 2013, the last day of the Authority's fiscal year, and each
38 subsequent statement shall cover the Authority's previous fiscal year. The statement shall be
39 delivered to the Government annually within sixty (60) days of the end of Authority's fiscal
40 year."
41

42 **Article 4. Addition of Submerged Land.**
43

44 The definition of "Property" as defined in Article 2 of the Agreement is amended to
45 include the property described as "Submerged Land" and depicted on Exhibit "K" attached to
46 this Amendment No. 2 and made part of the Agreement.

1
2 **Article 5. Miscellaneous Updates to Agreement**
3

4 a. Form of Quitclaim Deeds. Article 3(c) of the Agreement is amended to add at the
5 end thereof, the following new sentences:
6

7 "The Quitclaim Deed attached as Exhibit "B-2" to the Agreement, form of quitclaim deed
8 for a conveyance of any portion of the Property to be conveyed following the due execution of a
9 FOSET, and the Quitclaim Deed attached as Exhibit "B-3" to the Agreement, form of quitclaim
10 deed for a conveyance of any portions of the Property other than EDC-4, the East Housing
11 Portion, to be conveyed following the due execution of a FOST, shall be updated at the time of
12 conveyance of such Property to incorporate the changes prescribed in Paragraphs 5.1.2, 5.5, 5.8,
13 5.9, 5.10 and 5.11 of DoD Instruction 4165.72 issued December 21, 2007. Any and all such
14 references in the Agreement to Exhibits "B-2" and "B-3" as the forms of quitclaim deeds to be
15 used for the conveyance of the Property shall now mean those forms of quitclaim deeds updated
16 to incorporate the changes prescribed by DoD Instruction 4165.72 issued December 21, 2007."
17

18 b. FOST Process. Recital 4 of the Agreement is amended to add at the end thereof,
19 the following new sentence:
20

21 "Such FOSTs or FOSETs prepared after March 1, 2006, were, or shall be, prepared, in
22 accordance with the Base Redevelopment and Realignment Manual dated March 1, 2006 (the
23 "BRRM")."
24

25 c. Notices. The Parties listed in Article 15 of the Agreement are hereby deleted and
26 replaced with the following:
27

28 "If to Authority: Executive Director
29 Alameda Reuse and Redevelopment Authority
30 Alameda City Hall
31 2263 Santa Clara Avenue
32 Room 380
33 Alameda, CA 94501
34 Facsimile: 510-865-4048
35

36 "With a copy to: General Counsel
37 Alameda Reuse and Redevelopment Authority
38 Alameda City Hall
39 2263 Santa Clara Avenue
40 Room 280
41 Alameda, CA 94501
42 Facsimile: 510-748-4691
43

44 "And to: George Schlossberg, Esq.
45 Kutak Rock LLP
46 1101 Connecticut Avenue, NW

Suite 1000
Washington, DC 20036
Facsimile: 202-828-2488

"If to Government: Director, Base Realignment and Closure Program
Management Office
Naval Facilities Engineering Command
1455 Frazee Road, Suite 900
San Diego, CA 92108
Facsimile: (619) 532-0780"

c. Dispute Resolution Managers. The second sentence of Article 26(b) of the Agreement shall be amended to read as follows:

"The Director, Base Realignment and Closure Program Management Office, Naval Facilities Engineering Command and the Executive Director of the Authority shall serve as Dispute Resolution Managers for their respective organizations."

Article 6. Survival and Benefit

a. Unless defined separately, the terms used in this Amendment No. 2 shall be the same as used and defined in the Agreement.

b. Except as set forth herein, and unless modified specifically by this Amendment No. 2, the terms and conditions contained in the Agreement shall remain binding upon the Parties and their respective successors and assigns as set forth in the Agreement.

[Signatures on the Following Page]

1 **In Witness Whereof**, the Parties, intending to be legally bound, have caused their duly
2 authorized representatives to execute and deliver this Amendment No. 2 as of the date first above
3 written.

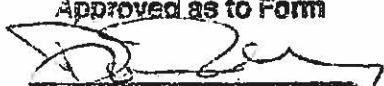
4
5 **UNITED STATES OF AMERICA,**
6 **Acting by and through the Department of the Navy**

7
8
9
10
11 Name: William R. Carsillo
12 Real Estate Contracting Officer
13 Department of the Navy
14
15
16

17 **ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**

18
19
20
21
22 Name: John Russo
23 Title: City Manager
24
25
26

27 **Approved as to Form**

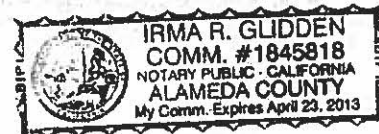
28

General Counsel

State of California}
County of Alameda}

On January 3, 2012 before me, Irma R. Glidden, a Notary Public,
(date)
personally appeared John Russo, 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 Irma R. Glidden (Seal)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Francisco

On 01/13/2012 before me, Thom O'Brien, notary public
(Here insert name and title of the officer)

personally appeared William A. Carsillo

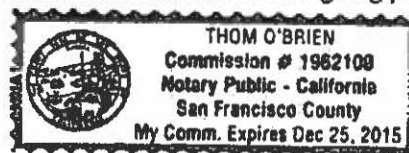
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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 of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual(s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

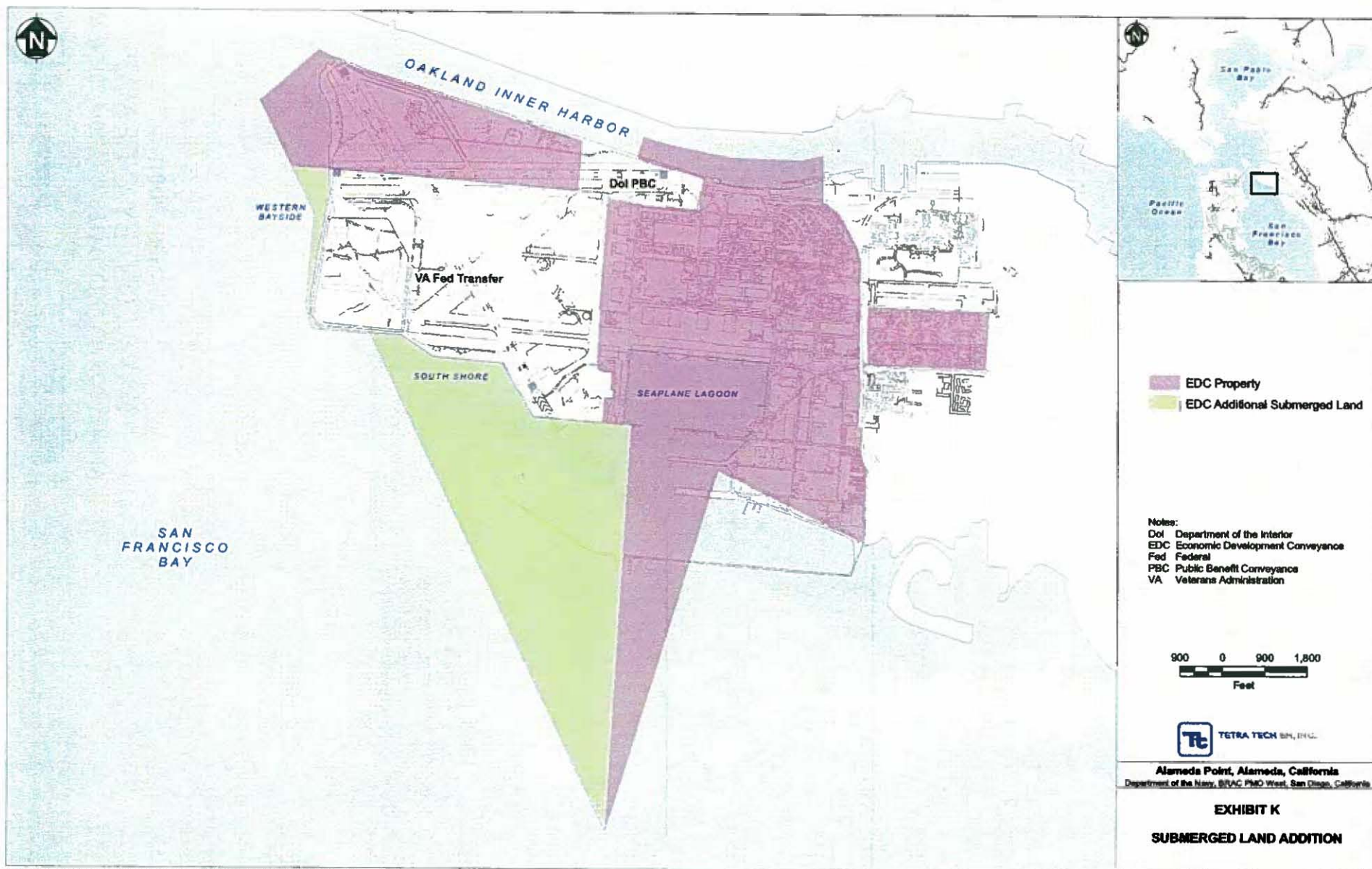
Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

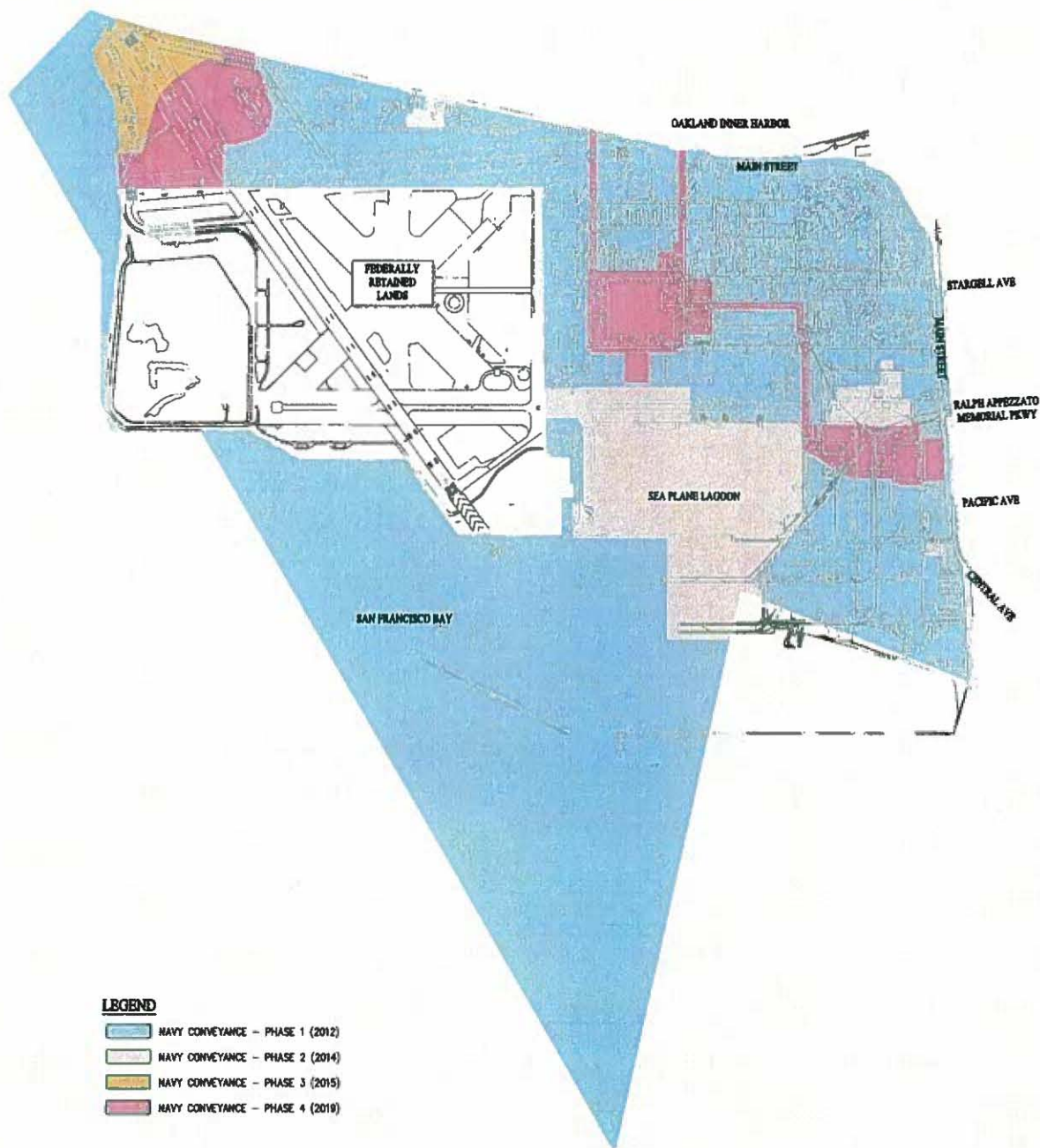
ATTACHMENT 1

Exhibit K to the Agreement Submerged Land Addition

4819-5347-1758.1



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LEGEND

- NAVY CONVEYANCE - PHASE 1 (2012)
- NAVY CONVEYANCE - PHASE 2 (2014)
- NAVY CONVEYANCE - PHASE 3 (2015)
- NAVY CONVEYANCE - PHASE 4 (2019)

**ALAMEDA POINT
NAVY CONVEYANCE MAP**
APPROX CONVEYANCE DATES: 2012, 2014, 2015 & 2019
CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA

