

## **SERVICE PROVIDER AGREEMENT**

This SERVICE PROVIDER AGREEMENT ("Agreement") is entered into this 9<sup>th</sup> day of February 2022 ("Effective Date"), by and between the CITY OF ALAMEDA, a municipal corporation (the "City"), and RIVERROCK REAL ESTATE GROUP, INC., a California corporation, whose address is 2392 Morse Ave Suite 100, Irvine, CA 92614 (the "Provider"), in reference to the following facts and circumstances:

### **RECITALS**

- a. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- b. The City owns certain real property within Alameda Point ("the Alameda Point Properties") identified by address and, in some cases, by Building Number, on the attached Exhibit A and incorporated herein by reference. The City also owns certain: (i) Tidelands Trust Properties (the "Tidelands Trust Properties") granted by the State of California by Statutes 1913, Chapter 348, as amended by Statutes 1917, Chapter 594 (collectively, the "Tidelands Grant"); (ii) properties on which cell towers are located ("the Cell Towers Properties"); and (iii) other City-owned Properties (identified on Exhibit A-1 as "City of Alameda Leases" and collectively referred to as the "Other City-owned Properties"). The Tidelands Trust Properties, the Cell Towers Properties and the Other City-owned Properties are identified by address on the attached Exhibit A-1 and incorporated herein by reference. Collectively, the Alameda Point Properties, the Cell Towers Properties, and the Other City-owned Properties shall be referred to as the "Managed Properties."
- c. Pursuant to the Tidelands Grant, the City holds the Tidelands Trust Properties in trust for the following uses and purposes and express conditions:

That said lands shall be used by said City and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereof of wharves, docks, piers, slips, quays and other utilities, warehouses, structures and appliances necessary or convenient for the promotion, benefit and accommodation of commerce and navigation, and said City or its successors shall not except as herein authorized, at any time grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation for any purpose whatever, provided, that said City or its successors may grant franchises thereon for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and this grant, for a term not to exceed 25 years, and on such other terms and conditions as said City may determine, including a right to renew such lease or leases for a further term not exceeding 25 years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to the said City on the termination of such lease or leases of any and all improvements

thereon, and on such other terms and conditions as the said City may determine, but for no purpose which will interfere with the navigation or commerce; subject also to a reservation in all such lease or such wharfing out privileges of a street, or of such other reservation as the said City may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electrical cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said City, upon compensation being made for the injury and damage done to any improvement or structure thereon.

- d. In accordance with the Tidelands Grant by the State of California, the City, in the granting of any and all such lease, shall, whenever in its judgment it can reasonably do so, give preference to the owners of upland abutting the Tidelands Trust Properties.
- e. The City needs the following services: a Provider who acts as a property manager for the Managed Properties, and as to certain limited obligations as more particularly described below, the Tidelands Trust Properties. Provider is responsible for managing, operating, maintaining, and servicing the Managed Properties and for performing the Tidelands Management Services (defined below). Additionally, Provider will perform the Tidelands Management Services as to the Tidelands Trust Properties, provided that Provider shall have no responsibility for nor does Provider make any representations or warranties in connection with the compliance of the Tidelands Trust Properties with the Tidelands Grant. As used herein, "Tidelands Management Services" mean the following services to be performed by Provider in connection with the Tidelands Trust Properties: (i) bill and collect rents payable by tenants of the Tidelands Trust Properties on an annual basis, (ii) periodic review (but not more often than quarterly) of existing leases and related title documents to determine the current holders of leasehold interests in the Tidelands Trust Properties, provided that in no event shall Provider be required to review, prepare or coordinate signature of any assignments or other vesting documents relating to the leasing of the Tidelands Trust Properties, (iii) perform such other services relating to the Tidelands Trust Properties as may be expressly set forth in this Agreement, if any, and (iii) engage consultants and other third-parties to assist Provider in performing the Tidelands Management Services to the extent reasonably determined to be necessary by Provider.
- f. Provider possesses the skill, experience, ability, background, certification, and knowledge to provide the property management services as described in this Agreement and on the terms and conditions described within it.
- g. The City and Provider each, and collectively, desire to enter into an Agreement for property management services upon the terms and conditions described herein.
- h. The City and Provider are currently parties to a Property Management, Leasing and Licensing Agreement dated October 5, 2016 (the "Existing PMA"), which is scheduled to terminate on December 31, 2021. The Parties desire to terminate that Existing PMA effective as of the commencement of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the forgoing, which this Agreement incorporates by reference, and for good and valuable consideration, the receipt and adequacy of which the City and Provider hereby acknowledge, each agrees as follows:

1. **TERM**

The term of this Agreement shall retroactively commence on the 1st day of October 2021, and shall terminate on the 31st day of December 2024, unless terminated earlier as set forth below.

2. **TERMINATION OF EXISTING PMA**

Upon the commencement of this Agreement, both Parties agree that the Existing PMA shall be deemed terminated and neither party shall have any further obligations or liabilities under the Existing PMA.

3. **SERVICES TO BE PERFORMED**

Provider hereby agrees to perform its duties and responsibilities as set forth in the attached Exhibit B, which is incorporated into, and hereby made a part of, this Agreement between City and Provider.

4. **CITY RIGHTS AND OBLIGATIONS**

- a. **Managed Properties Materials in Possession of City.** City confirms that it has provided, and Provider acknowledges and agrees that it has access to, the documents and information required for the management of the Managed Properties and to perform the Tidelands Management Services, including, but not limited to, all leases, amendments and correspondence related thereto, the status of rental payment, copies of service contracts in effect, and all applicable insurance policies. Upon Provider's request, the City shall provide any additional such documents it may have in its possession.
- b. **Approval of Contracts.** Notwithstanding any term or provision of this Agreement to the contrary, except in the case of an emergency situation involving danger to persons or property, or as otherwise approved by the City, no contract or agreement for equipment, supplies, services or any other item shall be entered into by "RiverRock Real Estate Group, Inc., a California Corporation as agent for the City of Alameda," or by Provider; in Provider's name, on behalf of the City, unless Provider shall first comply with, or use a procurement process consistent with, the City's procurement policies applicable to equipment, supplies and materials, a copy of which has been furnished to Provider. In regard to services, Provider shall first obtain and submit to the City three (3) competitive, written bids for the performance or furnishing of such service(s), and the City shall first approve the awarding of such contract or agreement. All service contracts shall contain a provision whereby the City may terminate such contracts; and all service contracts shall comply with the provisions of Exhibit B, Section c(vi) ("Service Contracts"). No other provision of this Agreement to the contrary, Provider shall not enter into, or on behalf of the City, any agreement with itself (including with "RiverRock Real Estate Group, Inc., a California Corporation as agent for the City of Alameda,") and/or any Provider affiliate without the City's prior written consent; such consent shall specifically reference the

Provider's affiliation with the contracting party.

- c. City's Representative. For the purposes of administering this Agreement, Provider shall communicate with and take direction from the City's representative, Nanette Mocanu, in connection with Provider's performance of its obligations under this Agreement. The City may change its representative by providing written notice to Provider.

**5. COMPENSATION TO PROVIDER**

- a. By the 7<sup>th</sup> day of each month, Provider shall submit an invoice to the City for the total amount of work performed in the month previous. Pricing and accounting of charges will be according to the fee schedule set forth in Exhibit D and incorporated herein by this reference. Work that exceeds the scope of services described herein must have the City Manager's, or their designee's, written approval prior to performance; and such work shall be compensated on a time and materials basis and agreed to on an as needed basis.
- b. The total three-year compensation for this Agreement shall not exceed \$726,641.66. Use of contingency shall be for work items outside the original scope and shall require the City's prior written authorization.

**6. BUDGETS AND REPORTS**

- a. Budgets. Provider acknowledges that the fiscal year for the City is July 1-June 30. No later than February 15th of each year, or such other date specified in a written notice from the City to Provider, Provider shall submit to the City, for the City's written approval (which shall not be unreasonably withheld), proposed budget for each of the Managed Properties and the Tidelands Trust Properties, and a description of the Property Management Services and Tidelands Management Services to be provided by Provider during the next fiscal year. Provider shall provide such other financial data and other information as may be required by the City in connection with the preparation of its annual business plan or which may otherwise be reasonably requested by the City. The budgets for fiscal years 2020-2021 and 2021-2022 are attached to this Agreement as Exhibits E and E-1, respectively.
- b. Compensation for Provider. The City shall pay to Provider as compensation for performing the Property Management Services and the Tidelands Management Services amounts budgeted for costs and expenses of all services provided under this Agreement, including those costs and expenses which are specifically reimbursable pursuant to Section 7 and Exhibit B below, in accordance with the budgets attached hereto as Exhibits E and E-1, as such budgets may be adjusted pursuant to Section 6(c) below.
- c. Budget Adjustment. The budgets attached hereto as Exhibits E and E-1 may be adjusted on an annual basis as follows:
  - i. If the Provider desires to adjust the budgets shown on Exhibits E and E-1 the Provider shall send written notice (the "Budget Adjustment Request") to the City. The Budget Adjustment Request shall include the proposed budget adjustments. In no event shall such adjustments collectively exceed three percent (3%) of the prior year's annual budget.
  - ii. The Parties agree to negotiate in good faith any such budget adjustments requested

in the Budget Adjustment Request.

- iii. If the Parties either (1) do not reach agreement regarding the requested budget adjustments; or (2) if the City does not approve the requested budget adjustments, then the annual budget shall not be adjusted and shall be the same as the annual budget approved and in place at the time the Budget Adjustment Request was received by the City.
- d. Monthly Reports. On or before the twentieth (20th) day of each calendar month, Provider shall deliver to the City, for each lease area within each of the Managed Properties, for each of the Managed Properties as a whole, the following reports, for the preceding month:
  - i. *Accounting*. A cash flow operating statement, a funds from operations statement (cash basis), an income statement (cash basis), a balance sheet (cash basis) and a statement of cash flows. Such statements shall present the results of operations of each lease area within the Managed Properties and the Managed Properties as a whole for the preceding calendar month and for the year-to-date.
  - ii. *Rent Roll and Accounts Receivable Aging Reports*. Reports setting forth a rent roll, presentation rent roll, tenant delinquencies and the aging of accounts payable.
  - iii. *Inspection Reports*. A report of all significant and material findings, if any, of Provider's inspections of tenants' premises pursuant to this Agreement.
  - iv. *Capital Expenditure Reports*. Reports providing details of capital expenditures, including tenant improvements, for the preceding month and for the remainder of the calendar year, itemized by type of capital expenditure.
  - v. *Updated Forecast*. A statement setting forth in detail the estimated revenues, expenses, capital expenditures, for each of the remaining months of the calendar year. Provider shall also set forth on a monthly basis the estimated cash flow to the City.
  - vi. *Book and Tax Projections*. If requested by the City (at the City's cost), projections of the current year's net income or loss on a book and tax basis, together with statements supporting the calculation of these projections. The City will notify Provider of the specific date on which the Projections are due.
  - vii. *Receivables Aging Reports*. A list of all accounts receivable outstanding as of the end of the preceding month, specifying the amount due, the nature of the receivable, the person or entity from whom due, the age of the receivable and a summary of collection efforts to date.
  - viii. *Bank Reconciliation*. A reconciliation for each of the City's bank accounts related to each of the Managed Properties of the activity in such account for the preceding month and for the year-to-date.
- e. Within forty-five (45) days after the end of each calendar year, Provider shall deliver to the City a cash flow operating statement, a funds from operations statement (cash basis), an income statement (cash basis), a balance sheet (cash basis) and a statement of cash flows, each for or as of the end of the immediately preceding year.
- f. Format. At the City's request, Provider shall make available to the City all reports required hereunder in an electronic format reasonably acceptable to the City and

compatible with the City's computer system and software. All reports required to be provided by this Agreement shall be printed on recycled paper.

- g. Use of Reports. All reports prepared by Provider may be used by the City in execution or implementation of: the original services for which Provider was hired; continuation of the services by others; subsequent additions to the original services; and/or other services being furnished to the City, as the City deems appropriate.
- h. No Distribution Without Approval. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior written approval by the City or as required by law.

7. **EXPENSES**

- a. Expense of City. All payments made, or expenses incurred, by the Provider in the performance of the Property Management Services and the Tidelands Management Services shall be paid or reimbursed by the City, except as otherwise provided in this Agreement.
- b. Payment by the Provider. Subject to Section 7(c) below, without the necessity of obtaining the prior written consent of the City, the Provider shall make all payments for repairs and maintenance costs incurred and equipment and supply purchases made in accordance with this Agreement, and under contracts existing prior to the effective date of this Agreement or approved or authorized pursuant to this Agreement, but only if such payments (a) will not cause the annual expenditure under a budget line item to exceed the approved budget by the lesser of Five Thousand and No/100ths Dollars (\$5,000.00) or ten percent (10%) or more of the amount of such budget line item, and (b) will not, as a result of actual savings to date in other budget line items, cause the total projected annual expenditures to exceed the approved budget. However, in the case of casualty, breakdown in machinery or other similar emergency, the Provider may make reasonable payments for repairs, maintenance, equipment or supplies in excess of such authorization amounts if, in the reasonable opinion of the Provider, emergency action prior to written approval is necessary to prevent additional damage or a greater total expenditure, to protect the Managed Properties or Tidelands Trust Properties from damage or to prevent a default on the part of the City as landlord under a lease, but in no event shall the Provider be authorized to expend more than Five Thousand and No/100ths Dollars (\$5,000.00). In such cases, such authority shall terminate upon the cessation of the emergency and the Provider shall notify the City of the expenditure within two (2) days after such expenditure.
- c. Source of Payment. Any authorized payments made by the Provider on behalf of the City shall only be made out of such funds as the Provider may from time to time hold for the account of the City or as may be provided by the City.

8. **TIME IS OF THE ESSENCE**

Provider and City agree that time is of the essence regarding the performance of this Agreement.

9. **STANDARD OF CARE**

Provider agrees to perform all services under this Agreement in a manner commensurate with the prevailing standards of like Providers in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel whom the City does not employ.

10. **INDEPENDENT PARTIES**

Provider hereby declares that it engages as an independent business. Provider further agrees that it perform the services under this Agreement as an independent contractor. Provider controls the manner and means of conducting the services and tasks, except to the extent statute, rule or regulation and the express terms of this Agreement limit the services and tasks Provider performs or provides. No civil service status or other right of employment will be acquired by virtue of Provider's services. The City shall not supply or grant to Provider, its employees, or its agents, any of the benefits the City provides to its own employees, including but not limited to: unemployment insurance, workers' compensation plans, and vacation and sick leave. The City shall not deduct from any compensation due to Provider any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship. If payments of the above items are required, such payments shall be the Provider's responsibility.

11. **IMMIGRATION REFORM AND CONTROL ACT (IRCA)**

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work under this Agreement, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

12. **NON-DISCRIMINATION**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable employer/employee conduct, neither Provider nor Provider's employee, agents, subcontractors or suppliers shall harass or discriminate against any job applicant, City employee, or any person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Provider agrees that any violations of this provision shall constitute a material breach of this Agreement.

13. **INSURANCE**

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration, of insurance coverage in compliance with subsections 13A, B, C, D, and E, below. Such certificates, which do not limit Provider's

indemnification, shall also contain substantially the following statement:

“Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the City of Alameda. Attention: Risk Manager.”

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. All insurance policies required under Section 13, other than Workers’ Compensation and professional liability insurance for errors and omissions, shall: (i) name the City and all other parties specified in Section 13(g) below as additional insureds, (ii) be issued by an insurer and be in a form and contain terms, all as reasonably approved by the City’s Risk Manager, (iii) provide that such policies shall not be canceled nor shall any material change be made therein without at least thirty (30) days’ prior written notice to the City, and (iv) provide that any loss shall be payable to the City and any other additional named insured specified in Section 13(g) below notwithstanding any act or negligence of Provider which might otherwise result in forfeiture of such insurance. All commercial general liability, vehicle liability, and workers’ compensation insurance required under this Article VI shall include a waiver of subrogation endorsement.

c. Provider shall deliver updated insurance certificates to the City at the address described in Section 20(f). prior to the expiration of the existing insurance certificate for the duration of the term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

d. Rating. All insurers providing the coverages specified in this Article VI shall be rated A-VII or better by Best’s and shall otherwise be subject to the prior approval of the City’s Risk Manager.

e. Certificates of Insurance. On or before the commencement of the term of this Agreement, Provider shall furnish the City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Agreement. Such certificates, which do not limit Provider’s indemnification, shall also contain substantially the following statement: “Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the City of Alameda by certified mail, Attention: Risk Manager.” It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company or companies licensed to do insurance business in the State of California and domiciled in the United States of America. Evidence of insurance with endorsements naming the additional insureds specified in subsection (g) below shall be submitted with the insurance certificates. Provider shall also provide the City with certificates evidencing and further insurance coverages required by this Section (whether maintained by Provider or by contractors and subcontractors) prior to the commencement of any activity or operation which could give rise to a loss to be covered by such insurance. Replacement



certificates shall be sent to the City's Risk Manager as policies are renewed, replaced or modified.

f. Investigation of Claims. Provider shall promptly report any conditions or incidents of which Provider becomes aware which could give rise to a claim or lawsuit against the City or involving any of the Managed Properties. Provider shall promptly investigate and make a full, timely, written report to any insurance company providing coverage, with a copy to the City's Risk Manager, of all accidents, claims, or damage relating to the ownership, operation and maintenance of any of the Managed Properties, any damage or destruction to any of the Managed Properties and the estimated cost of repair thereof, and shall prepare any and all further reports required by any such insurance company in connection therewith. Provider shall have no right to settle, compromise or otherwise dispose of any claims, demands or liabilities against the City, whether or not covered by insurance, without the prior written consent of the City's Risk Manager.

g. Additional Insureds. The City, the City Council, Alameda Power and Telecom, Alameda Housing Authority, the Successor Agency of the Community Improvement Commission of the City of Alameda, and their respective boards, commissions, officers, employees, agents and volunteers shall be named as additional insureds under all insurance coverages required by this Agreement.

h. Deductibles. All deductibles shall be subject to the approval of the City's Risk Manager. No self-insured retentions shall be permitted.

SC  
\_\_\_\_\_  
Provider's Initials

A. COVERAGE:

Provider, at its cost, shall maintain, or cause to be maintained, the following insurance coverage during the term of this Agreement:

i. Workers' Compensation:

Workers' Compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

ii. Liability:

Comprehensive, broad form general liability insurance, in an amount not less than Six Million Dollars (\$6,000,000), combined single limit. At least \$1,000,000 shall be primary as to general liability insurance and the remainder may be maintained, as applicable, as umbrella or excess liability coverage. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, and volunteers is required.

iii. Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

|                  |                             |
|------------------|-----------------------------|
| Bodily injury:   | \$1,000,000 each occurrence |
| Property Damage: | \$1,000,000 each occurrence |

or

Combined Single Limit: \$2,000,000 each occurrence

Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, and volunteers is required.

iv. Professional Liability:

Two Million Dollars (\$2,000,000) of professional liability insurance for errors and omissions for the professional acts, errors and omissions of Provider or its employees and agents related to any services performed by Provider hereunder requiring a real estate broker's license.

v. Heavy Equipment Construction:

Provider shall not undertake or permit to be undertaken any construction involving heavy equipment, such as grading or earthmoving equipment, without prior approval of the City, which may be conditioned upon requiring additional insurance from Provider or the contractor or subcontractor performing the work.

vi. Construction and/or Services in the Managed Properties:

(1) With respect to construction or other services by contractors in the Managed Properties other than as described in Exhibit B (d), Provider shall cause the construction contractors and subcontractors to provide the following insurance coverages: Comprehensive, broad form general liability insurance, including products and completed operations, in amounts not less than:

(A) For construction contracts under \$100,000 and all service and consultant contracts:  
\$1,000,000 per occurrence  
\$2,000,000 in the aggregate, or  
\$1,000,000 combined single limit

(B) For construction contracts under \$100,000 and all capital improvement projects:

\$1,000,000 per occurrence  
\$2,000,000 in the aggregate, or  
\$2,000,000 combined single limit

If such insurance is provided under a blanket policy, a separate general liability and completed operations aggregate limit shall apply to each of the Managed Properties. The completed operations coverage shall be maintained for at least two (2) years following completion of construction.

(2) Liability insurance for owned, hired and non-owned vehicles in amounts not less than:

(A) For construction contracts involving large trucks and heavy equipment:

\$2,000,000 per occurrence  
\$2,000,000 in the aggregate, or  
\$2,000,000 combined single limit

(B) For all construction contracts under \$100,000 and all capital improvement projects:

\$1,000,000 per occurrence  
\$2,000,000 in the aggregate, or  
\$2,000,000 combined single limit

(C) Notwithstanding subsection (2)(A) above, for all contractors driving in the course and scope of contract:

\$500,000 per occurrence  
\$500,000 in the aggregate, or

(3) Workers' Compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

(4) If required by the City's Risk Manager (to be determined on a case-by-case basis), professional liability insurance in an amount not less than One Million Dollars (\$1,000,000) each occurrence.

vii. Provider shall also cause contractors and subcontractors to maintain, as applicable, umbrella, or excess liability, coverage, in an amount not less than Three Million Dollars (\$3,000,000) unless the City's Risk Manager expressly approves in writing lesser amounts. Such insurance shall be in excess of all liability coverages required in the above subsections to be maintained by the contractors and subcontractors.

viii. To the extent Provider is directly or indirectly involved in any type of excavation on or adjacent to any of the Managed Properties, it must obtain prior written approval of the City, which may condition such approval on requiring pollution legal liability insurance in an amount to be determined by the City based on the scope of work.

Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, and volunteers is required.

B. HOLD HARMLESS

1. To the extent permitted by applicable law, Provider shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City, its City Council, boards, commissions, officials, and employees (collectively, "City Indemnitees") from and against any and all losses, damages, liabilities, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees (collectively, "Claims"), to the extent arising from (i) Provider's grossly negligent, reckless or willful misconduct, (ii) Provider's breach of this Agreement, or (iii) work conducted or performed by Provider outside of the scope of authority expressly granted to Provider pursuant to this Agreement. Notwithstanding the foregoing, the foregoing indemnification shall not extend to any Claims to the extent arising out of, or by reason of (1) any gross negligence and/or willful or reckless misconduct of the City or any of the City Indemnitees; (2) the performance by Provider of any of its obligations under this Agreement, including any damage or injury to any employees or other persons or property arising out of the use, administration, or control of the Managed Properties and/or the Tidelands Trust Properties during the term of this Agreement; (3) any condition of the Managed Properties and/or the Tidelands Trust Properties, unless the condition of the Property results from Provider's gross negligence, reckless or willful misconduct, or Provider's breach of this Agreement; and/or (4) the City's breach of its obligations under this Agreement.
2. Intentionally Omitted.
3. Intentionally Omitted.
4. As to Claims arising out of the acts of the Provider or its employees only for which Provider is expressly obligated to indemnify City under subsection B.1, above, Provider's commercial general liability insurance policy shall include a stipulation that the insurance is primary insurance and that no insurance or self-insurance of the City will be called upon to contribute to a loss relating to any such Claims.
5. Notwithstanding the foregoing, except as expressly provided in the immediately preceding subsection B.4, the City's liability insurance policies, which include any self-insurance of the City, shall at all times be primary and non-contributory with any liability insurance carried by the Provider with respect to any Claims arising out of the performance or non-performance of Provider's duties and activities within the scope of this Agreement arising from any action, or from any activity on, or condition of, the Property.
6. To the extent permitted by applicable law, City shall indemnify, defend (with counsel reasonably acceptable to Provider), and hold Provider and its employees, officers, members and managers (collectively, the "Provider Indemnitees") harmless from and against any and all Claims to the extent arising out of (i) the gross negligence and/or willful and reckless misconduct of the City or its officers, employees, and agents; (ii) the performance by Provider of any of its obligations under this Agreement, including any damage or injury to any employees or other persons or property arising out of the use, administration, or control of the Managed Properties and/or the Tidelands Trust

Properties during the term of this Agreement; (iii) any condition of the Managed Properties and/or the Tidelands Trust Properties, unless the condition of the Managed Properties and/or the Tidelands Trust Properties result from Provider's gross negligence, reckless or willful misconduct, or Provider's breach of this Agreement; and/or (iv) the City's breach of its obligations under this Agreement; provided, however, that such indemnity shall not extend to any Claims to the extent arising out of (1) any gross negligence and/or willful and reckless misconduct of Provider or its employees and officers; (2) Provider's breach of its obligations under this Agreement; and/or (3) any act taken by Provider or its employees and officers outside the scope of Provider's authority expressly granted to Provider pursuant this Agreement.

7. City shall name Provider as an additional insured as respects the claims that it is responsible to insure.
8. Provider's and the City's obligation to indemnify, defend and hold harmless the City Indemnities and Provider Indemnitees, as applicable, shall expressly survive the expiration or early termination of this Agreement.

#### C. SUBROGATION WAIVER

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery. Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against City by virtue of the payment of any loss under such insurance.

#### D. FAILURE TO SECURE

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and shall be compensated by the Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

#### E. ADDITIONAL INSURED

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

#### F. SUFFICIENCY OF INSURANCE

The insurance limits required by City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

#### **14. CONFLICT OF INTEREST**

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement require Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

#### **15. PROHIBITION AGAINST TRANSFERS**

Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or his or her designee may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

#### **16. APPROVAL OF SUB-PROVIDERS**

If after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in his/her sole and absolute discretion.

Each sub-provider shall be required to furnish proof of Workers' Compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

The requirements in this Section 16 shall not apply to persons who are merely providing materials, supplies, data or information which the Provider then analyzes and incorporates into its work product.

#### **17. PERMITS AND LICENSES**

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of the services and tasks hereunder.

#### **18. REPORTS**

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or his/her designee.

## **19. RECORDS**

- a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of the Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the services and tasks under this Agreement (collectively the "Records").
- b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.
- c. If supplemental examination or audit of the Records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

## **20. NOTICES:**

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda  
950 W. Mall Square, Suite 205  
Alameda, CA 94501  
ATTENTION: Nanette Mocanu / Lorie Curtis

With copies to:  
City of Alameda  
2263 Santa Clara Avenue, Room 320  
Alameda, CA 94501  
ATTENTION: City Manager

City of Alameda  
2263 Santa Clara Avenue, Room 280  
Alameda, CA 94501  
ATTENTION: City Attorney

e. All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

RiverRock Real Estate Group, Inc., a California Corporation  
2392 Morse Avenue, Suite 100  
Irvine, CA 92614  
ATTENTION: John Combs, Principal

f. All updated insurance certificates from Provider to City shall be addressed to City at:

City of Alameda  
Office of the City Attorney  
2263 Santa Clara Avenue, Room 280  
Alameda, CA 94501  
ATTENTION: Risk Manager  
Ph: (510) 747-4750

## **21. SAFETY**

a. Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the



performance of this Agreement. Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

**22. HEALTH AND SAFETY REQUIREMENTS.**

Provider acknowledges that the City shall have the right to impose, at the City's sole discretion, requirements that it deems are necessary to protect the health and safety of the City employees, residents, and visitors. Provider agrees to comply with all such requirements, including, but not limited to, mandatory vaccinations, the use of personal protective equipment (e.g. masks), physical distancing, and health screenings. Provider also agrees to make available to the City, at the City's request, records to demonstrate Provider's compliance with this Section. [See Certification of Compliance attached hereto as Exhibit C.]

**23. TERMINATION**

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within ten (10) business days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may thereafter immediately terminate the Agreement forthwith by giving to the Provider written notice thereof.

b. The foregoing notwithstanding, City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this s u b s e c t i o n 22 . c. shall survive the expiration or early termination of this Agreement.

**24. ATTORNEYS' FEES**

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney's office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

**25. COMPLIANCE WITH ALL APPLICABLE LAWS**

During the term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by the Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by City.

**26. CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**27. WAIVER**

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character. A waiver of provisions by any party to this Agreement shall not be effective unless in writing; signed by the party granting the waiver. Further, the waiver shall only be effective as expressly provided in writing. The City's or Provider's failure to seek redress for breach, or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement, shall not constitute a waiver. The City and Provider shall have all remedies provided herein and by applicable law with respect to any subsequent act that would have constituted a breach originally.

**28. INTEGRATED CONTRACT**

The Recitals and Exhibits are a material part of this Agreement and thus expressly incorporated within the Agreement. This Agreement represents the full and complete understanding of every kind or nature between the parties, and all preliminary negotiations and agreements of whatsoever kind or nature have merged herein. No verbal agreement or implied covenant shall vary the Agreement's provisions. Any modification of this Agreement will become effective only when executed in writing and signed by both the City and the Provider.

**29. SEVERABILITY**

If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

**30. CAPTIONS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

**31. COUNTERPARTS**

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**32. SIGNATORY**

By signing this Agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

**33. CONTROLLING AGREEMENT**

In the event of a conflict between the terms and conditions of this Agreement and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.



IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

RIVERROCK REAL ESTATE GROUP, INC.,  
a California corporation



Steve Core  
President

CITY OF ALAMEDA  
a Charter City and a Municipal corporation

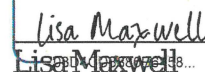


Eric J. Levitt  
City Manager



Ken Kruis  
Chief Financial Officer

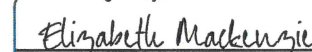
RECOMMENDED FOR APPROVAL



Lisa Maxwell  
Director of Community Development

APPROVED AS TO FORM:  
City Attorney

DocuSigned by:



Elizabeth Mackenzie  
Chief Assistant City Attorney



# EXHIBIT A

## Alameda Point Building List

| <u>BUILDING #</u> |           | <u>ADDRESS</u>                            |
|-------------------|-----------|-------------------------------------------|
| 1                 |           | 950 W. MALL SQ.                           |
| 2                 | WING 3    | 2599 LEXINGTON ST.                        |
| 2                 | RM211     | 1025 W. MIDWAY AVE.                       |
| 2                 | A         | 1041 W. MIDWAY AVE.                       |
| 2                 | C         | 2550 MONARCH ST.                          |
| 3                 |           | 2651 LEXINGTON ST.                        |
| 4                 |           | 2701 LEXINGTON ST.                        |
| 6                 | A         | 950 W. RANGER AVE. (FIRE DEPARTMENT.)     |
| 6                 | B         | 951 W. RANGER AVE. (PW MAINTENANCE)       |
| 7                 |           | 851 W. MIDWAY AVE.                        |
| 10                |           | 2221 LEXINGTON ST.                        |
| 11                |           | 1190 W. TOWER AVE.                        |
| 12                |           | 1050 W. TOWER AVE.                        |
| 14                |           | 1800 FERRY POINT                          |
| 15                |           | 1605 FERRY POINT                          |
| 16                |           | 2600 SARATOGA ST                          |
| 17                |           | 700 W. ESSEX DR.                          |
| 18                |           | 2700 SARATOGA ST.                         |
| 19                |           | 2175 MONARCH ST.                          |
| 20                |           | 2701 MONARCH ST.                          |
| 21                |           | 2601 MONARCH ST.                          |
| 22                |           | 2501 MONARCH ST.                          |
| 22                |           | 2505 MONARCH ST.                          |
| 24                | BAY 1     | 2301 MONARCH ST.                          |
| 24                | BAY 2 & 3 | 2301 MONARCH ST.                          |
| 25                | A         | 1951 MONARCH ST.                          |
| 25                | B         | 1951 MONARCH ST.                          |
| 25                | C         | 1951 MONARCH ST.                          |
| 29                |           | 1701 MONARCH ST.                          |
| 30                |           | 2900 NAVY WAY                             |
| 32                |           | 2451 SARATOGA ST.                         |
| 35                |           | 2450 PAN AM WAY                           |
| 38                |           | 1603 FERRY POINT                          |
| 39                |           | 950 W. TOWER AVE.                         |
| 41                |           | 650 W. TOWER AVE.                         |
| 42                |           | 2480 MONARCH ST.                          |
| 43                |           | 2440 MONARCH ST.                          |
| 44                |           | 2400 MONARCH ST.                          |
| 60                |           | 641 W. RED LINE AVE. (REC & PARK O' CLUB) |
| 62                |           | 1040 W. MIDWAY AVE.                       |

| <b><u>BUILDING #</u></b> |       | <b><u>ADDRESS</u></b>                            |
|--------------------------|-------|--------------------------------------------------|
| 63                       |       | 2650 MONARCH ST.                                 |
| 64                       |       | 1651 FERRY POINT                                 |
| 68                       |       | 1610 FERRY POINT                                 |
| 76                       |       | 1111 W. RED LINE AVE. (PARK & REC SWIMMING POOL) |
| 77                       |       | 2151 FERRY POINT                                 |
| 78                       |       | 475 SUNRISE CT.                                  |
| 92                       |       | 650 W. RANGER AVE.                               |
| 94                       |       | 2790 SARATOGA ST.                                |
| 102                      |       | 1280 W. MIDWAY AVE.                              |
| 113                      |       | 450 W. ATLANTIC AVE.                             |
| 114                      |       | 2450 SARATOGA ST.                                |
| 114                      | A     | 800 W. MIDWAY AVE.                               |
| 114                      | B     | 801 W. MIDWAY AVE.                               |
| 115                      |       | 2601 TODD ST.                                    |
| 116                      |       | 2501 TODD ST.                                    |
| 117                      | EAST  | 2251 ORION ST.                                   |
| 117                      | WEST  | 2251 ORION ST.                                   |
| 118                      | EAST  | 51 W. TRIDENT AVE.                               |
| 118                      | WEST  | 51 W. TRIDENT AVE.                               |
| 134                      |       | 1101 W. RED LINE AVE. (PARK & REC GYMNASIUM)     |
| 135                      |       | 750 W. RED LINE AVE.                             |
| 137                      |       | 650 W. RED LINE AVE.                             |
| 152                      |       | 2451 HANCOCK ST.                                 |
| 162                      | EAST  | 400 W. ATLANTIC AVE.                             |
| 162                      | WEST  | 450 W. ATLANTIC AVE.                             |
| 163                      |       | 1800 ORION ST.                                   |
| 164                      |       | 351 W. TICONDEROGA AVE.                          |
| 166                      |       | 1501 VIKING ST.                                  |
| 167                      |       | 1500 FERRY POINT                                 |
| 168                      |       | 1651 VIKING ST.                                  |
| 169                      |       | 1680 VIKING ST.                                  |
| 170                      | NORTH | 1770 VIKING ST.                                  |
| 170                      | SOUTH | 1770 VIKING ST.                                  |
| 180                      |       | 1780 FERRY POINT                                 |
| 271 (STRUCTURE)          |       | 421 W. TRIDENT AVE.                              |
| 275                      |       | 821 W. RED LINE AVE.                             |
| 292                      |       | 1450 FERRY POINT                                 |
| 302                      |       | 1451 SKYHAWK ST.                                 |
| 338 (PARKING LOT)        |       | 1450 SKYHAWK ST.                                 |
| 338                      |       | 51 W. HORNET AVE.                                |
| 360                      |       | 1900 SKYHAWK ST.                                 |



| <u>BUILDING #</u> |         | <u>ADDRESS</u>                                 |
|-------------------|---------|------------------------------------------------|
| 372               |         | 1770 ORION ST.                                 |
| 377               |         | 2761 MONARCH ST.                               |
| 389               |         | 1005 W. RED LINE AVE.                          |
| 397               |         | 1690 ORION ST.                                 |
| 400               |         | 1150 W. TOWER AVE.                             |
| 400               | A       | 1090 W. TOWER AVE.                             |
| 405               |         | 2350 MONARCH ST.                               |
| 410               |         | 250 W. ORISKANY AVE.                           |
| 414               |         | 1820 ORION ST.                                 |
| 420               |         | 3100 PERIMETER ROAD                            |
| 423               | F       | 715 W. RED LINE AVE.                           |
| 458               | A       | 815 W. RED LINE AVE.                           |
| 459               |         | 101 W. TOWER AVE.                              |
| 494               |         | 1851 MONARCH ST. (POLICE DEPARTMENT)           |
| 500               |         | 2351 LEXINGTON ST.                             |
| 525               |         | 2751 TODD ST.                                  |
| 529               |         | 1501 SKYHAWK ST.                               |
| 530               |         | 120 W. ORISKANY AVE.                           |
| 530               | A       | 1550 SKYHAWK ST. (EMPTY LOT EAST OF BLDG. 530) |
| 542               |         | 150 W. HORNET AVE.                             |
| 552               |         | 1990 SKYHAWK ST.                               |
| 584               |         | 1402 VIKING ST.                                |
| 587               | LOT     | 1800 VIKING ST. (ALAMEDA POWER & TELECOM)      |
| 587               |         | 1850 VIKING ST.                                |
| 587               | PARKING | 1880 VIKING ST.                                |
| 601               |         | 1601 FERRY POINT                               |
| 608               |         | 50 W. HORNET AVE.                              |
| 608               | A       | 54 W. HORNET AVE.                              |
| 608               | B       | 52 W. HORNET AVE.                              |
| 608               | C       | 48 W. HORNET AVE.                              |
| 611               |         | 2440 PAN AM WAY                                |
| 612               |         | 1450 VIKING ST.                                |
| 614               |         | 2390 MONARCH ST.                               |
| 615               |         | 1051 W. TOWER AVE.                             |
| 616               |         | 1750 ORION ST.                                 |
| 617               | A       | 800 W. ORISKANY AVE.                           |
| 618               |         | 181 W. HORNET AVE.                             |
| 619               |         | 185 W. HORNET AVE.                             |
| 620               |         | 1401 SKYHAWK ST.                               |
| 621               |         | 270 W. TICONDEROGA AVE.                        |

| <b><u>BUILDING #</u></b>  | <b><u>ADDRESS</u></b>                   |
|---------------------------|-----------------------------------------|
| 625                       | 1470 VIKING ST. (PW STORAGE)            |
| 626                       | 1472 VIKING ST. (PW STORAGE)            |
| FLOATING DOCK -NELSON'S   | 651 W. ORISKANY AVE.                    |
| MAIN ST. GREENWAY         | 2000 MAIN ST.                           |
| GUARD SHACK               | 2900 NAVY WAY                           |
| HORNET (SHIP)             | 707 W. HORNET AVE.                      |
| MINI-STORAGE              | 50 W. ORISKANY AVE.                     |
| PARCELS #60 & #65         | 1001 W. RED LINE AVE.                   |
| PIER #1                   | 1599 FERRY POINT                        |
| PIER #2                   | 1499 FERRY POINT                        |
| PIER #3                   | 1399 FERRY POINT (AC HORNET FOUNDATION) |
| FIELDS 424 & 425 (SOCCER) | 2655 LEXINGTON ST.                      |
| TAXIWAY #7                | 2001 FERRY PT.                          |
| VACATION LOT NEXT TO 621  | 150 W. TICONDEROGA AVE.                 |
| ENTERPRISE LOT            | 575 W. HORNET AVE.                      |

# EXHIBIT A

## Alameda Point Residential Leases

|                         |                        |
|-------------------------|------------------------|
| 2540 Barbers Point #A   | 2745 Pearl Harbor Road |
| 2540 Barbers Point #B   | 2756 Pearl Harbor Road |
| 2540 Barbers Point #C   | 2760 Pearl Harbor Road |
| 2540 Barbers Point #D   | 2775 Pearl Harbor Road |
| 2601 Barbers Point #A   | 2780 Pearl Harbor Road |
| 2601 Barbers Point #B   | 2790 Pearl Harbor Road |
| 2601 Barbers Point #C   | 2800 Pearl Harbor Road |
| 2601 Barbers Point #D   | 2805 Pearl Harbor Road |
| 2651 Barbers Point #A   | 2825 Pearl Harbor Road |
| 2651 Barbers Point #B   | 2845 Pearl Harbor Road |
| 2651 Barbers Point #C   | 2820 Pearl Harbor Road |
| 2651 Barbers Point #D   | 2830 Pearl Harbor Road |
| 2811 Barbers Point Road | 2840 Pearl Harbor Road |
| 2820 Barbers Point Road | 2850 Pearl Harbor Road |
| 2821 Barbers Point Road | 2855 Pearl Harbor Road |
| 2830 Barbers Point Road | 2775 San Diego Road    |
| 2831 Barbers Point Road | 2805 San Diego Road    |
| 2840 Barbers Point Road | 2835 San Diego Road    |
| 2841 Barbers Point Road | 2865 San Diego Road    |
| 2850 Barbers Point Road | 2765 Seattle Road      |
| 2860 Barbers Point Road | 2805 Seattle Road      |
| 2861 Barbers Point Road | 2795 San Pedro Road    |
| 2870 Barbers Point Road | 2815 San Pedro Road    |
| 2901 Barbers Point Road | 2835 San Pedro Road    |
| 2600 Lemoore Road #A    | 2845 San Pedro Road    |
| 2600 Lemoore Road #B    | 2875 San Pedro Road    |
| 2650 Lemoore Road #A    | 250 West Essex Drive   |
| 2650 Lemoore Road #B    | 301 West Essex         |
| 2700 Lemoore Road #A    | 350 West Essex         |
| 2700 Lemoore Road #B    | 390 West Essex Drive   |
| 2701 Lemoore Road       | 555 West Essex         |
| 2765 Newport Road       |                        |
| 2801 Newport Road       |                        |
| 2815 Newport Road       |                        |
| 2825 Newport Road       |                        |
| 2750 Orion              |                        |

**EXHIBIT A-1**  
**Tidelands Trust Properties,**  
**Cell Tower Properties and**  
**Other City-Owned**  
**Properties**  
  
**[attached]**

# **EXHIBIT A-1**

## **Tidelands Trust Commercial Leases**

Ballena Isle Marina [formerly Marina Operators ]

Coast Guard Island

East Bay Regional Parks District

Encinal Industries I Grand Marina-Harbor Tug

Encinal Marina I Grand Marina

North Waterfront Cove Formerly Encinal Industries dba: Encinal Terminals

Fortmann Basin

Mariner Square Associates

Engine Works Inc.

Pacific Shops I Alameda Marina 1815 Clement & 2033 Clement

Bay Ship & Yacht 2900 Main Street

W.R. Williams Trust

# EXHIBIT A-1

## Cell Site Leases

| <u>TENANT</u>                     | <u>ADDRESS</u>                   |
|-----------------------------------|----------------------------------|
| Amercian Tower Corp.              | Chuck Corica Golf                |
| Amercian Tower Corp.              | Fire Sta #4                      |
| AT&T                              | Krusi Park                       |
| AT&T                              | Leydecker Park                   |
| AT&T Wireless                     | AT&T Mobility 2501 Monarch St.   |
| CC TM PA LLC                      | 1300 Park St.                    |
| GTE: Mobilenet/Crown Castle Intl. | Clubhouse Memorial Dr.           |
| New Cingular Wireless PCS         | AT&T Mobility- 25 W. Pacific Ave |
| Sprint                            | 2595 Mccartney Rd                |
| Sprint                            | Clubhouse Memorial Dr.           |
| Sprint                            | Mastic Senior Center             |
| T Mobile Wireless                 | 900 Mound St.                    |
| SBA                               | 625 W. Ranger                    |

# EXHIBIT A-1

## City of Alameda Leases

| <u>TENANT</u>            | <u>ADDRESS</u>    |
|--------------------------|-------------------|
| Park Street Wine Cellars | 2315 Central Ave. |
| Alameda Theatre          | 2317 Central Ave. |
| Project Burger           | 2319 Central Ave. |
| Grand Edibles            | 300 Island Dr.    |
| Children's Library       | 1429 Oak Street   |
| Carnegie Library         | 1510 Oak Street   |
| Hometown Donuts          | 1930 Main St.     |

## EXHIBIT B

### SERVICES TO BE PERFORMED BY PROVIDER

- a. Appointment of Provider. The City hereby appoints Provider (i) as property manager of the Managed Properties with the responsibilities and upon the terms and conditions outlined in this Agreement and (ii) to perform the Tidelands Management Services, and Provider hereby accepts such appointment.
- b. Property Management of the Managed Properties. Notwithstanding anything to the contrary contained in the Agreement or this Exhibit, the City confirms and acknowledges that as of the date of the Agreement, certain portions of the Managed Properties and the Tidelands Trust Properties are in poor condition and in need of material repairs and replacements and several buildings among the Managed Properties and the Tidelands Trust Properties are currently vacant and abandoned. The Provider shall diligently perform its duties hereunder and shall devote sufficient time and effort to the Managed Properties to ensure that it is managed, leased, operated, maintained and serviced in substantially the same condition as exists as of the date of the Agreement. In addition to providing the Property Management Services (as hereinafter defined), the Provider shall perform the Tidelands Management Services as to the Tidelands Trust Properties.
- c. Specific Management Services. Without limiting the generality of any other term or provision of this Agreement, the Provider shall perform or cause to be performed the following services (the "Property Management Services"). The Property Management Services shall apply only to the Managed Properties and shall be separate from, and in addition to, the Tidelands Management Services.
  - i. *Personnel.* The Provider, as employer, shall hire, pay, supervise and discharge all its employees and the personnel necessary for the operation of the Managed Properties. Such personnel shall, in every instance, be the employees or independent contractors of the Provider and not of the City. Subject to reimbursement as set forth in this Agreement, the salaries, wages, and other compensation and fringe benefits (including, without limitation, workers' compensation and other insurance, employer's and employee's taxes and vacation, hereafter collectively "Wages") of such employees and personnel shall be paid by Provider and reimbursed by the City as provided in the City approved annual budget. Additionally, at the Provider's expense, its executive personnel will be charged with the performance of Provider's obligations under this Agreement and with the general supervision, direction and control of the Managed Properties' personnel. The Provider shall comply with all laws, statutes and ordinances relating to the employment of its employees, including, without limitation, those requiring workers' compensation insurance to cover all of the Provider's employees. The Provider shall remove from the



Managed Properties all persons whom it, in the exercise of its good business judgment, or whom the City, in its reasonable judgment, deems unnecessary or undesirable for the operation and management of the Managed Properties; said removal shall comply with applicable laws, statutes and ordinances.

ii. *Collection and Handling of Money.*

1. The Provider shall diligently undertake the collection of rents and other charges payable by tenants of each of the Managed Properties under the terms of their leases and any sums otherwise payable to the City with respect to each of the Managed Properties. All sums collected by Provider shall be deposited immediately in an interest-bearing account (all interest shall accrue to the benefit of the City), approved by and established in the City's name, for the benefit of, and held in trust for, the City, in a bank which has been approved by the City. Funds collected by Provider from each of the Managed Properties shall not be commingled with any other funds collected by Provider from properties not a part of the Managed Properties. If required by law, Provider shall establish separate accounts for holding tenants' security deposits, and funds in such accounts shall not be commingled with other funds of Provider. Funds may only be withdrawn from the account by Provider for permissible expenditures pursuant to this Agreement.
2. Provider acknowledges that the City has certain regularly scheduled payments that it must make on a regular basis out of the revenues from certain of the Managed Properties, including debt service on bonds. Within fifteen (15) days after the end of each calendar month, Provider shall cause to be disbursed to the City all funds in any of the bank accounts established by Provider (other than any accounts established for the deposit of tenants' security deposits), less any amounts which are necessary in order to meet anticipated expenses of such Properties coming due during the next thirty (30) days, accompanied by the reports required under Section 1.3(d) below.

iii. *Surety Bond.* Employees of Provider who are responsible for, or have access to, money of the City shall be bonded by a fidelity bond company at the expense of Provider or covered under Provider's crime insurance policy. Provider shall provide a crime insurance policy or a surety bond to the City in form, amount, and substance approved by the City's Risk Manager, which at a minimum shall be an amount equivalent to 60-90 days of receipts.

iv. *Books and Records.*

1. Provider shall maintain complete books and records in accordance with generally accepted accounting principles applied on a consistent basis in connection with its management and

operation of each of the Managed Properties and such books and records shall be clearly identified and readily accessible.

2. Provider shall make the books of account and all other records relating to, or reflecting the operation of each of the Managed Properties, including without limitation, computer records and electronic data, all of which Provider agrees to keep safe, available and separate from any records not relating to the Managed Properties, available to the City and its representatives at all reasonable times for examination, audit, inspection and transcription. Provider shall provide access to the City or its respective designees during normal business hours upon request by the City. The records for each of the Managed Properties shall be kept on-site at the principal office of the Provider. The City may examine and audit the records, make any copies or transcripts therefrom it wishes, and inspect all work, data, documents, proceedings, and activities related to this Agreement. Such records shall be kept separate from other documents of Provider and shall be maintained for a period of three (3) years after receipt of final payment. For purposes of this provision, the term "record" shall have the definition it has in the Public Records Act of the State of California (Cal. Gov't. Code Section 6250 *et seq.*).
3. Upon the City's reasonable request, Provider shall deliver to the City copies of any source materials utilized by Provider in preparing the records, books and accounts.
4. Upon termination of the Agreement, Provider, at the City's written request, shall turn over copies of all such books and records to the City.
5. Provider agrees to render to the City on or before the twentieth (20th) day of each calendar month a detailed financial report as specified in Section 6 of the Agreement. Provider shall, at the City's written request (such request to be not less than sixty (60) days), have an annual audit of the books and records of each of the Managed Properties made by a firm of certified public accountants or other auditors approved by the City, which audit shall be certified as to the fairness of the presentation of such financial statements and notes and the preparation thereof in accordance with generally accepted accounting principles applied on a consistent basis, but shall in no event include any tax return preparation relating to each of the Managed Properties. The expense of the annual audit shall be an expense of the City.
6. If supplemental examination or audit of the records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit

of the records determines that there is an error that exceeds 5% of the total annual operating expenses, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

7. Provider will cooperate with, and give reasonable assistance to, any accountant or other person designated by the City to examine such records.

v. *Repairs and Maintenance.*

1. Provider shall cause all repairs and shall cause all maintenance to be performed on the buildings, grounds and other improvements of the Managed Properties necessary to maintain the Managed Properties in good well-maintained condition, in a manner comparable to similar professionally managed developments and any other reasonable standards approved by the City from time to time. Provider shall also use commercially reasonable efforts to perform or furnish any and all emergency repairs or services necessary for the preservation of the Managed Properties or to avoid the suspension of any service to any of the Managed Properties or danger to life or property. Provider shall give prompt notice of any emergency repairs to the City and to make reasonable efforts to secure the City's prior written approval. Emergency repairs or services may be made or furnished by Provider without the City's prior approval, but only if it is not reasonably feasible to secure such prior approval. In any event, Provider shall, not later than two (2) business days after performing or furnishing an emergency repair or service, notify the City of the details and cost thereof. For providing the services of this Section v(1), City shall compensate Provider as provided in the attached Exhibit D, "Construction Management Fees".
2. Notwithstanding the provisions of subsection v(1) above, Provider's obligations for repair and maintenance of any of the Managed Properties shall not include repair and maintenance of utilities located within the public rights of way. The Provider shall maintain, or cause to be maintained, the lateral utility lines from the area on the Managed Properties outside the public rights of way and within the buildings for each of the Managed Properties. The utilities located within the public rights of way (or street areas which are intended to become public rights of way) shall be the responsibility of the City or the responsible utility. For purposes of determining what constitutes "public rights of way," the parties hereto agree the "public rights of way" shall mean the existing roadways up to the curb line. [NOTE TO CITY: Public Works has taken on responsibility for maintenance of sidewalks above the utility lines]

- vi. *Service Contracts.* Subject to the provisions of Section d below, Provider shall enter into, as "RiverRock Real Estate Group, Inc., a California Corporation, as agent for the City of Alameda" as contractor (unless the City otherwise directs), contracts (in the City's approved forms of contract attached hereto as Exhibits C, C-1 and C-2) for the furnishing to the Managed Properties of such utility, maintenance, consulting and other services and for the acquisition of such equipment and supplies as may be necessary for the management, operation, maintenance and servicing of the Managed Properties in accordance with this Agreement. Unless otherwise approved in writing by the City, all such contracts entered into pursuant to this subsection shall be cancelable upon not more than thirty (30) days' prior written notice and shall be assignable to the City, at the City's request. To the extent that any such contracts entered into pursuant to this subsection are required to be in the name of the City, as contractor, such contracts shall be submitted to the City for processing, review and execution by the City. Provider shall be responsible to enforce the terms of, and the performance for, all such contracts entered into pursuant to this subsection. The City shall have the right to enforce the obligations of the contract, whether the contractor is the Provider or the City.
- vii. *Other Services.* Provider shall perform all other services which are normally performed in connection with the operation and management of similar professionally managed developments; and specifically, without limiting the generality of the foregoing, Provider shall perform, without additional charge, all services normally provided to tenants of similar developments.
- viii. *Compliance with Laws, Permits and Licenses.* With regard to the performance of the Property Management Services, Provider shall take such action as may be necessary to comply with all laws, rules and regulations and any and all orders or requirements of any governmental authority having jurisdiction there over affecting the Managed Properties. Provider shall use commercially reasonable efforts to confirm that all use permits necessary for tenancies have been obtained by such tenants. Provider shall not knowingly permit the use of the Managed Properties for any purpose which might void or increase the premiums payable under any insurance policies held by the City. Provider shall obtain and maintain during the term of this Agreement all appropriate permits, certificates and licenses, including, but not limited to, a City of Alameda Business License, that may be required in connection with the performance of services hereunder. To the extent permits, certificates or licenses are necessary for Provider to conduct its operations, the cost of such permits, certificates and licenses shall be at Provider's sole expense and not an expense paid out of revenues from the Managed Properties.
- ix. *Legal Actions.* Any proposed legal action in connection with a tenant, including actions to evict tenants in default and to recover possession of such tenants' premises, shall be referred to the City Attorney's office

acting as general counsel for the City for review and handling. Provider shall have no right to settle, compromise or release such actions or suits or reinstate such tenancies without prior written approval of the City and the City Attorney.

- x. *Notices.* Provider shall promptly deliver to the City all notices received from any contractor, subcontractor, governmental or official entity, any tenant or any other party with respect to the Managed Properties. Provider may sign and serve in the name of the City any and all notices required in connection with the proper performance by Provider of the Property Management Services.
- xi. *Notices of Claim of Injury or Damage.* Provider shall notify the City of any personal injury or property damage occurring to, or claimed by, any tenant or third party on or with respect to the Managed Properties promptly upon obtaining actual knowledge thereof and to promptly forward to the City any summons, subpoena, or legal document served upon the Provider relating to actual or alleged potential liability of the City, the Provider or the Managed Properties within two (2) business days of receipt thereof.
- xii. *Cooperation.* Provider shall give the City all pertinent information in its possession and provide reasonable assistance in the defense or disposition of any claims, demands, suits or other legal proceedings which may be made or instituted by any third party against the City which arise out of any matters relating to the Managed Properties, this Agreement or Provider's performance hereunder.
- xiii. *Leasing.* Provider shall provide those services set forth in Exhibit F attached to and made a part of this Agreement, only in connection with the marketing and leasing of the Cell Towers Properties and the licensing of the Alameda Point Properties, and shall receive, in consideration therefor, the leasing and licensing commissions specified in Exhibit F.
- xiv. *Security.* Provider shall cause to be maintained 24-hour security for the Managed Properties, provided that such security shall be limited to an exterior patrol of the perimeter of the Managed Properties and common areas. Provider shall provide to the City a monthly summary of any incident reports made during such month within ten (10) days following the end of each calendar month. Incident reports shall be provided to the City within 24 hours of the incident.
- xv. *Tenant Relations.* Provider shall make itself fully familiar with the terms and provisions of all leases for areas within the Managed Properties, shall perform all delegable property management duties of the City as landlord under each such lease, so that such lease shall remain in full force and effect, with no default by the City, and shall enforce the full performance of all obligations of the tenant under each such lease. Provider shall maintain business-like relations with tenants, receive requests, complaints and the like from tenants and respond and act upon the foregoing in

reasonable fashion. To ensure full performance by tenants of all of their obligations, Provider shall inspect the Managed Properties on an annual basis, and, if appropriate, shall make demands on any tenants who have not performed in accordance with the terms of such tenant's lease. Provider shall notify all tenants of all rules, regulations, and notices as may be promulgated by the City, governing bodies and insurance carriers. If a lease with any tenant requires that the tenant maintain any insurance coverage, Provider shall obtain insurance certificates and endorsements from such tenant evidencing compliance with the lease terms, and shall promptly notify the City if it is unable to obtain such certificates. Provider shall maintain tenant contact information and notify tenants of special events, utility outages, state power alerts, road closures and street work.

- xvi. *Taxes and Assessments.* Provider, at the City's request, agrees to annually review, and submit a report on all real estate and personal property taxes and assessments affecting the Managed Properties (and if so requested, Provider may engage outside consultants at the City's expense with the City's prior written approval) and to initiate and pursue appeals of same, if so directed by the City.
- xvii. *Inventories and Supplies.* Provider agrees to supervise and purchase, or arrange for the purchase, in an economical manner, of all inventories, provisions, supplies and operating equipment which, in the normal course of business, are necessary and proper to maintain and operate the Managed Properties in a first-class manner.
- xviii. *Hours.* At all times during normal business hours, Provider agrees to be available to, or cause a representative of Provider to be available to, tenants of the Managed Properties.
- xix. *Inspections.*
  - 1. Provider shall inspect or cause to be inspected all exterior areas of the Managed Properties for safety hazards on a monthly basis and shall report on such inspections to the City.
  - 2. Provider shall perform or cause to be performed periodic comprehensive inspections of the Managed Properties, and report on such inspections to the City at least annually. In addition, Provider shall cause to be inspected the roofs of occupied and marketable buildings within the Managed Properties annually and report on such inspections to the City. Notwithstanding the foregoing, City confirms that the roofs of the majority of vacant buildings among the Managed Properties require replacement and Provider shall have no obligation to cause the inspection of the roofs of any vacated or abandoned buildings among the Managed Properties.
  - 3.. Provider shall also inspect or cause to be inspected all premises upon termination of leases, and Provider shall not return security deposits upon the termination of leases until an inspection of the

premises is complete and the cost of repairs and damages has been deducted or otherwise determined.

- xx. *Assistance with Proposed Sale, Financing, Refinancing.* Provider agrees to cooperate with, and assist the City in any attempt by the City to sell, finance or refinance any of the Managed Properties without such cooperation giving rise to compensation. Such cooperation shall include, without limitation, answering prospective purchasers' or lender(s)' questions about the Managed Properties or tenant leases, notifying tenants about the sale of any of the Managed Properties, and obtaining estoppel certificates. When requested by the City, Provider shall prepare a list of all personal property owned by the City and used at any of the Managed Properties or in their operation. Upon request, Provider shall diligently seek to obtain lease estoppel certificates (on a form approved by the City) from tenants for the benefit of the City and/or any proposed purchaser and/or mortgagee.
- d. Construction Management Services. Upon request of City, Provider covenants and agrees to act as construction manager with respect to any tenant improvements, capital improvements and other construction work made to the Property after the Commencement Date, and will supervise, oversee and administer each and every aspect of any such construction work. "Construction work" is defined as any construction, reconstruction or alteration of any improvements constituting part of the Property, but does not include usual maintenance and repairs made to the Property ("Construction Management Services"). Such construction work shall typically relate to work requiring a building permit and/or requiring multiple trades to execute. Provider will be compensated for such construction supervision services as outlined on Exhibit D.
  - i. *Personnel.* Provider shall (a) prepare budgets for the construction of certain capital improvements, capital repairs and tenant improvement work designated by the City (collectively the "Work"), (b) supervise other Consultants (as defined herein) for the Work; and (c) perform such other services as are reasonably requested in writing by the City from time to time in connection with the planning, development and construction of the Work, or as may be necessary to complete the planning, development and construction of the Work. Provider further agrees to perform such other extraordinary services as the City may direct from time to time, in writing, provided that the City shall reimburse Provider for Provider's cost in performing same.
  - ii. *Contracts.* All contracts for the design, development and construction of any improvements for the Work including, without limitation, all contracts with engineers, architects, consultants, designers and contractors (who shall sometimes collectively be referred to herein as the "Consultants") shall be in the name of the City, shall be executed by the City or by "RiverRock Real Estate Group, Inc., a California Corporation as agent for the City of Alameda".

- iii. *Competitive Bidding.* At the request of the City, or in the reasonable discretion of Provider, contracts for the Work shall be awarded on the basis of competitive bidding, solicited in the following manner:
  - 1. A minimum of three (3) written bids shall be obtained for any work over \$5,000;
  - 2. Compliance with the terms and conditions of this Agreement;
  - 3. Each bid will be solicited in a form prescribed by the Provider so that uniformity will exist in the bid quote;
  - 4. Provider shall provide the City with all bid responses accompanied by the Provider's recommendations as to the most acceptable bid. If the Provider advises acceptance of other than the lowest bidding, the Provider shall adequately support, in writing, its recommendations; and
  - 5. The City shall be free to accept or reject any and all bids.
  - 6. The City will communicate in writing to Provider its acceptance or rejection of bids.
- iv. *City Approval of Work Plans and Specifications.* At the request of the City, prior to submitting any of the Work for bid, the City shall approve all plans and specifications relating to the Work and all costs for the completion of any and all plans and specifications shall be deemed to be a part of the Work.
- v. *Provider Contract Administration.* Provider shall administer the various contracts relating to the Work. Provider shall be responsible for keeping the City informed with respect to the progress of the Work. Provider shall not be responsible for (a) the quality or quantity of the Work, nor the construction means, methods, techniques, sequences or procedures employed by contractors in the performance of their contracts; (b) the failure of any contractor to complete the Work in accordance with the contract documents, the acts or omissions of any contractors, subcontractors or their agents or employees, or any other persons performing portions of the Work; (c) any errors, inconsistencies or omissions which may be contained in the plans and specifications relating to the Work; (d) acts or omissions of the City, its agents (other than Provider) and employees; (e) any payments to contractors, subcontractors, materials suppliers or any other parties; (f) any delays in the completion of the Work; (g) the enforcement of any contract pertaining to the Work; (h) adherence to any budget for the completion of the Work; and (i) any other matters not expressly made the responsibility of Provider herein.
- vi. *Provider Progress Payments.* Subject to the provisions herein set forth, and subject to the availability of funds therefor, Provider shall deliver all progress payments to the contractors in accordance with the provisions of the construction contracts relating thereto for Work performed thereunder which is undisputed and in accordance with the plans and specification



relating thereto, and shall make all payments to professionals for services rendered under the professional contracts relating thereto. Notwithstanding the foregoing, the City shall have the right to approve the invoices relating thereto, which invoices shall be prepared by the Provider and shall detail the particular work performed or service rendered, identify the person or firm performing such work or service, and shall set forth the amount due for such work or services; provided, however, the Provider shall have the right, but not the obligation, to pay directly any contractor and/or professional amounts not exceeding Five Thousand Dollars (\$5,000.00) with respect to any such contractor or professional, prior to the City's approval of the invoices relating thereto.

1. Provider may withhold disbursement to any contractor and/or professional for a period of not more than thirty (30) days following the City's approval of the invoice relating thereto if the Provider reasonably deems the performance of such contractor or professional unsatisfactory under the applicable contract.
2. Payment of all sums to the contractors and the professionals for Work performed shall be subject to Section 6 of this Agreement.
3. All construction contracts which are let in accordance with the provisions of this Agreement shall provide for a ten percent (10%) holdback from the amounts due under each progress payment, with the entire amount of the holdback under such contract, subject to the terms and conditions contained in the applicable contract, payable to such contractor or material man within thirty-five (35) days following the recordation of a valid Notice of Completion or upon Provider's review and approval of all project costs.

Notwithstanding anything to the contrary set forth in this subsection (d), "Construction Management Services," the City acknowledges and agrees that the Provider shall in no way be construed to be engaging in the performance of any construction or design activities.



## EXHIBIT C

### **Certification of Compliance With the City of Alameda's Vaccination Requirement**

The City of Alameda ("City") requires all individuals who perform work for the City to be fully vaccinated<sup>1</sup> against COVID-19. All service providers and contractors for the City must sign the following statement certifying compliance with this requirement.

---

By signing below, I certify that all of our personnel who are performing work for the City are fully vaccinated against COVID-19. I also acknowledge that the City reserves the right to review any relevant records to demonstrate our compliance with this requirement.

I declare under penalty of perjury that the foregoing is true and correct.

RiverRock Real Estate Group, Inc.

Date: 1/6/22



By: Steve Core  
Its President

---

<sup>1</sup> For the purposes of this Certification of Compliance, an individual is considered to be fully vaccinated if two weeks have passed since their second dose in a 2-dose series (such as the Pfizer or Moderna vaccines) or if two weeks have passed since receiving their single-dose vaccine (such as Johnson & Johnson's Janssen vaccine).



## EXHIBIT D

### Property Management and Construction Management Fees

#### **Property Management Fee:**

Beginning in October 2021, RiverRock shall be reimbursed a flat monthly fee of \$18,000 for all management and operational oversight of Alameda Point. On each anniversary date, the monthly fee shall be increased by three percent (3%):

Year 2 = \$18,540.00

Year 3 = \$19,096.20

Year 4 = \$19,669.09 (partial)

#### **Salary Reimbursement:**

Salaries for the onsite staff shall be considered a property expense and shall be reimbursed in monthly installments.

#### **Residential Management Fee:**

RiverRock proposes to retain the 3<sup>rd</sup> property residential specialist, Prime Property Group, to oversee the residential component of the assignment. Based on the current fee structure, Prime Property Group is reimbursed at 4% of gross rental income and received 35% of the first month's rent, paid by the tenant, for any lease executed. These costs will be passed through the property with no mark-up/override from RiverRock.

#### **Early Termination:**

In the event, the management agreement is terminated within the first 12 months without cause or due to sale, RiverRock will receive an early termination fee equal to one month management fee.

#### **Construction Management:**

In the event, RiverRock's construction management division is engage to oversee capital or tenant improvements, the following fee schedule will apply:

- 5% on services less than \$100,000 with a \$1,500 minimum fee
- Plus 4% on services from \$100,000 to \$200,000
- Plus 3% on services from \$200,000 to \$500,000
- Plus 2% on services from \$500,000 to \$1,000,000
- Plus 1.75% on services from greater than \$1,000,000

All fees shall be invoices monthly on total job cost with a minimum total fee of \$1,500. Billing will be based on monthly progress payments.

For purposes of calculating construction supervision fees, the term "total project costs" shall mean all costs associated with the applicable project including but not limited to design fees paid to architects, engineers and other design professionals, plan check and permit fees, and reimbursable expenses.

Non-permitted work shall be subject to a fee with prior approval.

## **EXHIBIT E and E-1**

Budgets for Fiscal Years  
FY 2020/2021 and FY 2021/2022 [attached]

## EXHIBIT E

2020/2021 ALAMEDA POINT/TIDELANDS/OTH PROPERTIES BUDGET

**Alameda Point**  
**2020/21 Budget Approval and Variance Comments**

|                                              | 2018/2019<br>Budget<br>Total | 2019/2020<br>Budget<br>Total | 2019/2020<br>Reforecast<br>Total | 2020/21<br>Budget<br>Total | Variance               | Comments                                                                                                                                             |
|----------------------------------------------|------------------------------|------------------------------|----------------------------------|----------------------------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Total Revenue</b>                         | \$ 13,690,456.00             | \$ 15,143,469.00             | \$ 16,039,599.77                 | \$ 16,547,819.43           | \$ 508,219.66          |                                                                                                                                                      |
| <b>Operating Expenses</b>                    |                              |                              |                                  |                            | \$ -                   |                                                                                                                                                      |
| Security/Life Safety                         | \$ 591,093.00                | \$ 602,192.76                | \$ 501,369.51                    | \$ 632,315.59              | \$ (130,946.08)        | Variance due to a combination of timing of expenditures and compensation for potential for larger projects necessitated by aging FLS Infrastructure. |
| Cleaning/Janitorial                          | \$ -                         | \$ -                         | \$ -                             | \$ -                       | \$ -                   |                                                                                                                                                      |
| Repairs & Maintenance                        | \$ 385,612.00                | \$ 351,778.32                | \$ 257,905.52                    | \$ 382,117.38              | \$ (124,211.86)        | Budget category inflated to accommodate larger projects. Any amount not used in current fiscal year will accrue for deferred Maintenance projects.   |
| HVAC                                         | \$ -                         | \$ -                         | \$ -                             | \$ -                       | \$ -                   |                                                                                                                                                      |
| Administrative                               | \$ 816,321.00                | \$ 837,481.32                | \$ 924,723.69                    | \$ 839,945.94              | \$ 84,777.75           | Variance due to construction manager in 2019/2020, but no longer on River/Rock payroll.                                                              |
| General Building Services                    | \$ 113,900.00                | \$ 193,340.00                | \$ 139,798.44                    | \$ 185,540.00              | \$ (45,741.56)         | It is impossible to determine the extent of dumping and debris removal. Costs can vary widely.                                                       |
| Utilities                                    | \$ 68,660.00                 | \$ 104,280.00                | \$ 79,477.10                     | \$ 104,280.00              | \$ (24,802.90)         |                                                                                                                                                      |
| Landscaping                                  | \$ 204,571.00                | \$ 201,790.96                | \$ 161,290.00                    | \$ 201,790.96              | \$ (40,500.96)         |                                                                                                                                                      |
| Management Fees                              | \$ 152,460.00                | \$ 164,880.00                | \$ 164,880.00                    | \$ 164,880.00              | \$ -                   |                                                                                                                                                      |
| Other Recoverable Expenses                   | \$ -                         | \$ -                         | \$ -                             | \$ -                       | \$ -                   |                                                                                                                                                      |
| Other Operating Expenses                     | \$ 1,244,340.00              | \$ 1,024,200.00              | \$ 1,193,751.01                  | \$ 1,180,200.00            | \$ 13,551.01           |                                                                                                                                                      |
| <b>Total Operating Expenses</b>              | <b>\$ 3,574,957.00</b>       | <b>\$ 3,479,943.36</b>       | <b>\$ 3,423,195.27</b>           | <b>\$ 3,691,069.87</b>     | <b>\$ (267,874.60)</b> |                                                                                                                                                      |
| <b>Net Operating Income</b>                  | <b>\$ 10,115,499.00</b>      | <b>\$ 11,663,525.64</b>      | <b>\$ 12,616,404.50</b>          | <b>\$ 12,856,749.56</b>    | <b>\$ 240,345.06</b>   |                                                                                                                                                      |
| <b>Capital Expenditures</b>                  | <b>\$ -</b>                  | <b>\$ -</b>                  | <b>\$ -</b>                      | <b>\$ 33,425.00</b>        | <b>\$ (33,425.00)</b>  |                                                                                                                                                      |
| <b>Total of all Anticipated Expenditures</b> | <b>\$ 3,574,957.00</b>       | <b>\$ 3,479,943.36</b>       | <b>\$ 3,423,195.27</b>           | <b>\$ 3,724,494.87</b>     | <b>\$ (301,299.60)</b> |                                                                                                                                                      |
| <b>Net Income after Expenditures</b>         | <b>\$ 10,115,499.00</b>      | <b>\$ 11,663,525.64</b>      | <b>\$ 12,616,404.50</b>          | <b>\$ 12,823,324.56</b>    | <b>\$ 206,920.06</b>   |                                                                                                                                                      |

Prepared by: Ryan Gaughan Date: \_\_\_\_\_

Reviewed by: Anne Hinz Date: \_\_\_\_\_

Approved by: Nanette Mocanu 8/26/2020  
Nanette Mocanu Date: \_\_\_\_\_



**Tidelands Trust**  
**2020/21 Budget Approval Form**

|                                              | 2019/20<br>Budget<br><u>Total</u> | 2019/20<br>Reforecast<br><u>Total</u> | 2020/21<br>Budget<br><u>Total</u> | 2016/17 Budget<br>2015/16 Reforecast<br><u>Variance</u> | Comments |
|----------------------------------------------|-----------------------------------|---------------------------------------|-----------------------------------|---------------------------------------------------------|----------|
| <b>Total Revenue</b>                         | \$ 763,150                        | \$ 1,546,211                          | \$ 1,601,418                      | 55,207                                                  |          |
| <b>Operating Expenses</b>                    |                                   |                                       |                                   |                                                         |          |
| Security/Life Safety                         | -                                 | 685                                   | -                                 | 685                                                     |          |
| Cleaning/Janitorial                          | -                                 | -                                     | -                                 | -                                                       |          |
| Repairs & Maintenance                        | -                                 | 3,853                                 | 7,000                             | (3,147)                                                 |          |
| HVAC/Elevator                                | -                                 | -                                     | -                                 | -                                                       |          |
| Administrative                               | 31,236                            | 27,701                                | 61,924                            | (34,223)                                                |          |
| General Building Services                    | -                                 | -                                     | -                                 | -                                                       |          |
| Utilities                                    | -                                 | -                                     | -                                 | -                                                       |          |
| Landscaping                                  | -                                 | -                                     | -                                 | -                                                       |          |
| Management Fees                              | 25,200                            | 15,120                                | 15,120                            | -                                                       |          |
| Other Recoverable Expenses                   | -                                 | -                                     | -                                 | -                                                       |          |
| Other Operating Expenses                     | -                                 | -                                     | -                                 | -                                                       |          |
| <b>Total Operating Expenses</b>              | <u>56,436</u>                     | <u>47,359</u>                         | <u>84,044</u>                     | <u>(36,685)</u>                                         |          |
| <b>Net Operating Income</b>                  | <u>706,714</u>                    | <u>1,498,852</u>                      | <u>1,517,374</u>                  | <u>18,522</u>                                           |          |
| <br>Other Expenditures                       | 4,644                             | -                                     | -                                 | -                                                       |          |
| <b>Total of all Anticipated Expenditures</b> | 61,080                            | 47,359                                | 84,044                            | (36,685)                                                |          |
| <b>Net Cash Flow after Expenditures</b>      | <u>\$ 702,070</u>                 | <u>\$ 1,498,852</u>                   | <u>\$ 1,517,374</u>               | <u>18,522</u>                                           |          |

Prepared by:

---

 Ryan Gaughan/Ruby Rubio

Reviewed by:

---

 Anne Hinz

Approved by:

---

 Nanette Mocanu

**EXHIBIT E-1**

**2021/2022 ALAMEDA POINT/TIDELANDS/OTH PROPERTIES BUDGET**

**Alameda Point**  
**2021/22 Budget Approval and Variance Comments**

|                             | 2019/2020<br>Budget<br>Total | 2020/2021<br>Budget<br>Total | 2020/2021<br>Reforecast<br>Total | 2021/22<br>Budget<br>Total | Variance          | Comments                                                                                                                                                        |
|-----------------------------|------------------------------|------------------------------|----------------------------------|----------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Total Revenue               | \$ 15,143,469.00             | \$ 16,519,601.00             | \$ 14,318,741.57                 | \$ 12,954,492.57           | \$ (1,364,249.00) | Budget variance due to lost revenue between Google vacating Bldgs. 11 & 15 and MARAD's reduced fleet and potential termination of lease agreement.              |
| Operating Expenses          |                              |                              |                                  |                            | \$ -              |                                                                                                                                                                 |
| Security/Life Safety        | \$ 602,192.76                | \$ 632,322.00                | \$ 509,431.60                    | \$ 564,215.99              | \$ (54,784.39)    | Reduced expenses in the 2020/2021 Reforecast by deferring non-essential work to accommodate for shortfall in revenue.                                           |
| Cleaning/Janitorial         | \$ -                         | \$ -                         | \$ -                             | \$ 30,480.00               | \$ (30,480.00)    | Variance due to re-allocation of janitorial budget from "Admin-Mgmt Rent's Utility" category to "Cleaning/Janitorial"                                           |
| Repairs & Maintenance HVAC  | \$ 351,778.32                | \$ 382,126.00                | \$ 344,360.71                    | \$ 373,013.90              | \$ (28,653.19)    | Variance due to a reduction in cost associated with backflow preventor and sidewalk maintenance being taken over by PW.                                         |
| Administrative              | \$ 837,481.32                | \$ 839,950.00                | \$ 736,817.02                    | \$ 832,128.11              | \$ (95,311.09)    | Variance due to above mentioned Janitorial re-allocation; cost cutting measures where available and re-allocation of signage from "Admin-Other" to "R&M-Other". |
| General Building Services   | \$ 193,340.00                | \$ 185,540.00                | \$ 157,785.32                    | \$ 175,700.00              | \$ (17,914.68)    | Reduced overall 2021/22 budget due to the fluctuating nature of trash removal. Reduced overall budget due to observed downward trend in removal cost.           |
| Utilities                   | \$ 104,280.00                | \$ 104,280.00                | \$ 96,084.73                     | \$ 147,780.00              | \$ (52,695.27)    | Variance due to increase in utility cost associated with buildings recently vacated by Google, rate increases and new PW fees.                                  |
| Landscaping Management Fees | \$ 201,790.96                | \$ 201,787.00                | \$ 171,635.00                    | \$ 228,093.56              | \$ (56,458.56)    | Increase in 21/22 budget due to cost associated with new landscape contract.                                                                                    |
| Other Recoverable Expenses  | \$ -                         | \$ -                         | \$ -                             | \$ -                       | \$ -              |                                                                                                                                                                 |
| Other Operating Expenses    | \$ 1,024,200.00              | \$ 1,024,200.00              | \$ 1,032,099.51                  | \$ 1,032,688.51            | \$ (589.00)       |                                                                                                                                                                 |
| Total Operating Expenses    | \$ 3,479,943.36              | \$ 3,535,085.00              | \$ 3,212,093.89                  | \$ 3,548,980.06            | \$ (336,886.17)   |                                                                                                                                                                 |
| Net Operating Income        | \$ 11,663,525.64             | \$ 12,984,516.00             | \$ 11,106,647.68                 | \$ 9,405,512.50            | \$ (1,701,135.18) |                                                                                                                                                                 |
| Capital Expenditures        | \$ -                         | \$ 33,425.00                 | \$ 40,652.42                     | \$ 35,953.00               | \$ 4,699.42       | Variance due to lower projected license fees due to Covid-19 restrictions                                                                                       |
|                             | \$ 3,479,943.36              | \$ 3,568,510.00              | \$ 3,252,746.31                  | \$ 3,584,933.06            | \$ (332,186.75)   |                                                                                                                                                                 |
|                             | \$ 11,663,525.64             | \$ 12,951,091.00             | \$ 11,065,995.26                 | \$ 9,369,569.50            | \$ (1,696,435.76) |                                                                                                                                                                 |

10/19/21  
 Date

Date

Approved by:

Nanette Mocanu

Date



**OTH Other Properties**  
**2021/22 Budget Approval Form**

|                               | <u>2020/21<br/>Budget<br/>Total</u> | <u>2020/21<br/>Reforecast<br/>Total</u> | <u>2021/22<br/>Budget<br/>Total</u> | <u>Variance</u> | <u>Comments</u> |
|-------------------------------|-------------------------------------|-----------------------------------------|-------------------------------------|-----------------|-----------------|
| Total Revenue                 | \$ 730,398.71                       | \$ 731,961.92                           | \$ 731,962.06                       | \$ 0.14         |                 |
| Operating Expenses            |                                     |                                         |                                     |                 |                 |
| Management Fees               | \$ -                                | \$ -                                    | \$ -                                | \$ -            |                 |
| Total Operating Expenses      | \$ -                                | \$ -                                    | \$ -                                | \$ -            |                 |
| Net Operating Income          | \$ 730,398.71                       | \$ 731,961.92                           | \$ 731,962.06                       | \$ 0.14         |                 |
| Major Expenditures            | \$ -                                | \$ -                                    | \$ -                                | \$ -            |                 |
| Net Income after Expenditures | \$ 730,398.71                       | \$ 731,961.92                           | \$ 731,962.06                       | \$ 0.14         |                 |

Prepared by:

[Redacted Signature]

Date

8/31/21

Reviewed by:

[Redacted Signature]

Date

8/31/21

Approved by:

[Redacted Signature]

Date

8/31/21

## EXHIBIT F

### Leasing, Licensing and Commissions

#### I. LEASING AND LICENSING.

1.1 Leasing and Licensing Services. The City hereby engages the Property Manager as the exclusive leasing broker for the purpose of leasing those portions of the Cell Towers Properties which may be available for lease during the term of this Agreement. The City hereby engages the Property Manager as the exclusive licensing broker for the purpose of licensing those portions of the Alameda Point Properties which may be available for licensing during the term of this Agreement. As to both, Property Manager shall:

(a) Diligently pursue new, renewal, extension and replacement tenants/licensees for premises within the Cell Towers Properties (leases) and the Alameda Point Properties (licenses) on the best terms available in the market.

(b) Investigate prospective tenants/licensees as to their credit-worthiness and reputation in business and ethical matters. Such investigation shall include, without limitation, a review of the records of governmental agencies having jurisdiction over the use, generation, storage, transportation and disposal of hazardous wastes and materials and oil. If during the term of this Agreement, Property Manager becomes aware of the existence or the likely existence of hazardous materials, Property Manager shall immediately notify the City of the condition, both orally and in writing. licensees.

(c) Negotiate lease/license terms with prospective and renewal tenants and licensees.

(d) Prepare and present proposed leases and licenses (including amendments and renewals) to the City for approval.

1.2 Right to Approve. The City shall have the right, in its sole discretion, to approve the terms, conditions and form of any proposed lease and proposed license (including amendments and renewals) and to approve any prospective tenants or licensee.

#### 1.3 Outside Brokers.

(a) If any outside brokers are engaged in obtaining any new tenant or licensee of any of the Cell Tower Property (lease) or Alameda Point Properties (license) on behalf of, or in conjunction with, the Property Manager, and a commission is due hereunder, the Property Manager shall negotiate the fee payable to such broker and pay any portion of its commission payable to such broker pursuant to its agreement with such broker.

(b) If an outside broker is involved and is unwilling to accept payment of its commission in the same manner as Property Manager will be paid pursuant to Article II of this Exhibit D, then on a case-by-case basis, Property Manager may request the City's prior written approval for Property Manager to pay such outside broker in an alternative manner. The following example is provided as an illustration of an alternative payment request which may arise: An outside tenant's broker may request payment of its commission from Property Manager as 50% on execution of the lease and 50% on occupancy of the new lease. If the City consents in writing to Property Manager's paying the outside broker as it requested, then Property Manager will provide an invoice to the City requesting an advance of a portion of the Property Manager's commission, which Property Manager will pay to the outside broker. Subsequently and pursuant to Article II of this Exhibit D, Property Manager will provide monthly invoices to the City reduced by the amount of the advance paid by the City in the manner approved by the City in writing.

(c) Notwithstanding anything to the contrary in the foregoing, Property Manager shall be responsible for payment of any commissions or brokerage fees to outside brokers and the City shall not be liable to any outside broker for any commissions or brokerage fees which may arise as a result of Property Manager's agreements with outside brokers.

#### 1.4 Reports.

(a) Leasing Status Reports. On or before the fifteenth day of each month, the Property Manager shall deliver to the City for each lease area within the Cell Tower Properties a leasing status report for the preceding month. The leasing status report shall identify, with square footage and locations specified, all areas occupied under leases which are expected to terminate or which contain termination options exercisable during the ensuing twelve months.

(b) Prospective Tenants. With respect to prospective tenants, the lease status report shall include the tenant's name; proposed terms of the lease, including base rent, term, free-rent periods, escalation provisions, projected occupancy date, tenant furnish allowance or estimated tenant finish cost and options; size of premises to be leased.

## II. LEASING AND LICENSING COMMISSIONS.

### 2.1 Compensation for Leasing or Licensing.

(a) Subject to Section 2.3 below, the Property Manager shall be entitled to a leasing or licensing commission with respect to any lease or license entered into during the Term of this Agreement, when (i) the lease/license has been fully executed, and (ii) the tenant/licensee takes occupancy of the leased/licensed premises. The City acknowledges that Property Manager may pay a portion of its commission to outside brokers pursuant to Section 1.3 above.

(b) Subject to the terms and conditions of Section 2.4 below and in accordance with the method of calculation illustrated by examples set forth in Section 2.3 below:

(i) payment by the City of the leasing commission to the Property Manager shall be made ratably only out of payments of Fixed Annual Minimum Rent (as hereinafter defined) made by the tenant in equal monthly installments over the term of the lease commencing on the date that the conditions set forth in Section 2.1(a)(i) and (ii) of this Exhibit D; and

(ii) the amount of such leasing commission shall be: (A) five percent (5%) of the Fixed Annual Minimum Rent for the first five (5) years of the initial term of the lease, and (B) as applicable, two and one-half percent (2-1/2%) of the Fixed Annual Minimum Rent for the second five (5) years of the initial term of the lease; excluding any renewal, extension or expansion options included in such lease, any period of free rent and any period after the tenant may, at its option, terminate the lease.

(c) "Fixed Annual Minimum Rent" shall mean the base rent payable by the tenant, excluding any payments for real estate taxes, operating expenses, insurance or other such payments payable by the tenant or rent payments intended to amortize tenant improvement investments. Further, any other rent abatements or tenant concessions shall be deducted in calculating the amount of Fixed Annual Minimum Rent on which the commission is payable.

## 2.2 Renewals.

(a) Subject to the terms and conditions of Section 2.4 below and in accordance with the method of calculation illustrated by examples set forth in Section 2.3 below, a leasing commission equal to two and one-half percent (2-1/2%) of the Fixed Annual Minimum Rent payable for the first five (5) years of the renewal term shall be earned by the Property Manager for any renewal or extension of the term or expansion of the premises of any lease, and shall be payable ratably out of payments of Fixed Annual Minimum Rent made by the tenant under such lease renewal in equal monthly installments over the lease renewal term commencing on the date that conditions set forth in Section 2.1(a)(i) and (ii) of this Exhibit D have been satisfied as to such renewal, extension or expansion, as applicable.

(b) More than one lease renewal term for a lease, shall be subject to the prior written approval of the City.

**2.3 Payment Terms.** The parties hereto contemplate payment of the leasing commissions will be payable only out of rental payments from tenants actually received (except as approved in writing by the City pursuant to Section 1.3(b) of this Exhibit D). Accordingly, the Property Manager has agreed to the



foregoing schedule of payments set forth in Sections 2.1 and 2.2 of this Exhibit D calculated in accordance with the illustrative examples set forth below (subject to reduction pursuant to any alternative arrangement approved in writing by the City pursuant to Section 1.3(b) of this Exhibit D).

(a) Commissions for New Leases-Examples.

3 year new lease: Property Manager will provide monthly invoices to the City for 5% of the Fixed Annual Minimum Rent for months 1 through 36 of the lease.

7 year new lease: Property Manager will provide monthly invoices to the City for: (i) 5% of the Fixed Annual Minimum Rent for months 1 through 60 of the lease; then (ii) 2-1/2% of the Fixed Annual Minimum Rent for months 61 through 84 of the lease.

12 year new lease: Property Manager will provide monthly invoices to the City for: (i) 5% of the Fixed Annual Minimum Rent for months 1 through 60 of the lease; then (ii) 2-1/2% of the monthly Fixed Annual Minimum Rent for months 61 through 120 of the lease. No commission will be charged or payable for months 121 through 144 of the lease.

20 year new lease: Property Manager will provide monthly invoices to the City for: (i) 5% of the Fixed Annual Minimum Rent for months 1 through 60 of the lease; then (ii) 2-1/2% of the monthly Fixed Annual Minimum Rent for months 61 through 120 of the lease. No commission will be charged or payable for months 121 through 240 of the lease.

(b) Commissions for Renewals of Existing Leases – Examples.

3 year existing lease renewal: Property Manager will provide monthly invoices to the City for 2-1/2% of the Fixed Annual Minimum Rent for months 1 through 36 of the lease renewal term.

7 year existing lease renewal: Property Manager will provide monthly invoices to the City for 2-1/2% of the Fixed Annual Minimum Rent for months 1 through 60 of the 7-year lease renewal term. No commission will be charged or payable for months 61 through 84 of the 7-year lease renewal term.

Two 5-year options to renew existing lease: If the tenant exercises the first 5-year option to renew, Property Manager will provide monthly invoices to the City for 2-1/2% of Fixed Annual Minimum Rent for months 1 through 60 of the first 5-year lease renewal term. Then if the tenant exercises the second 5-year option to renew, Property Manager will provide monthly invoices to the City for 2-1/2% of Fixed Annual Minimum Rent for months 1 through 60 of the second 5-year lease renewal term.

(c) Commissions for New Leases Plus Renewals-Examples.

5-year new lease plus one 5-year option to renew: Property Manager will provide monthly invoices to the City for 5% of the Fixed Annual Minimum Rent for months 1 through 60 of the new 5-year lease. Then if the tenant exercises the option to renew, Property Manager will provide monthly invoices to the City for 2-1/2% of Fixed Annual Minimum Rent for months 1 through 60 of the 5-year lease renewal term.

7-year new lease plus one 5-year option to renew: Property Manager will provide monthly invoices to the City for: (i) 5% of the Fixed Annual Minimum Rent for months 1 through 60 of the new 5-year lease; then (ii) 2-112% of the Fixed Annual Minimum Rent for months 61 through 84 of the new 5-year lease. Then if the tenant exercises the option to renew, Property Manager will provide monthly invoices to the City for 2-1/2% of Fixed Annual Minimum Rent for months 1 through 60 of the 5-year lease renewal term.

10-year new lease plus one 7-year option to renew: Property Manager will provide monthly invoices to the City for: (i) 5% of the Fixed Annual Minimum Rent for months 1 through 60 of the new 10-year lease; then (ii) 2-112% of the monthly Fixed Annual Minimum Rent for months 61 through 120 of the new 10-year lease. Then if the tenant exercises the 7-year option to renew, Property Manager will provide monthly invoices to the City for 2-1/2% of Fixed Annual Minimum Rent for months 1 through 60 of the 7-year lease renewal term. No commission will be charged or payable for months 61 through 84 of the 7-year lease renewal term.

10-year new lease plus two 5-year options to renew: Property Manager will provide monthly invoices to the City for: (i) 5% of the Fixed Annual Minimum Rent for months 1 through 60 of the new 10-year lease; then (ii) 2-112% of the monthly Fixed Annual Minimum Rent for months 61 through 120 of the new 10-year lease. Then if tenant exercises the first 5-year option to renew, Property Manager will provide monthly invoices to the City for 2-1/2% of Fixed Annual Minimum Rent for months 1 through 60 of the first 5-year lease renewal term. Then if the tenant exercises the second 5-year option to renew, Property Manager will provide monthly invoices to the City for 2-1/2% of Fixed Annual Minimum Rent for months 1 through 60 of the second 5-year lease renewal term.

2.4 Special Circumstances. The amount of leasing commission payable by the City to the Property Manager pursuant to Sections 2.1, 2.2 and 2.3 of this Exhibit D shall be subject to the following qualifications:

(a) If, prior to the termination of the initial term of its lease, an existing tenant relocates within the Managed Property in which the tenant was an existing tenant, the commission applicable to the portion of the relocation lease

term equal to the unexpired term of the original lease shall be based upon the increase, if any, in the rent.

(b) The commission due for any expansion by an existing tenant shall be based upon the net overall increase in rent payable by the tenant; and if another tenant vacates its space prior to the expiration of its lease term to permit such expansion, the rent upon which the commission is based shall be reduced by the vacating tenant's rent for the period of such unexpired term.

(c) If upon expiration of its existing lease, an existing tenant relocates to another space in the Managed Property in which the tenant was an existing tenant, the commission applicable to such lease shall be calculated as though the lease was a renewal as provided in Section 2.2 of this Exhibit D.

(d) The rent upon which the commission is based shall be reduced by the total amount of any rent payable to a tenant by the City for space subleased back to the City.

(e) No commission shall be paid to the Property Manager with respect to any lease for any period after ten (10) years from the initial occupancy of a tenant in a Cell Tower Properties, except commissions for renewals pursuant to Section 2.2 of this Exhibit D.

(t) No commission shall be payable to the Property Manager with respect to any lease or other occupancy agreement for the City or any of their related agencies, or Property Manager.

### III. ENTIRE COMPENSATION.

Except as expressly set forth herein, no leasing or licensing commission, finder's fee, broker's fee or other type of commission shall be payable to the Property Manager for any lease, ground lease, sale, conveyance, or transfer of the Cell Towers Properties or the Alameda Point Properties or any interest in the Cell Towers Properties or the Alameda Point Properties, or for any financing or refinancing of the Cell Towers Properties or the Alameda Point Properties.

