

**RECORDING REQUESTED BY:**

United States Navy  
BRAC Program Management Office West  
33000 Nixie Way  
Building 50, Suite 207  
San Diego, California 92147  
Attention: Amy Jo Hill  
Real Estate Contracting Officer

**WHEN RECORDED MAIL TO:**

Alameda City Hall  
2263 Santa Clara Avenue  
Alameda, CA 94501-4456  
Attention: Jill B. Keimach  
City Manager

Exempt from documentary transfer tax pursuant to California  
Revenue and Taxation Code §11922. Exempt from recording fees  
pursuant to California Government Code §27383. Governmental  
agency acquiring title.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: [REDACTED]

**QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTION PURSUANT TO**  
**CALIFORNIA CIVIL CODE SECTION 1471**  
**FOR PARCEL ALA-78-EDC AT FORMER NAS ALAMEDA**

This Quitclaim Deed is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the United States of America, acting by and through the Department of the Navy, hereinafter called the **GRANTOR or United States**, and the **City of Alameda, California, Successor in Interest to the Alameda Reuse and Redevelopment Authority**, hereinafter called the **GRANTEE**.

**WITNESSETH:**

**WHEREAS**, the Secretary of the Navy is authorized to convey surplus property at a closing installation to the recognized Local Redevelopment Authority ("LRA") for economic development purposes pursuant to Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, 10 U.S.C. Section 2687 note); as amended by Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65); and

**WHEREAS**, the former Naval Air Station Alameda ("NAS Alameda") was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Pub. L. No. 101-510) and is no longer required for military purposes; and

*Mail tax statements to: See mail to address above*

1       **WHEREAS**, in 1996, the Alameda Reuse and Redevelopment Authority (“ARRA”), as  
2 the recognized LRA at the time, prepared and adopted the NAS Alameda Community Reuse Plan  
3 (as amended, “Reuse Plan”) and thereafter applied for a No-Cost Economic Development  
4 Conveyance (“EDC”) to acquire portions of NAS Alameda (the “EDC Property”) for development  
5 in accordance with the Reuse Plan, which was approved. The ARRA and the GRANTOR entered  
6 into a Memorandum of Agreement regarding the terms of a no-cost EDC in 2000 (“EDC MOA”),  
7 and in 2011 agreed to a term sheet for the amendment of that agreement. The parties subsequently  
8 executed Amendment 2 to the EDC MOA (January 3, 2012) to implement the agreements  
9 contained in the term sheet. In 2012, ARRA assigned its rights and obligations under the EDC  
10 MOA, as amended, to the City of Alameda, and the City of Alameda became the federally  
11 recognized LRA for NAS Alameda (March 9, 2012); and  
12

13       **WHEREAS**, the GRANTEE and the State of California, acting by and through the State  
14 Lands Commission, entered into the Naval Air Station Alameda Title Settlement and Exchange  
15 Agreement (“Exchange Agreement”) approved on October 19, 2012, which settled a land and  
16 boundary dispute between them and resolved the status and disposition of certain lands in the City  
17 of Alameda, County of Alameda, State of California; and  
18

19       **WHEREAS**, the EDC Property includes Parcel ALA-78-EDC, hereinafter referred to as  
20 the “Property”, and is more particularly described in Exhibit “A”, attached hereto and made a part  
21 hereof; and  
22

23       **WHEREAS**, the Final Comprehensive Environmental Response, Compensation and  
24 Liability Act (“CERCLA”) Record of Decision for Installation Restoration Site for OU-2C Drain  
25 Lines Located Outside of Buildings 5 and 10 was issued by the GRANTOR in [REDACTED],  
26 201 [REDACTED] (“Final ROD”); and  
27

28       **WHEREAS**, the GRANTOR has completed remedial actions on the Property to be  
29 conveyed to GRANTEE that are necessary to provide the covenants required by CERCLA, 42  
30 U.S.C. Section 9620(h)(3)(A)(ii)(I); and  
31

32       **WHEREAS**, the GRANTOR has found and determined that the Property to be conveyed  
33 to GRANTEE is suitable for transfer pursuant to a Finding of Suitability for Transfer Phase 3A for  
34 Former Naval Air Station Alameda, Alameda Point, Alameda, California dated [REDACTED]  
35 (FOST), on file with the Clerk of the City of Alameda and the City of Alameda Community  
36 Development Department Permit Center; and  
37

38       **WHEREAS**, GRANTOR has determined pursuant to applicable Federal statutes and  
39 regulations and California Civil Code Section 1471 that it is reasonably necessary to impose  
40 certain restrictions on the use of portions of the Property to protect present and future human health  
41 or safety or the environment as a result of the presence of hazardous materials on portions of the  
42 Property described hereinafter with particularity; and  
43

44       **WHEREAS**, at such time as the Property is conveyed from the United States to the City  
45 of Alameda, as the Successor in Interest to the Alameda Reuse and Redevelopment Authority, that

1 certain *Lease in Furtherance of Conveyance between the United States of America and the*  
2 *Alameda Reuse and Redevelopment Authority for the Former Naval Air Station, Alameda*, dated  
3 June 6, 2000, as amended (“LIFOC”), shall terminate with regard to such Property.  
4

5 **NOW THEREFORE**, the GRANTOR, for good and valuable consideration, the receipt  
6 and sufficiency of which is hereby acknowledged, does hereby remise, release and forever  
7 quitclaim to the GRANTEE, all of GRANTOR’S right, title and interest in and to the Property:  
8

9 **I. TOGETHER WITH** all buildings and improvements located thereon, and all rights,  
10 tenements, hereditaments, and appurtenances belonging, or in any wise appertaining, including  
11 fixtures, structures, mineral rights, water rights, the banks, beds and waters of any streams, rivers  
12 or lakes upon said Property, appurtenant easements, rail lines and utility lines, alleys, roads, streets  
13 ways, strips, gores or railroad rights of way upon said Property, and any means of ingress and  
14 egress appurtenant thereto.

15 **II. SUBJECT TO THE FOLLOWING NOTICES, COVENANTS,**  
16 **RESTRICTIONS, AND CONDITIONS**, which shall be binding upon and enforceable against  
17 the GRANTEE, its successors and assigns, in perpetuity:

18 **A.** The GRANTEE agrees to accept conveyance of the Property subject to all  
19 covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and  
20 encumbrances of record that pertain to the Property.

21 **B.** Reserved.

22 **C.** A FOST has been completed and an Environmental Baseline Survey  
23 (“EBS”) report is referenced in the FOST. The FOST and EBS reference environmental conditions  
24 on the Property and on other property not subject to this Quitclaim Deed. The FOST sets forth  
25 the basis for the GRANTOR’s determination that the Property is suitable for transfer. GRANTEE  
26 acknowledges that it has received copies of the FOST and the EBS; that it is aware of the  
27 notifications therein; and that all documents referenced therein have been made available to  
28 GRANTEE for inspection and copying.

29 **D.** The GRANTEE acknowledges that it has inspected, is aware of, and accepts  
30 the condition and state of repair of the Property, and, except as otherwise provided herein, or as  
31 otherwise provided by law, that the Property is conveyed “AS IS” and “WHERE IS” without any  
32 representation, promise, agreement, or warranty on the part of the GRANTOR regarding such  
33 condition and state of repair, or regarding the making of any alterations, improvements, repairs or  
34 additions. The GRANTEE further acknowledges that the GRANTOR shall not be liable for any  
35 latent or patent defects in the Property except to the extent required by applicable law.  
36

37 **E. LEAD BASED PAINT (LBP).**  
38

39 1. The Property may include improvements that are presumed to  
40 contain LBP because they are thought to have been constructed prior to 1978. Lead from paint,  
41 paint chips, and dust can pose health hazards if not managed properly. Pursuant to 40 CFR Section

1 745.113 and the FOST, the following notice is provided: “Every purchaser of any interest in  
2 residential real property on which a residential dwelling was built prior to 1978 is notified that  
3 such property may present exposure to lead from lead-based paint that may place young children  
4 at risk of developing lead poisoning. Lead poisoning in young children may produce permanent  
5 neurological damage, including learning disabilities, reduced intelligence quotient, behavioral  
6 problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women.  
7 The seller of any interest in residential real property is required to provide the buyer with any  
8 information on lead-based paint hazards from risk assessments or inspections in the seller's  
9 possession and notify the buyer of any known lead-based paint hazards. The GRANTEE will be  
10 responsible for managing all lead-based paint and potential lead-based paint in compliance with  
11 all applicable federal, state and local laws and regulations.”  
12

13 2. The GRANTEE shall be responsible for managing all lead-based  
14 paint and potential lead-based paint hazards, including soil lead hazards that arise after the date of  
15 transfer, in compliance with the Residential Lead Based Paint Hazard Reduction Act of 1992, 42  
16 U.S.C. Section 4852d (“Title X”) and all applicable federal, state and local laws and regulations.  
17 The GRANTEE shall conduct soil sampling and, if necessary, remediation after demolition and  
18 removal of demolition debris and prior to occupancy of any newly constructed dwelling units in a  
19 manner consistent with Title X and Department of Housing and Urban Development guidelines.

20 3. The GRANTEE hereby acknowledges the required disclosure of the  
21 presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978 in  
22 accordance with Title X. The GRANTOR agrees that it has provided to GRANTEE, and  
23 GRANTEE acknowledges the receipt of, available records and reports pertaining to LBP and/or  
24 LBP hazards and receipt of the Environmental Protection Agency (EPA) approved pamphlet  
25 “Protect Your Family from Lead in Your Home” (EPA 747-K-94-001). Furthermore, the  
26 GRANTEE acknowledges that it has read and understood the EPA pamphlet.

27 4. The GRANTEE covenants and agrees that, in any improvements on  
28 the Property defined as target housing by Title X and constructed prior to 1978, LBP hazards will  
29 be disclosed to potential occupants in accordance with Title X before use of such improvements  
30 as a residential dwelling (as defined in Title X). Further, the GRANTEE covenants and agrees  
31 that LBP hazards in target housing will be abated in accordance with Title X before use and  
32 occupancy as a residential dwelling, in accordance with applicable laws. “Target housing” means  
33 any housing constructed prior to 1978, except housing for the elderly or persons with disabilities  
34 (unless any child who is less than six (6) years of age resides, or is expected to reside, in such  
35 housing) or any zero-bedroom dwelling.

1                     5.       The GRANTEE covenants and agrees that in its use and occupancy  
2 of the Property, it will comply with Title X and all applicable Federal, State, and local laws relating  
3 to LBP. The GRANTEE acknowledges that the GRANTOR assumes no liability for damages for  
4 personal injury, illness, disability, or death to the GRANTEE, or to any other person, including  
5 members of the general public, arising from or incident to the purchase, transportation, removal,  
6 handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever  
7 with LBP on the Property, arising after the conveyance of the Property from the GRANTOR to  
8 the GRANTEE, whether the GRANTEE has properly warned, or failed to properly warn, the  
9 persons injured.

10                    6.       The GRANTOR shall provide a Notice of Release, in recordable  
11 form, to the GRANTEE when demolition of the building or buildings on the Property containing  
12 LBP have been completed and the appropriate Federal, State or local regulatory agency(s) have  
13 concurred in writing that LBP has been removed from the buildings in accordance with all  
14 applicable Federal, State, and local laws and regulations. This Notice of Release shall be deemed  
15 to remove all notices and restrictions relating to LBP from applicable portions of the Property.

16                   **F.       ASBESTOS CONTAINING MATERIALS.**

17                    1.       The GRANTEE is hereby informed and does hereby acknowledge  
18 that hazardous materials in the form of asbestos or asbestos containing materials ("ACM") have  
19 been found and are otherwise presumed to exist in buildings and structures on the Property. The  
20 EBS and FOST disclose the presence of known asbestos or ACM hazards in such buildings and  
21 structures on the Property.

22                    2.       The GRANTEE covenants that it will prohibit occupancy and use of  
23 buildings and structures, or portions thereof, containing known friable ACM prior to abatement of  
24 the friable ACM or demolition of the building or structure, as may be required by applicable law.  
25 In connection with its use and occupancy of the Property, including, but not limited to, demolition  
26 of buildings and structures containing asbestos or ACM, GRANTEE will comply with all  
27 applicable Federal, State and local laws relating to asbestos or ACM.

28                    3.       The GRANTEE acknowledges that the GRANTOR assumes no  
29 liability for damages for personal injury, illness, disability, or death to the GRANTEE, its  
30 employees, invitees, or to any other person, including members of the general public, arising from  
31 or incident to GRANTEE's purchase, transportation, removal, handling, use, disposition, or other  
32 activity causing or leading to contact of any kind whatsoever with ACM in the structures on the  
33 Property, arising after the conveyance of the Property from GRANTOR to GRANTEE, whether  
34 the GRANTEE has properly warned, or failed to properly warn the persons injured.

35                    4.       The GRANTOR shall provide a Notice of Release, in recordable  
36 form, to the GRANTEE when demolition of the building or buildings on the Property containing  
37 ACM have been completed and the appropriate Federal, State or local regulatory agency(s) have  
38 concurred in writing that ACM has been removed from the buildings and structures in accordance  
39 with all applicable Federal, State, and local laws and regulations. This Notice of Release shall be

deemed to remove all notices and restrictions relating to ACM from applicable portions of the Property.

**G. Property Covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)):** For the Property, the GRANTOR provides the following notice, description, and covenants and retains the following access rights:

**1. Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)):** Pursuant to section 120(h)(3)(A)(i)(I) and (II) of CERCLA (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in Exhibit "B", attached hereto and made a part hereof, and further described in the FOST.

**2. Description of Remedial Action Taken, if Any, Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)):** Pursuant to section 120(h)(3)(A)(i)(III) of CERCLA (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit "B", attached hereto and made a part hereof, and further described in the FOST.

**3. Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii) and (B)):** Pursuant to section 120(h)(3)(A)(ii) and (B) of CERCLA (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)), the United States warrants that:

(a) all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of CERCLA remaining on the Property has been taken before the date of this Quitclaim Deed, and

(b) any additional remedial action found to be necessary after the date of this Quitclaim Deed shall be conducted by the United States. This covenant shall not apply to the extent that the GRANTEE caused or contributed to any release or threatened release of any hazardous substance, pollutant, or contaminant.

**4. Access Rights Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(iii)):** The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of

1 access includes, without limitation, the right to perform any environmental investigation, survey,  
2 monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or  
3 pumping wells or other treatment facilities, response action, corrective action, or any other action  
4 necessary for the United States to meet its responsibilities under applicable laws and as provided  
5 for in this instrument. Such easement and right of access shall be binding on the GRANTEE and  
6 its successors and assigns and shall run with the land.

7 In exercising such easement and right of access, the United States shall provide the  
8 GRANTEE or its successors or assigns, as the case may be, with reasonable notice of its intent to  
9 enter upon the Property and exercise its rights under this clause, which notice may be severely  
10 curtailed or even eliminated in emergency situations. The United States shall use reasonable  
11 means to avoid and to minimize interference with the GRANTEE's and the GRANTEE's  
12 successors' and assigns', as the case may be, quiet enjoyment of the Property. At the completion  
13 of work, the work site shall be reasonably restored. Such easement and right of access includes  
14 the right to obtain and use utility services, including water, gas, electricity, sewer, and  
15 communications services available on the Property at a reasonable charge to the United States.  
16 Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be  
17 due the GRANTEE, nor its successors and assigns, for the exercise of the easement and right of  
18 access hereby retained and reserved by the United States.

19  
20 In exercising such easement and right of access, neither the GRANTEE nor its successors  
21 and assigns, as the case may be, shall have any claim at law or equity against the United States or  
22 any officer or employee of the United States based on actions taken by the United States or its  
23 officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with  
24 this clause: Provided, however, that nothing in this clause shall be considered as a waiver by the  
25 GRANTEE and its successors and assigns, as the case may be, of any remedy available to them  
26 under the Federal Tort Claims Act.

27  
28 **H. MARSH CRUST/SUBTIDAL ZONE SOIL MANAGEMENT**  
29 **REQUIREMENTS.** "Marsh Crust" is defined as the underground layer that is the remnant of the  
30 tidal marsh that existed along the shoreline of Alameda Island before filling to create additional  
31 dry land. "Subtidal Zone" is defined as the underground layer that is the pre-filling San Francisco  
32 Bay floor extension of the historic marsh. These layers form a single continuous underground  
33 layer that extends Bayward of the original mean high tide line of Alameda Island before filling  
34 and contains hazardous materials and hazardous substances, pollutants, and contaminants that were  
35 retained in the historic marsh and Subtidal Zone before filling. The GRANTEE covenants and  
36 agrees that it shall comply with City of Alameda Ordinance No. 2824 regarding Excavation Into  
37 the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda and Fleet and Industrial  
38 Supply Center, Alameda Annex and Facility. GRANTEE will record that certain Covenant to  
39 Restrict Use of Property (Environmental Restriction) (the "Marsh Crust Covenant"), in  
40 substantially the same form as Exhibit "C" attached hereto, by and between the City of Alameda,  
41 as Covenantor, and the Department of Toxic Substances Control (DTSC) (which is a part of  
42 California Environmental Protection Agency), as Covenantee, which sets forth restrictions  
43 applicable to the Marsh Crust/Subtidal Zone covered by this paragraph, immediately following  
44 conveyance of the Property. GRANTOR and GRANTEE intend that the restrictions set out in this

1 paragraph, which are enforceable by the GRANTOR, shall be interpreted in a manner that is  
2 consistent and not in conflict with the restrictions set forth in the Marsh Crust Covenant which is  
3 enforceable by DTSC. A failure to enforce the Marsh Crust Covenant by DTSC shall not preclude  
4 the GRANTOR from enforcing this restriction.

5  
6 **I. RESERVATION OF ACCESS TO MONITORING**  
7 **WELLS/PROHIBITION AGAINST DISTURBANCE.** Pursuant to California Civil Code  
8 Section 1471, GRANTEE agrees, as a covenant running with the land, that GRANTOR, or its  
9 officers, agents, employees, contractors and subcontractors, shall have the right to enter upon the  
10 Property to perform any installation, removal, repair, operation and maintenance of groundwater  
11 monitoring wells located on the Property. The GRANTEE further agrees, as a covenant running  
12 with the land, that GRANTEE shall not alter, disturb, or remove any groundwater monitoring  
13 wells, associated equipment or security features (such as locks on monitoring wells, site fencing,  
14 or signs) without prior review and written approval by GRANTOR. In the event that GRANTEE  
15 alters, disturbs or removes any groundwater monitoring well, associated equipment or security  
16 feature required for groundwater monitoring by GRANTOR, GRANTEE shall repair or replace  
17 such monitoring well, site fencing or security feature, as the case may be, at its sole cost and  
18 expense. GRANTOR agrees to use reasonable means to avoid and to minimize interference with  
19 the GRANTEE's quiet enjoyment of the Property so as to not unreasonably interfere with  
20 GRANTEE's operations on or other uses of the Property. If at any future time, GRANTEE  
21 determines that the monitoring wells unduly interfere with any of its activities, it shall grant to  
22 GRANTOR, without charge, a substitute right of access permitting the GRANTOR to relocate the  
23 monitoring wells, or portion thereof, on adjacent GRANTEE property, at the GRANTEE'S cost  
24 and expense. The substitute right of access shall contain the same terms and conditions as those of  
25 this covenant. In the event the GRANTOR abandons any monitoring well after the date of this  
26 Quitclaim Deed, GRANTOR'S rights under this covenant with respect to such abandoned  
27 monitoring well shall automatically terminate. The land to be affected by said covenants shall be  
28 the Property or any portion thereof. GRANTEE and all successive owners of the Property or any  
29 portion thereof, and their assigns, are hereby bound by such covenants for the benefit of  
30 GRANTOR as the covenantee.

31 **J. NON-DISCRIMINATION.** GRANTEE covenants for itself, its  
32 successors and assigns and every successor in interest to the Property hereby conveyed, or any part  
33 thereof, that said GRANTEE and such successors and assigns shall not discriminate upon the basis  
34 of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale or  
35 lease of the Property, or in their employment practices conducted thereon. This covenant shall not  
36 apply however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it  
37 apply with respect to Property used primarily for religious purposes. The United States of America  
38 shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of  
39 any land or interest therein in the locality of the Property hereby conveyed and shall have the sole  
40 right to enforce this covenant in any court of competent jurisdiction.

41 **K. FLOODPLAIN NOTIFICATION.** To the extent that any portion of the  
42 Property lies within a floodplain as defined in Section 6(c) of Executive Order No. 11988,  
43 Floodplain Management, dated May 24, 1977, construction, development and other uses of that



1 portion of the Property could be restricted by the standards and criteria of the National Flood  
2 Insurance Program of the Federal Emergency Management Agency, or other applicable  
3 regulations.

4 **L. NON-INTERFERENCE WITH NAVIGABLE AIRSPACE.**

5 GRANTEE shall comply with the provisions of Title 14, Code of Federal Regulations, part 77,  
6 titled "Objects Affecting Navigable Airspace," in connection with any construction or alteration  
7 on the Property for which notice to the Administrator of the Federal Aviation Administration is  
8 required to be provided in accordance with those regulations.

9 **M. PESTICIDE NOTIFICATION.** The GRANTEE is hereby notified that

10 the Property may contain pesticide residue from pesticides that have been applied in the  
11 management of the Property. The GRANTOR knows of no use of any registered pesticide in a  
12 manner inconsistent with its labeling and believes that all applications were made in accordance  
13 with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA - 7 U.S.C. Sec. 136, et seq.),  
14 its implementing regulations, and according to the labeling provided with such substances. It is  
15 the GRANTOR's position that it shall have no obligation under the covenants provided pursuant  
16 to section 120(h)(3)(A)(ii) of the Comprehensive Environmental Response, Compensation and  
17 Liability Act of 1980, 42 U.S.C. Sections 9620(h)(3)(A)(ii), for the remediation of legally applied  
18 pesticides.

19 **N. BIOLOGICAL OPINION RESTRICTIONS.** The GRANTEE is hereby

20 notified and does hereby acknowledge that the Property is subject to certain avoidance and  
21 minimization measures and terms and conditions relating to the management and use of the  
22 Property as set forth in the Biological Opinion on the Proposed Naval Air Station Alameda  
23 Disposal and Reuse Project in the City of Alameda, Alameda County, California issued by the  
24 United States Department of Interior, Fish and Wildlife Service (Service) on August 29, 2012  
25 (2012 Biological Opinion), which constitute prohibitions and restrictions on use of the Property.  
26 The Property is the subject of a recorded Declaration of Restrictions that identifies such  
27 prohibitions and restrictions on use of the Property, executed by GRANTOR and recorded in the  
28 official public records of the Alameda County Clerk-Recorder's Office as Document No.  
29 2013199782 and the City and County of San Francisco Office of the Assessor-Recorder as  
30 Document No. 2013J677266.

31 **O. POLYCHLORINATED BIPHENYLS (PCBs).** The GRANTEE is

32 hereby notified and does acknowledge that certain portions of the improvements on the Property  
33 may contain PCBs. Prior to beginning any maintenance, alterations, demolition, restoration, or  
34 construction work affecting fluorescent light fixtures, the GRANTEE must determine if PCB  
35 ballasts are present. If present, GRANTEE shall dispose of PCB ballasts and/or fixtures at its  
36 expense in accordance with applicable Federal, State, and local laws and regulations relating to  
37 PCBs. The GRANTEE is hereby notified and does acknowledge that buildings constructed or  
38 renovated between 1950 and 1978 have the potential to have PCBs contained within caulking, and  
39 those PCBs can migrate from the caulk into air, dust and surrounding material, such as wood,  
40 bricks and soil. Such materials must be handled, managed and disposed of during maintenance  
41 and/or renovations by the GRANTEE at its expense in accordance with applicable Federal, State,  
42 and local laws and regulations relating to PCBs.

1                   **P.     PROTECTION OF WETLANDS.** The GRANTEE is hereby notified that  
2 the Property may contain wetlands. In accordance with Section 4 of Executive Order 11990,  
3 “Protection of Wetlands” dated May 24, 1977, GRANTEE is hereby notified that dredge and fill  
4 activities in wetlands are regulated by the United States Army Corps of Engineers pursuant to the  
5 Federal Water Pollution Control Act, 33 USC. Section 1344 et seq. and its implementing  
6 regulations.

7                   **III.     BINDING EFFECT; WAIVER.** The conditions, restrictions, reservations, and  
8 covenants set forth in this Quitclaim Deed, unless subsequently released, are a binding servitude  
9 on the Property; shall inure to the benefit of the GRANTOR and GRANTEE, their successors and  
10 assigns, and will be deemed to run with the land in perpetuity, pursuant to California Civil Code  
11 sections 1462 and 1471 and other applicable authority.

12                   The failure of GRANTOR to insist in any one or more instances upon complete  
13 performance of the conditions subsequent, terms, or covenants of this Quitclaim Deed shall not be  
14 construed as a waiver of, or a relinquishment of GRANTOR’s right to future performance of any  
15 of those conditions subsequent, terms and covenants and the GRANTEE’s obligations with respect  
16 to such future performance shall continue in full force and effect.  
17

18                   **IV.     NOTICES.** Notices shall be deemed sufficient under this Quitclaim Deed if made  
19 in writing and submitted to the following addresses (or to any new or substitute address hereinafter  
20 specified, in a writing theretofore delivered in accordance with the notice procedure set forth herein  
21 by the intended recipient of such notice):

22                   If to the GRANTEE:                   Jill B. Keimach, City Manager  
23   City of Alameda  
24   Alameda City Hall  
25   2263 Santa Clara Avenue  
26   Alameda, CA 94501-4456  
27

28                   If to the Government:               United States Navy  
29   BRAC Program Management Office West  
30   33000 Nixie Way  
31   Building 50, Suite 207  
32   San Diego, CA 92147  
33   Attention: Director  
34

35                   If to U.S. EPA:                           U.S. Environmental Protection Agency  
36   Federal Facilities Site Cleanup Branch  
37   Superfund Division  
38   75 Hawthorne Street  
39   San Francisco, CA 94105  
40   Attention: Chief  
41

If to DTSC: Department of Toxic Substances Control  
700 Heinz Avenue  
Berkeley, CA 94710  
Attention: Emily Mortazavi  
Alameda Remedial Project Manager

**I. LIST OF EXHIBITS:** The following exhibits are attached hereto and made a part of this Quitclaim Deed:

- A.** Exhibit "A" – Legal Descriptions and Plats of the Property
- B.** Exhibit "B" – Hazardous Substances Notification
- C.** Exhibit "C" – Marsh Crust Covenant

**[SIGNATURE PAGE FOLLOWS]**

1           **IN WITNESS WHEREOF**, the GRANTOR has caused its name to be signed to these  
2 presents by an authorized Real Estate Contracting Officer on the day first above written.  
3

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5                           **UNITED STATES OF AMERICA,**  
6                           acting by and through the Department of the Navy,  
7

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10                   **BY:** \_\_\_\_\_  
11                               AMY JO HILL  
12                               Real Estate Contracting Officer  
13

14  
15  
16           Date: \_\_\_\_\_  
17

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19           **ACCEPTANCE:**  
20

21  
22           The **GRANTEE** hereby accepts this Quitclaim Deed and agrees to be bound by all the  
23 agreements, covenants, conditions, restrictions and reservations contained therein.  
24

25  
26                           **CITY OF ALAMEDA**  
27

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29  
30                   **BY:** \_\_\_\_\_  
31                               JILL B. KEIMACH  
32                               City Manager  
33

34  
35           Date: \_\_\_\_\_  
36

37  
38           **APPROVED AS TO FORM**  
39

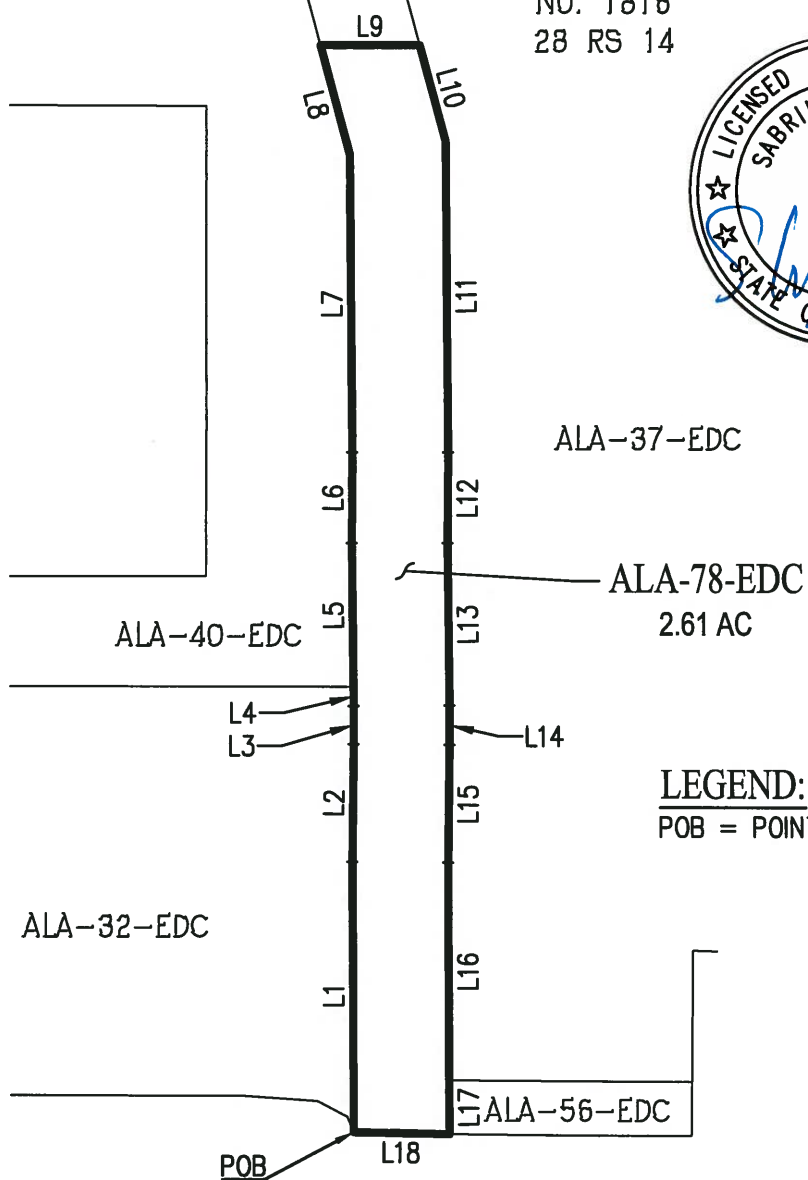
40  
41           By: \_\_\_\_\_  
42                   FARIMAH F. BROWN  
43                   Senior Assistant City Attorney

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**Exhibit “A”**  
**Legal Descriptions and Plats of the Property**



PARCEL 1 (PORTION)  
RECORD OF SURVEY  
NO. 1816  
28 RS 14



LEGEND:  
POB = POINT OF BEGINNING

PARCEL 1 (PORTION)  
RECORD OF SURVEY NO. 1816  
28 RS 14



GRAPHIC SCALE

SEE SHEET 2 FOR COURSE  
TABLES AND NOTE

## PLAT TO ACCOMPANY LEGAL DESCRIPTION

ALA-78-EDC  
ALAMEDA, CALIFORNIA

JUNE 9, 2016

SHEET 1 OF 2

**Carlson, Barbee & Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

2633 CAMINO RAMON, SUITE 350

SAN RAMON, CALIFORNIA, (925) 866-0322

LINE TABLE		
NO	BEARING	LENGTH
L1	N04°45'07"E	280.98'
L2	N05°44'28"E	122.27'
L3	N04°50'40"E	39.68'
L4	N04°17'00"E	20.01'
L5	N04°17'00"E	149.12'
L6	N05°22'56"E	94.57'
L7	N04°26'37"E	309.13'
L8	N10°15'35"W	118.32'
L9	S85°08'27"E	103.59'
L10	S10°15'35"E	104.20'
L11	S04°26'37"W	322.85'
L12	S05°22'56"W	94.43'
L13	S04°17'00"W	168.66'
L14	S04°50'40"W	40.96'
L15	S05°44'28"W	122.19'
L16	S04°45'07"W	226.37'
L17	S04°45'07"W	56.00'
L18	N83°57'12"W	100.03'

**NOTE:**

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3.  
 DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE  
 GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN  
 ON THAT CERTAIN RECORD OF SURVEY NO. 1816 (28 RS 14).

## PLAT TO ACCOMPANY LEGAL DESCRIPTION

ALA-78-EDC  
 ALAMEDA, CALIFORNIA

JUNE 9, 2016

SHEET 2 OF 2

### Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS

2633 CAMINO RAMON, SUITE 350

SAN RAMON, CALIFORNIA, (925) 866-0322

**LEGAL DESCRIPTION  
ALA-78-EDC  
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF PARCEL ALA-32-EDC, AS SAID PARCEL ALA-32-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199807, OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE EASTERN LINE OF SAID PARCEL ALA-32-EDC (2013-199807), THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 04°45'07" EAST 280.98 FEET,
- 2) NORTH 05°44'28" EAST 122.27 FEET,
- 3) NORTH 04°50'40" EAST 39.68 FEET, AND
- 4) NORTH 04°17'00" EAST 20.01 FEET TO THE NORTHEASTERN CORNER OF SAID PARCEL ALA-32-EDC (2013-199807), SAID POINT ALSO BEING THE SOUTHEASTERN CORNER OF PARCEL ALA-40-EDC, AS SAID PARCEL ALA-40-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199812, OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, FROM SAID SOUTHEASTERN CORNER OF PARCEL ALA-40-EDC (2013-199812), THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 04°17'00" EAST 149.12 FEET,
- 2) NORTH 05°22'56" EAST 94.57 FEET,
- 3) NORTH 04°26'37" EAST 309.13 FEET, AND
- 4) NORTH 10°15'35" WEST 118.32 FEET;

THENCE, LEAVING SAID EASTERN LINE OF PARCEL ALA-40-EDC (2013-199812), SOUTH 85°08'27" EAST 103.59 FEET TO A POINT ON THE WESTERN LINE OF PARCEL ALA-37-EDC, AS SAID PARCEL ALA-37-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199810, OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;



THENCE, ALONG SAID WESTERN LINE OF PARCEL ALA-37-EDC (2013-199810),  
THE FOLLOWING SEVEN (7) COURSES:

- 1) SOUTH 10°15'35" EAST 104.20 FEET,
- 2) SOUTH 04°26'37" WEST 322.85 FEET,
- 3) SOUTH 05°22'56" WEST 94.43 FEET,
- 4) SOUTH 04°17'00" WEST 168.66 FEET,
- 5) SOUTH 04°50'40" WEST 40.96 FEET,
- 6) SOUTH 05°44'28" WEST 122.19 FEET, AND
- 7) SOUTH 04°45'07" WEST 226.37 FEET TO THE SOUTHWESTERN CORNER  
OF SAID PARCEL ALA-37-EDC (2013-199810), SAID POINT ALSO  
BEING THE NORTHWESTERN CORNER OF PARCEL ALA-56-EDC, AS SAID  
PARCEL ALA-56-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM  
DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199824, OF  
OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF  
ALAMEDA COUNTY;

THENCE, FROM SAID NORTHWESTERN CORNER OF PARCEL ALA-56-EDC (2013-  
199824), ALONG THE WESTERN LINE OF SAID PARCEL ALA-56-EDC (2013-  
199824), SOUTH 04°45'07" WEST 56.00 FEET TO THE SOUTHWESTERN CORNER OF  
SAID PARCEL ALA-56-EDC (2013-199824);

THENCE, FROM SAID SOUTHWESTERN CORNER OF PARCEL ALA-56-EDC (2013-  
199824), NORTH 83°57'12" WEST 100.03 FEET TO SAID POINT OF BEGINNING.

CONTAINING 2.61 ACRES OF LAND, MORE OR LESS.

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3.  
DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE  
GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN  
ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK  
28 OF RECORDS OF SURVEY AT PAGE 14, ALAMEDA COUNTY RECORDS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS  
REFERENCE MADE A PART HEREOF.

ALL PARCELS SHOWN HEREON ARE INTENDED TO LIE COINCIDENT TO ONE ANOTHER  
WITH NO GAPS OR OVERLAPS CREATED BY THIS DOCUMENT.

**END OF DESCRIPTION**



  
\_\_\_\_\_  
SABRINA KYLE PACK, P.L.S.  
L.S. NO. 8164

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**Exhibit “B”**  
**Hazardous Substances Notification**

## ATTACHMENT 2: HAZARDOUS SUBSTANCES NOTIFICATION TABLE

Finding of Suitability to Transfer Phase 3A - Former NAS Alameda

Identification <sup>a</sup>	Media/ Description	Hazardous Substance <sup>b,c</sup>	Reportable Quantity (lbs) <sup>b</sup>	CAS Number	RCRA Waste Code <sup>b</sup>	Quantity Stored, Released, or Disposed <sup>d</sup>	Date Stored, Released, or Disposed <sup>d</sup>	Stored (S), Released (R), or Disposed (D)	Action Taken <sup>e</sup>
Marsh Crust	Sediment	PAHs	NA	NA	NA	Unknown	Unknown	R	A layer of sediment contaminated with PAHs and referred to as the marsh crust was identified during environmental investigations between 1993 and 2000. The marsh crust was deposited across the Alameda Facility/Alameda Annex from the late 1800s until the 1920s, and is believed to have resulted from direct discharges of petroleum products and wastes from former manufactured gas plants and oil refineries to marshlands that underlie the current uplands. The ROD selected land use controls that prohibit excavation within the marsh crust and former subtidal area, unless proper precautions are taken to protect worker health and safety and to ensure that excavated material is disposed of properly. The property is subject to a deed restriction, a Covenant to Restrict Use of Property, and permitting requirements for excavations in accordance with the Alameda Marsh Crust Ordinance No. 2824.
Storm Drain Line G	Soil	Radium 226	1 Curie	NA	NA	Unknown	Unknown	R	The 2016 ROD for OU-2C Drain Lines Located Outside of Buildings 5 and 10 identifies no contaminant of concern (COC) for the FOST Parcel's portion of OU-2C (Storm Drain Line G). Per the ROD, "sediment was removed from within these storm drain lines and subsequent video surveys, radiological surveys, and sampling did not show any indication of contamination associated with Storm Drain Lines A, B, and G." The 2016 ROD documents no further action for Storm Drain Line G (Navy, 2016a [pending]).

Notes:

a No chemicals were found to have been stored, disposed, or released within other areas of the FOST Parcel.

b This table was prepared in accordance with 40 CFR 373 and 40 CFR 302.4. The substances which do not have chemical-specific break down (and associated annual reportable quantity) are not listed in 40 CFR 302.4, and therefore have no corresponding CAS number, no regulatory synonyms, no RCRA waste numbers, and no reportable quantities. Hazardous substances listed in this table were compiled based on known contamination at the sites and historic activities at specific locations.

## ATTACHMENT 2: HAZARDOUS SUBSTANCES NOTIFICATION TABLE

### Finding of Suitability to Transfer Phase 3A - Former NAS Alameda

- c The FOST Parcel may contain pesticide residue from pesticides that have been applied in the management of the property. The Grantor knows of no use of any registered pesticide in a manner inconsistent with its labeling and believes that all applications were made in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA - 7 U.S.C. Sec. 136, et seq.), its implementing regulations, and according to the labeling provided with such substances. It is the Grantor's position that it shall have no obligation under the covenants provided pursuant to Section 120(h)(3)(A)(ii) of CERCLA, 42 U.S.C. Sections 9620(h)(3)(A)(ii), for the remediation of legally applied pesticides.
- d The quantity stored, released, or disposed, and the date stored, released, or disposed, is unknown because documentation related to storage, release, or disposal of these hazardous substances was not available during records searches for the property.
- e References listed in this section are included in FOST as part of [Section 10.0](#), References.

CAS	Chemical Abstract System	lbs	Pounds	R	Released
CFR	Code of Federal Regulations	NA	Not available	RCRA	Resource Conservation and Recovery Act
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980	NAS	Naval Air Station Alameda	ROD	Record of decision
D	Disposed	Navy	United States Department of the Navy	S	Stored
FOST	Finding of Suitability to Transfer	OU	Operable unit	U.S.C.	United States Code
gal	Gallon	OWS	Oil-water separator		
		PAH	Polycyclic aromatic hydrocarbon		

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**Exhibit “C”**  
**Marsh Crust Covenant**

**COVENANT**

RECORDING REQUESTED BY:

City of Alameda  
Base Reuse Department  
2263 Santa Clara Avenue  
Alameda, California 94501  
Attention:  
Chief Operating Officer - Alameda Point

WHEN RECORDED, MAIL TO:

Department of Toxic Substances  
Control  
700 Heinz Avenue  
Berkeley, CA 94710  
Attention: James Fyfe

This document is exempt from  
payment of a recording fee  
pursuant to California Government  
Code §27383

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Parcel No. ALA-78-EDC - DTSC Site Code 201971)

---

This Covenant and Agreement (Covenant) is made by and between the City of Alameda (City or the Covenantor), the current owner of certain property, situated in the City of Alameda, County of Alameda, State of California, described and depicted in Exhibit "A" (the Property), and the Department of Toxic Substances Control (Department). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonable necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials as defined in California Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section

25355.5, the use of the Property be restricted as set forth in this Covenant; and that the Covenant shall conform with the requirements of the California Code of Regulations, title 22, section 67391.1.

## ARTICLE I

### STATEMENT OF FACTS

1.1 Property Location. The Property, as depicted on Exhibit "A", is made up of approximately 2.61 acres, and is located within the Former Alameda Point Naval Air Station (NAS Alameda), Alameda, California. The hazardous substances of concern are located under the Property within the marsh crust and subtidal area (defined below), as depicted on Exhibit "B".

1.2 Site History. The "marsh crust" means the underground layer that is the remnant of the tidal marsh that existed along the shoreline of Alameda Island before filling to create additional dry land. In many places, this layer contains hazardous materials from former industrial discharges that were retained in the historic marsh before filling. These hazardous materials include petroleum hydrocarbons (TPH) and polynuclear aromatic hydrocarbons (PAHs). The marsh crust is a generally continuous underground layer, at depths of 4 to 20 feet bgs, that extends Bay-ward of the original mean high tide line of Alameda Island, before filling, throughout the intertidal area that was filled. The "former subtidal area" is a layer of sediment that may be contaminated with semivolatile organic compounds (SVOCs) that was deposited on tidal flats at the western end of NAS Alameda rather than on the marshes.

The marsh crust is located under two adjoining naval installations in Alameda: Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (Annex), and NAS Alameda. The former subtidal area is located on NAS Alameda west of the marsh crust. NAS Alameda was listed on the U.S. Environmental Protection Agency (U.S. EPA) National Priorities List (NPL) under CERCLA in July 1999. However, the NPL listing specifically excluded the marsh crust and former subtidal area and the Annex.

1.3 Decision Document. The "Remedial Action Plan/Record of Decision for the Marsh Crust at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and for the Marsh Crust and Former Subtidal Area at Alameda Point" (RAP/ROD) was

approved and finalized February 2, 2001. The RAP/ROD requires environmental restrictions in the Navy deed and a separate covenant to restrict use of Property between the Department and City at the time of transfer. The Annex property transferred from the Navy to the City in 2000, and at that time, and in accordance with the RAP/ROD requirements, the City recorded a covenant to restrict use. The NAS Alameda property transferred from the Navy to the City on \_\_\_\_\_, 2017, and this Covenant is fulfilling the requirements in the RAP/ROD.

1.4 City Excavation Ordinance. The City adopted City of Alameda Ordinance No. 2824 on February 15, 2000, which prohibits engaging in any excavation below specified threshold depths without an excavation permit and without taking proper measures to ensure that workers are not unduly exposed and that all contaminated material brought to the surface is properly disposed. The City will directly implement and enforce the Ordinance.

1.5 Basis for Covenant. As a result of the presence of hazardous substances in the Property, which are also hazardous materials as defined in California Health and Safety Code section 25260, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for the Property. The Department has also concluded that the Property, when used in compliance with this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

## ARTICLE II

### DEFINITIONS

2.1 Department. "Department" means the Department of Toxic Substances Control and includes its successor agencies, if any.

2.2 Excavation ordinance. "Excavation ordinance" means City of Alameda Ordinance No. 2824, which is incorporated herein by this reference.

2.3 Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.



2.3 Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.4 Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.5 Owner. "Owner" means the Covenanter, and any successor in interest including any heir and assign, who at any time holds title to all or any portion of the Property.

2.6 Threshold depth. "Threshold depth" is the elevation above which there is little likelihood that hazardous materials from the marsh crust would have mixed during filling. The threshold depth for any location at the Property is shown on an exhibit to the Excavation ordinance and will be derived from the RAP/ROD or other applicable remedial decision document. The current Threshold depth is depicted on Exhibit "B".

### ARTICLE III GENERAL PROVISIONS

3.1. Runs with the Land. This Covenant sets forth restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471, (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by, the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.2. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and lease for any portion of the Property.

3.4. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.5 Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

#### ARTICLE IV

#### RESTRICTIONS AND REQUIREMENTS

4.1 Prohibited Activities. The following activities are prohibited on the Property:  
Engaging in any excavation below the threshold depth without (a) a City excavation permit; or (b) if the excavation ordinance has been repealed, or if the Department has made a written determination with thirty (30) days prior written notice to the City that the excavation ordinance does not comport with the intent of this Covenant, then a permitted excavation may be conducted only in accordance with a written approval issued by the Department. Owner's application for such an approval shall be submitted to the Department and shall otherwise comply with the permit application requirements of the last version of the excavation ordinance or such other requirements as the Department may specify.

4.3 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

## ARTICLE V ENFORCEMENT

5.1 Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

## ARTICLE VI VARIANCE REMOVAL AND TERM

6.1 Variance. Any person may apply to the Department for a written variance from one of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2 Removal. Any person may apply to the Department to remove any of the restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3 Term. Unless ended in accordance with paragraph 6. 2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII

## MISCELLANEOUS

7.1 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.2 Recordation. The Covenanter shall record this Covenant, with all referenced Exhibits, in the County of Alameda within 10 days of the Covenanter's receipt of a fully executed original.

7.3 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

City of Alameda  
Base Reuse Department  
2263 Santa Clara Avenue  
Alameda, CA 94501  
Attention: Chief Operating Officer-Alameda Point

To Department:

California Environmental Protection Agency  
Department of Toxic Substances Control  
700 Heinz Avenue  
Berkeley, CA 94710  
Attention: Emily Mortazavi, Project Manager

Any party may change its address or the individual to whose attention a Notice is to be sent by giving advance written Notice in compliance with this paragraph.

7.4 Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant

shall remain in full force and effect as if such portion found invalid had not been included herein.

7.5 Statutory References. All statutory or regulatory references include successor provisions.

7.6 Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenanter: City of Alameda

By:

Title:

Date:

Department of Toxic Substances Control:

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

Karen M. Toth, P.E.  
Unit Chief  
Brownfields and Environmental Restoration Program

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

Page reserved for notary

Page reserved for notary

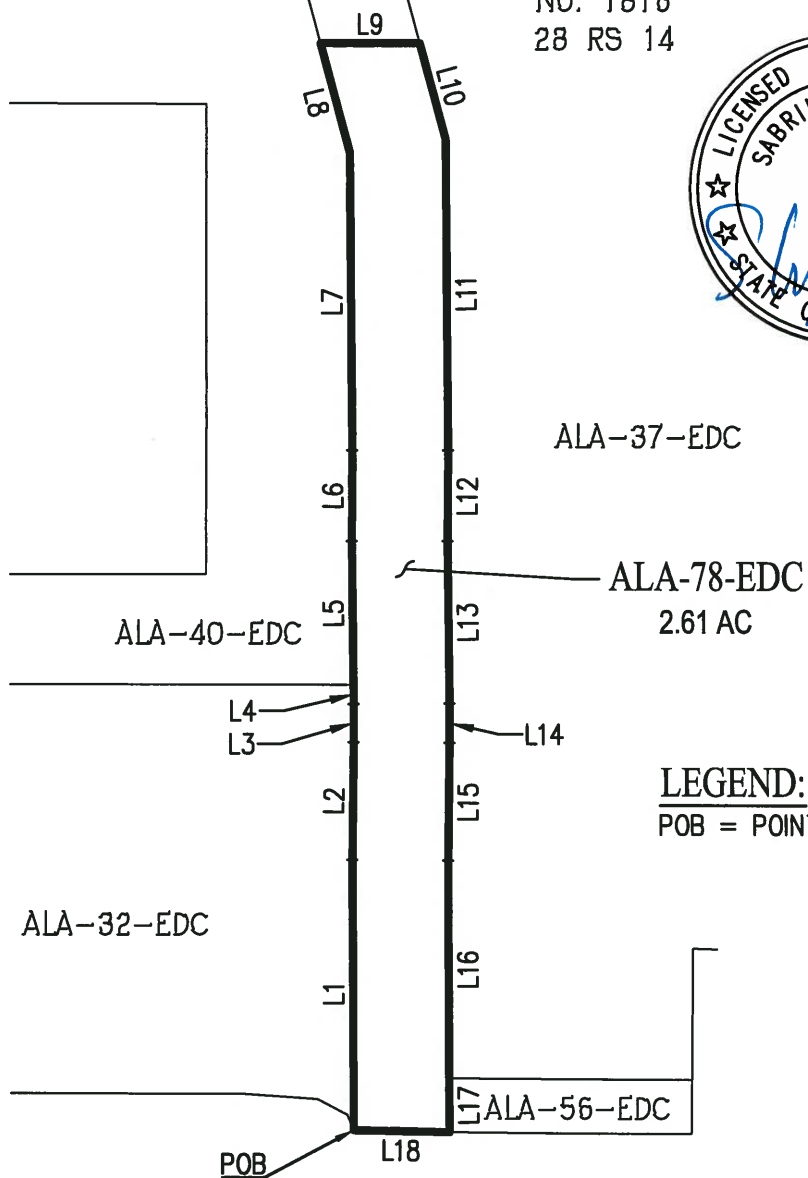
EXHIBIT "A"

LEGAL DESCRIPTIONS AND PLATS OF PROPERTY





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RECORD OF SURVEY  
NO. 1816  
28 RS 14



LEGEND:  
POB = POINT OF BEGINNING

PARCEL 1 (PORTION)  
RECORD OF SURVEY NO. 1816  
28 RS 14



GRAPHIC SCALE

SEE SHEET 2 FOR COURSE  
TABLES AND NOTE

## PLAT TO ACCOMPANY LEGAL DESCRIPTION

ALA-78-EDC  
ALAMEDA, CALIFORNIA

JUNE 9, 2016

SHEET 1 OF 2

**Carlson, Barbee & Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

2633 CAMINO RAMON, SUITE 350

SAN RAMON, CALIFORNIA, (925) 866-0322

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L14	S04°50'40"W	40.96'
L15	S05°44'28"W	122.19'
L16	S04°45'07"W	226.37'
L17	S04°45'07"W	56.00'
L18	N83°57'12"W	100.03'

**NOTE:**

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3.  
DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE  
GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN  
ON THAT CERTAIN RECORD OF SURVEY NO. 1816 (28 RS 14).

## PLAT TO ACCOMPANY LEGAL DESCRIPTION

ALA-78-EDC  
ALAMEDA, CALIFORNIA

JUNE 9, 2016

SHEET 2 OF 2

### Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS

2633 CAMINO RAMON, SUITE 350

SAN RAMON, CALIFORNIA, (925) 866-0322

**LEGAL DESCRIPTION  
ALA-78-EDC  
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF PARCEL ALA-32-EDC, AS SAID PARCEL ALA-32-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199807, OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE EASTERN LINE OF SAID PARCEL ALA-32-EDC (2013-199807), THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 04°45'07" EAST 280.98 FEET,
- 2) NORTH 05°44'28" EAST 122.27 FEET,
- 3) NORTH 04°50'40" EAST 39.68 FEET, AND
- 4) NORTH 04°17'00" EAST 20.01 FEET TO THE NORTHEASTERN CORNER OF SAID PARCEL ALA-32-EDC (2013-199807), SAID POINT ALSO BEING THE SOUTHEASTERN CORNER OF PARCEL ALA-40-EDC, AS SAID PARCEL ALA-40-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199812, OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, FROM SAID SOUTHEASTERN CORNER OF PARCEL ALA-40-EDC (2013-199812), THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 04°17'00" EAST 149.12 FEET,
- 2) NORTH 05°22'56" EAST 94.57 FEET,
- 3) NORTH 04°26'37" EAST 309.13 FEET, AND
- 4) NORTH 10°15'35" WEST 118.32 FEET;

THENCE, LEAVING SAID EASTERN LINE OF PARCEL ALA-40-EDC (2013-199812), SOUTH 85°08'27" EAST 103.59 FEET TO A POINT ON THE WESTERN LINE OF PARCEL ALA-37-EDC, AS SAID PARCEL ALA-37-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199810, OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, ALONG SAID WESTERN LINE OF PARCEL ALA-37-EDC (2013-199810),  
THE FOLLOWING SEVEN (7) COURSES:

- 1) SOUTH 10°15'35" EAST 104.20 FEET,
- 2) SOUTH 04°26'37" WEST 322.85 FEET,
- 3) SOUTH 05°22'56" WEST 94.43 FEET,
- 4) SOUTH 04°17'00" WEST 168.66 FEET,
- 5) SOUTH 04°50'40" WEST 40.96 FEET,
- 6) SOUTH 05°44'28" WEST 122.19 FEET, AND
- 7) SOUTH 04°45'07" WEST 226.37 FEET TO THE SOUTHWESTERN CORNER  
OF SAID PARCEL ALA-37-EDC (2013-199810), SAID POINT ALSO  
BEING THE NORTHWESTERN CORNER OF PARCEL ALA-56-EDC, AS SAID  
PARCEL ALA-56-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM  
DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199824, OF  
OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF  
ALAMEDA COUNTY;

THENCE, FROM SAID NORTHWESTERN CORNER OF PARCEL ALA-56-EDC (2013-  
199824), ALONG THE WESTERN LINE OF SAID PARCEL ALA-56-EDC (2013-  
199824), SOUTH 04°45'07" WEST 56.00 FEET TO THE SOUTHWESTERN CORNER OF  
SAID PARCEL ALA-56-EDC (2013-199824);

THENCE, FROM SAID SOUTHWESTERN CORNER OF PARCEL ALA-56-EDC (2013-  
199824), NORTH 83°57'12" WEST 100.03 FEET TO SAID POINT OF BEGINNING.

CONTAINING 2.61 ACRES OF LAND, MORE OR LESS.

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3.  
DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE  
GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN  
ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK  
28 OF RECORDS OF SURVEY AT PAGE 14, ALAMEDA COUNTY RECORDS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS  
REFERENCE MADE A PART HEREOF.

ALL PARCELS SHOWN HEREON ARE INTENDED TO LIE COINCIDENT TO ONE ANOTHER  
WITH NO GAPS OR OVERLAPS CREATED BY THIS DOCUMENT.

**END OF DESCRIPTION**



  
\_\_\_\_\_  
SABRINA KYLE PACK, P.L.S.  
L.S. NO. 8164

EXHIBIT "B"

FIGURE DEPICTING PROPERTY SUBJECT TO MARSH CRUST CRUP

## LEGEND

- APPROXIMATE SHORELINE
- PHASE 3A CONVEYANCE BOUNDARY

## PROPERTY SUBJECT TO MARSH CRUST CRUP (2.6 AC±)

- EXCAVATION PERMIT REQUIRED FOR EXCAVATIONS BELOW MEAN HIGHER HIGH TIDE
- EXCAVATION PERMIT REQUIRED FOR EXCAVATIONS BELOW 5 FEET
- EXCAVATION PERMIT REQUIRED FOR EXCAVATIONS BELOW 10 FEET
- EXTENT OF FORMER SUBTIDAL AREA
- EXTENT OF FORMER ISLAND 1865 (RADBRUCH 1957)

# ALAMEDA POINT EXHIBIT B

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA

DATE: JANUARY 3, 2017 SCALE: 1" = 1,500'



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