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5 **MEMORANDUM OF AGREEMENT**

6
7 **BETWEEN**

8
9 **THE UNITED STATES OF AMERICA**
10 **ACTING BY AND THROUGH**
11 **THE SECRETARY OF THE NAVY**
12 **UNITED STATES DEPARTMENT OF THE NAVY.**

13
14 **AND**

15
16 **THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**

17
18 **FOR THE CONVEYANCE OF**

19
20 **PORTIONS OF THE NAVAL AIR STATION ALAMEDA**

21
22 **FROM**

23
24 **THE UNITED STATES OF AMERICA**

25
26 **TO**

27
28 **THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**
29
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Final Navy Execution Version 1B

**AGREEMENT
FOR THE CONVEYANCE OF
PORTIONS OF THE NAVAL AIR STATION ALAMEDA
FROM
THE UNITED STATES OF AMERICA
TO
THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**

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**AGREEMENT
FOR THE CONVEYANCE OF
PORTIONS OF THE NAVAL AIR STATION ALAMEDA
FROM
THE UNITED STATES OF AMERICA
TO
THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**

This Agreement for the Conveyance of Real Property (hereinafter referred to as "Agreement") is entered into this 6TH day of June 2000 ("Effective Date"), between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy ("Government"), and the ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY ("Authority"), recognized as the local redevelopment authority by the Office of Economic Adjustment on behalf of the Secretary of Defense. Government and Authority are each sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS:

1. In 1993, the Defense Base Closure and Realignment Commission (the "DBCR Commission") recommended the closure of the former Naval Air Station Alameda ("NAS Alameda"), which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 2,693 acres of real property, together with the buildings, improvements and related and other tangible personal property located thereon and all rights, easements and appurtenances thereto.

2. In accordance with the Defense Base Closure and Realignment Act of 1990, as amended, the authority of the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, as amended, with respect to the disposal of surplus real property at installations closing thereunder has been delegated to the Secretary of Defense and further delegated to the Secretary of the Navy.

3. (a) Pursuant to the power and authority provided by Section 2905(b)4 of the Defense Base Closure and Realignment Act of 1990, as amended, and the implementing regulations of the Department of Defense (32 CFR Part 175), the Secretary of the Navy may convey surplus property at a closing installation to the local redevelopment authority at no cost for economic development purposes. By application dated October 1997 and amendments to that application dated December 1998, the Authority applied for a "No-Cost" Economic Development Conveyance ("EDC") for portions of NAS Alameda (the "EDC Application"), to be used and

1 developed in accordance with the "NAS Alameda Community Reuse Plan" (the "Reuse Plan")
2 dated January 1996 as amended in September 1997 prepared by Authority and approved by the
3 Department of Housing and Urban Development on April 23, 1996
4

5 (b) The Government has approved the Authority's EDC application
6 covering those portions of NAS Alameda generally described and delineated as EDC Parcels on
7 the map contained in Exhibit "A" hereto. The Government intends to convey those parcels to the
8 Authority by quitclaim deeds substantially in the form of Exhibits "B-1," "B-2" and "B-3" hereto.
9

10 4. In accordance with the provisions of the Community Environmental
11 Response Facilitation Act, the Government has performed Environmental Baseline Surveys
12 ("EBS(s)") for the Property, copies of which have been provided to the Authority. The
13 Government has prepared or will prepare Findings of Suitability to Transfer ("FOSTs") and
14 Findings of Suitability for Early Transfer ("FOSETs") for the various parcels that comprise NAS
15 Alameda, as applicable. A copy of the completed FOST for parcel EDC 4 is attached hereto as
16 Exhibit "C" and made a part hereof as if set out at length.
17

18 5. In accordance with the provisions of the National Environmental Policy
19 Act ("NEPA"), the Government has prepared an Environmental Impact Statement ("EIS") for the
20 disposal of the Property. A Record of Decision ("NEPA ROD") regarding the disposal of the
21 Property, which is attached hereto as Exhibit "D" and made a part hereof as if set out at length,
22 was issued on February 29, 2000.
23

24 6. In accordance with the provisions of the National Historic Preservation
25 Act, the Government has determined that the disposal of the Property will have an effect upon
26 those portions of the Property that are eligible for listing in the National Register of Historic
27 Places. A Memorandum of Agreement ("MOA") among the Department of the Navy, the
28 California State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic
29 Preservation, which is attached hereto as Exhibit "E" and made a part hereof as if set out at
30 length, was executed on October 5, 1999, and sets forth in full the Authority's obligations under
31 the National Historic Preservation Act and implementing regulations.
32

33 AGREEMENTS

34

35 **NOW, THEREFORE**, in consideration of the foregoing premises and the respective
36 representations, agreements, covenants and conditions herein contained, and other good and
37 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the
38 Government and the Authority agree as follows:
39

40 **ARTICLE 1. No Cost EDC.** Pursuant to Section 2905(b)(4) of the Defense Base
41 Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. §
42 2687 note), as amended by Section 2821 of the National Defense Authorization Act for Fiscal
43 Year 2000 (Pub. L. No. 106-65), the Government agrees to transfer and convey to the Authority
44 as a "no cost EDC", all of the certain land and buildings comprising the former NAS Alameda, as

1 specifically defined in Article 2, in consideration of the covenants, conditions and restrictions
2 contained herein and other good and valuable consideration, subject to the terms, conditions and
3 general provisions set forth in this Agreement.
4

5 **ARTICLE 2. Property Description.** The land and buildings at NAS Alameda to be
6 conveyed to the Authority are generally described and delineated as EDC Parcels on the map
7 contained in Exhibit "A" (collectively, the "Property"). Tangible personal property to be
8 transferred under this Agreement is listed in the Bill of Sale attached hereto and made a part
9 hereof as Exhibit "F" ("Personal Property"). Legal descriptions and plats of the individual
10 conveyance parcels will be prepared by the Parties prior to the delivery of the Quitclaim Deed(s)
11 ("Quitclaim Deeds"). The Parties shall cooperate in executing and delivering corrective deeds
12 necessary to convey omitted land intended to be included in the Property and to correct any
13 erroneous description of the Property.
14

15 **ARTICLE 3. Transfer and Conveyance.**
16

17 (a) The Government agrees to convey the Property to the Authority in
18 multiple parcels, by separate conveyance and closings. The initial parcel to be conveyed will be
19 the East Housing parcel (Parcel EDC-4) subject to the due execution of a FOST ("Initial
20 Closing"). The Government will convey the remainder of the Property subject to the due
21 execution of a FOST or a FOSET ("Subsequent Closings"). Should the Authority, after due
22 consideration, decide not to accept the conveyance of a parcel tendered following the execution
23 of a FOSET, such parcel will be conveyed, at a later date, following the due execution of a FOST.
24 In no event, may the Authority refuse to accept the conveyance of any parcel tendered by the
25 Government following the due execution of a FOST for such parcel if the Authority has accepted
26 title to any other parcel of the Property.
27

28 (b) The Property shall be conveyed in fee simple by one or more good
29 and sufficient Quitclaim Deeds.
30

31 (c) Attached hereto as Exhibit "B-1" is the Quitclaim Deed for the
32 conveyance of Parcel EDC-4 (the East Housing portion of the Property). Attached hereto as
33 Exhibit "B-2" is the form of Quitclaim Deed for a conveyance of any portion of the Property to be
34 conveyed following the due execution of a FOSET. Attached hereto as Exhibit "B-3" is the form
35 of Quitclaim Deed for a conveyance of any portions of the Property other than the EDC 4, the
36 East Housing portion, to be conveyed following the due execution of a FOST.
37

38 (d) The Authority shall have the right to specify that one or more of the
39 parcels shall be conveyed in a reasonable number of subparcels provided, however, the
40 parcelization shall not otherwise delay the conveyance of the larger parcel. Should the Authority
41 exercise such right to divide a parcel into two or more subparcels, all costs associated with the
42 parcelization shall be borne by the Authority and all subparcels within such parcel shall be
43 conveyed simultaneously.
44

1 (e) The Parties acknowledge that it is in their mutual best interest to
2 coordinate and cooperate in the preparation of the Quitclaim Deeds. Accordingly, the Parties
3 shall, to the maximum extent practicable, exchange information, coordinate the drafting of the
4 Quitclaim Deeds, and conclude the review of documents as rapidly as possible.
5

6 (f) The Government's right, title and interest in the personal property
7 to be transferred hereunder shall be transferred to the Authority concurrently with the conveyance
8 of Parcel EDC-4 in accordance with the terms and conditions of the Bill of Sale attached hereto
9 as Exhibit "F."
10

11 **ARTICLE 4. Closing and Settlement.**

12
13 (a) If an escrow is established by the Parties, the Government and the
14 Authority shall deliver the following documents to the Escrow Agent (with copies to the other
15 Party) at least one business day before an agreed upon Closing Date. If no escrow is established,
16 the deliveries shall be made by each Party to the other at a mutually agreed upon time and
17 location. The Parties will use their best efforts to consummate the Initial Closing and Subsequent
18 Closings no later than two (2) months after the later of the signing of this Agreement or the
19 completion of a FOST or FOSET by the Government for such Parcels of the Property as the
20 Parties agree will be conveyed at that Closing, or such other mutually agreeable date. In the event
21 that the Authority fails to accept any available EDC Parcel subsequent to Government offer by
22 FOST within 120 days of such notification, this will be considered a breach of this MOA.
23

24 (b) The Government shall deliver to the Initial and Subsequent Closings
25 the following documents ("Government Closing Documents") reasonably satisfactory to the
26 Authority and in a form previously reviewed and approved by the Authority:
27

28 1. Executed Quitclaim Deeds conveying fee ownership to the
29 Authority to such Parcels of the Property as the Parties agree will be conveyed at that Closing for
30 which a FOSET or FOST, as appropriate, has been executed, in the form set forth in Exhibit "B-
31 1", "B-2", or Exhibit "B-3", as appropriate.
32

33 2. A duly executed FOST or FOSET, as appropriate, for each
34 Parcel.
35

36 3. An Executed Bill of Sale for the related Personal Property
37 Conveyed to the Authority at the initial closing of Parcel EDC-4 in substantially the form set forth
38 in Exhibit "F."
39

40 4. Any permits transferred or assigned relating to each Parcel.
41

42 5. Such additional documents as may be required by California
43 law, the Title Insurer, or the Authority.
44

1 "I" is accurate and complete. The Authority acknowledges that it has received copies of all
2 documents listed on Exhibit "I." The Government agrees to promptly provide the Authority with
3 copies of any and all documents or information with respect to the environmental condition of the
4 Property prepared by or for Government after the date of this Agreement. The Environmental
5 Reports reflect a systematic process in which available information in the possession or control of
6 the Government was analyzed and conclusions drawn about the environmental condition of the
7 property. Further, the Environmental Reports have been prepared, under the direction of the
8 Government, in accordance with all material requirements of all applicable directives, guidance
9 documents, and other policies, and are based on the administrative record created to provide for
10 the conveyance of the Property subject to a FOSET/EROA.

11
12 **ARTICLE 6. Use of Proceeds From Sale or Lease.**

13
14 (a) Any proceeds from a sale, lease, or equivalent use of the Property (i.e., any
15 mechanism that serves to accomplish the same purposes of a sale or lease such as licenses,
16 permits, concession agreements, etc.) received by the Authority for the Property or the personal
17 property transferred by the bill of sale, during the first seven years after the recordation of the first
18 Deed for a part of the Property, must be used to support long-term job creation and the economic
19 redevelopment of, or related to, the Property. For purposes of this paragraph, the definition of
20 "Property" shall include the personal property transferred pursuant to the bill of sale.

21
22 (b) Allowable uses of proceeds pursuant to subparagraph (a) include payment
23 for, or offsetting the costs of public investment, for the following purposes:

- 24
25 * Road construction
26 * Transportation management facilities
27 * Storm and sanitary sewer construction
28 * Police and fire protection facilities and other public facilities
29 * Utility construction
30 * Building rehabilitation
31 * Historic property preservation
32 * Pollution prevention equipment or facilities
33 * Demolition
34 * Disposal of hazardous materials generated by demolition
35 * Landscaping, grading, and other site or public improvements
36 * Planning for or the marketing of the redevelopment and reuse of the Property
37

38 Other activities on the Property that are related to those listed above (for example,
39 new construction related to job creation and economic redevelopment, capital improvements, and
40 operation and maintenance of the Property needed to market its redevelopment and reuse) would
41 also be considered an appropriate, allowable use of proceeds. In order for investments made off
42 of the Property to be considered allowable uses of proceeds, the Authority shall submit
43 appropriate documentation to the Government for its approval which demonstrates that such
44 investments are related to those listed above and directly benefit the Authority's economic

1 redevelopment and long term job generation efforts on the Property.

2
3 (c) Consistent with standard accounting practices for tax purposes, Authority
4 shall maintain adequate records and books of account for income and expenses related to the
5 redevelopment of the Property detailing transactions described in subparagraphs (1) and (2).
6 Authority shall provide Government with access to such records and books of account and proper
7 facilities for inspection thereof at all reasonable times.

8
9 (d) Authority shall submit to the Government an annual financial statement
10 certified by an independent certified public accountant. The statement shall cover the Authority's
11 use of proceeds it receives from the sale, lease, or equivalent use of the Property. The first such
12 statement shall cover the 12 month period beginning on the date of recordation of the first Deed
13 and shall be delivered to Government within 60 days of the end of that period and annually
14 thereafter. The seven year period will commence with the recordation of each deed; however the
15 financial statements shall cover all parcels of property that have been conveyed during that period.
16 In the event Congress enacts legislation regarding the reporting period after the date of this
17 Agreement, the Government will in good faith exercise the authority granted to modify the terms
18 of this Agreement consistent with the legislation.

19
20 (e) Recoupment of Proceeds. Government may recoup all proceeds described
21 in paragraph 6 (a) which have not been reinvested in allowable uses described in paragraph 6 (b).
22 If recoupment is desired, Government shall notify Authority in writing that it intends to recoup
23 proceeds in a specific amount, describing why it believes that those proceeds have not been
24 reinvested as required by Article 6. Within 30 days of receipt of such notification, Authority shall
25 submit its response to Government. Within 30 days of receipt of Authority's response or within
26 30 days of the date Authority's response was due under this paragraph, Government shall issue its
27 decision on the matter which shall be final and binding on the Authority. The amount of the
28 recoupment described in the decision shall be paid by the Authority within 60 days of the decision.

29
30 **ARTICLE 7. Government's Representations.** The Government hereby represents to
31 the Authority on and as of the Effective Date of this Agreement and as of the Closing as follows:

32
33 (a) Execution of Agreement. The Government has full capacity, right, power
34 and authority to execute, deliver and perform this Agreement and all documents to be executed by
35 the Government pursuant hereto, and all required action and approvals therefor have been duly
36 taken and obtained. This Agreement and all documents to be executed pursuant hereto by the
37 Government are and shall be binding upon and enforceable against the Government in accordance
38 with their respective terms.

39
40 (b) Complete Information. To the best of the Government's knowledge,
41 information and belief, the information included in this Agreement, and the Exhibits hereto and the
42 documents to be delivered to the Authority pursuant to this Agreement or previously delivered to
43 the Authority are true, correct and complete in all material respects, and the same do not omit any
44 material information required to make the submission thereof fair and complete.

1
2 (c) Possession. To the best of the Government's knowledge, information and
3 belief, the information included in this Agreement, and the Exhibits hereto and the documents to
4 be delivered to the Authority pursuant to this Agreement or previously delivered to the Authority
5 acknowledge any contracts, leases or licenses in existence or persons who have possessory rights
6 or any claims in respect to the Property that will survive Closing.
7

8 (d) Claims. To the best of the Government's knowledge, information and
9 belief, there are no claims, causes of action or other litigation or proceedings pending or
10 threatened with respect to the ownership or operation of the Property or any part thereof
11 (including disputes with mortgagees, governmental authorities, utilities, contractors or adjoining
12 land owners).
13

14 (e) Notice. To the best of the Government's knowledge, information and
15 belief, the Government has not received any notice of (and is not otherwise aware of) any
16 violations of any legal requirements with respect to the Property which has not been disclosed to
17 the Authority.
18

19 **ARTICLE 8. Authority's Representations.** The Authority hereby represents to the
20 Government on and as of the Effective Date and on and as of the Closing, the Authority has full
21 capacity, right, power and authority to execute, deliver and perform this Agreement and all
22 documents to be executed by the Authority pursuant hereto, and all required action and approvals
23 therefor have been duly taken and obtained. The individuals signing this Agreement and all other
24 documents executed or to be executed pursuant hereto on behalf of the Authority shall be duly
25 authorized to sign the same on the Authority's behalf and to bind the Authority thereto. This
26 Agreement and all documents to be executed pursuant hereto by the Authority are and shall be
27 binding upon and enforceable against the Authority in accordance with their respective terms.
28

29 **ARTICLE 9. Response Assurances and Covenant Deferral Request Under**
30 **CERCLA 42 U.S.C. Section 9620(h)(3)(C) To Facilitate Early Transfer.** CERCLA requires a
31 covenant warranting that all remedial actions necessary to protect human health and the
32 environment have been taken prior to transfer of the Property to the Authority with respect to any
33 hazardous substances remaining on the Property. Some portions of the Property do not meet this
34 requirement; however, the covenant may be deferred and said Property may be conveyed prior to
35 completion of required remedial response actions if the requirements of CERCLA 42 U.S.C. §
36 9620(h)(3)(C), have been met. As required under CERCLA, a Covenant Deferral Request
37 package with all required documentation, including a draft FOSET, will be submitted by the
38 Government to the Administrator of the United States Environmental Protection Agency and the
39 Governor of the State of California for endorsement and final approval. Early conveyance of the
40 Property pursuant to a FOSET is conditioned upon the Administrator's and the Governor's
41 approval of the Covenant Deferral Request. A copy of the Covenant Deferral Request will be
42 provided to the Authority for their review and approval prior to its submission to the
43 Administrator and the Governor.
44

1 **ARTICLE 10. Environmental Services Cooperative Agreement(s).**

2
3 (a) The Authority and the Government are considering whether to
4 enter into one or more Environmental Services Cooperative Agreement(s) whereby the Authority,
5 its contractors and successors and assigns, will assume responsibility for completing
6 environmental remediation actions on the Property on behalf of the Government.
7

8 (b) Authority Proposal(s). The Authority will submit to the
9 Government a proposal(s) (the "Proposal(s)") consisting of a draft Environmental Services
10 Cooperative Agreement whereby the Authority, its contractors and successors and assigns, will
11 agree to remediate certain selected environmental conditions on selected portions of the Property
12 ("Environmental Remediation Work"). If the Parties negotiate and enter into an Environmental
13 Services Cooperative Agreement, the Authority, its contractors and successors and assigns, will
14 perform the Environmental Remediation Work in consideration for the agreed upon sum in
15 accordance with the terms and conditions of the Environmental Services Cooperative Agreement.
16 If the Government rejects the Proposal after discussions, the Government will retain
17 responsibility for the environmental remediation of the Property at its own cost, expense and risk.
18

19 **ARTICLE 11. Completion of Remediation and Deed Covenants.** For Property that
20 has transferred early, pursuant to the requirements of CERCLA 42 U.S.C. § 9620(h)(3)(C) for
21 which the remediation of the Property is completed, by either the Government or by the Authority
22 pursuant to an Environmental Services Cooperative Agreement, the Party responsible for
23 remediating the Property shall provide documentation evidencing regulatory closure as required
24 by CERCLA 42U.S.C. §9620(h)(3)(B) whereupon an appropriate instrument, in recordable form,
25 containing a warranty that all necessary remedial action has been taken as provided by CERLCA
26 42 U.S.C. § 9620(h)(3)(B)(iii) shall be prepared by the Government and delivered to the
27 Authority. The Authority may then record the warranty as an addendum or amendment to the
28 Deed.
29

30 **ARTICLE 12. Escrow; Title.** If deemed necessary by the Authority, the Authority shall
31 establish an escrow at its own cost and expense with an accredited title insurance company (the
32 "Escrow Agent"). Any title insurance that may be desired by the Authority shall be procured at
33 its sole cost and expense. However, the Government shall cooperate with the Authority or its
34 authorized agent and shall permit examination and inspection of any documents relating to the
35 title of the Property as it may have available. It is understood that the Government shall not be
36 obligated to pay for any expense incurred in connection with title matters for the Property. The
37 Authority may, at its sole cost and expense, on or before the Closing Date, order such searches as
38 it deems appropriate confirming the absence of additional title exceptions that may arise after
39 execution of this Agreement.
40

41 **ARTICLE 13. Officials Not To Benefit.** No member of or delegate to Congress shall
42 be admitted to any share or part of the Agreement or to any benefit to arise therefrom, but this
43 provision shall not be construed to extend to this Agreement if made with a corporation for its
44 general benefit.

1
2 **ARTICLE 14. Covenant Against Contingent Fees.** Authority warrants that no person
3 or agency has been employed or retained to solicit or secure this Agreement upon an agreement
4 or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide
5 employees or bona fide established commercial agencies maintained by Authority for the purpose
6 of securing the successful purchase of the Property by the Authority. "Bona fide established
7 commercial agencies" has been construed to include licensed real estate brokers engaged in the
8 business generally. For breach or violation of the warranty, Government has the right to annul
9 this Agreement without liability or in its discretion to require Authority to pay, in addition to the
10 consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
11

12 **ARTICLE 15. Notices.** Notices shall be deemed sufficient under this Agreement if made
13 in writing and submitted to the following addresses (or to any new or substitute address
14 hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure
15 set forth herein by the intended recipient of such notice):
16

17 If to Authority: James M. Flint, Executive Director
18 Alameda Reuse and Redevelopment Authority
19 Alameda City Hall
20 2263 Santa Clara Avenue
21 Alameda, CA 94501-4456
22 (Facsimile: 510-748-4504)
23

24 with a copy to: Carol Korade, General Counsel
25 Alameda Reuse and Redevelopment Authority
26 Alameda City Hall, Room 280
27 2263 Santa Clara Avenue
28 Alameda, California 94501-4456
29 (Facsimile: 510-748-4691)
30

31 and to: George R. Schlossberg, Esq.
32 Kutak Rock
33 1101 Connecticut Avenue, N.W.
34 10th Floor
35 Washington, D.C. 20036
36 (Facsimile: 202-828-2488)
37

38 If to Government: Commanding Officer
39 Southwest Division
40 Engineering Field Division
41 Naval Facilities Engineering Command
42 1220 Pacific Highway
43 San Diego, CA 92132-5189
44 (Facsimile: 619-532-3830)

1
2 **ARTICLE 16. Effects of Deeds.** The delivery of the executed Deeds pursuant to this
3 Agreement from the Government to the Authority shall be deemed full performance by the
4 Government of its obligations hereunder with regard to the portions of the Property conveyed by
5 each Deed other than any obligations of the Government which are required by this Agreement or
6 by law (including, *inter alia*, any obligations under CERCLA Section 120(h) and under Section
7 330 of the Department of Defense Authorization Act of 1993) to be performed after the delivery
8 of each such Deed. Except as otherwise provided for in this Agreement, the Government agrees
9 not to grant, after the effective date of this Agreement, any encumbrances, covenants, conditions,
10 restrictions, limitations on use or notices concerning the Property without first conferring with the
11 Authority. Except as provided herein and except for the Grantor's environmental remediation
12 responsibilities under CERCLA, all of the Property conveyed or leased hereunder will be in an
13 "as-is, where-is" condition and without any representation or warranty whatsoever and without
14 any obligation on the part of the United States of America except as expressly provided for by law
15 or in this Agreement.
16

17 **ARTICLE 17. Prior Claims.** The Government shall remain responsible for all
18 liabilities, claims, demands, judgments, suits, litigation, amounts payable (collectively, "Pre-
19 Closing Obligations") against the Government or the Property attributable to the period prior to
20 the conveyance or lease of the Property to the City as otherwise provided by the law. The City
21 shall notify the Government of the existence or occurrence of any such Pre-Closing Obligations of
22 which it has knowledge and shall cooperate with the Government in the disposition thereof.
23

24 **ARTICLE 18. Government's Covenants.** From the Effective Date of this Agreement
25 to the Closing, the Government shall not do, permit, or agree to do, any of the following:
26

27 (a) Sell, encumber or grant any interest in the Property or any part
28 thereof in any form or manner whatsoever or otherwise perform or permit any act which will
29 diminish or otherwise affect the Authority's interest under this Agreement or in or to the Property
30 or which will prevent the Government's full performance of its obligations hereunder, without the
31 written consent of the Authority, except as may be required for environmental restrictive
32 covenants or use restrictions serving as a component of remediation of any parcel; or
33

34 (b) Remove or alter any fixtures or personal property from the
35 Property listed on Exhibit "F," without the written consent of the Authority, except when such
36 removals or alterations are in association with the Government's continuing obligations under
37 CERCLA.
38

39 **ARTICLE 19. No Right of Rescission.** There shall be no right of rescission in the
40 Government as to the Property, or any portion thereof, once conveyed to the Authority. The
41 foregoing shall not be interpreted to limit any future exercise of the power of eminent domain by
42 the Government.
43
44

1 **ARTICLE 20. Master Lease Termination and Residual Obligations.**

2
3 (a) It is acknowledged that the Authority currently leases the Property
4 from the Government under a 15-year lease agreement, as amended, designated Government
5 Contract N6247497RP00P68, originally commencing on March 24, 1996 (the "Master Lease").
6 Simultaneous with the execution of this Agreement, (i) the Authority's leasehold interest in the
7 Property shall extinguish in accordance with the terms of said Master Lease, and all obligations
8 and responsibilities of the parties to the Master Lease shall cease and (ii) the parties agree to
9 execute a Lease in Furtherance of Conveyance for the Property ("LIFOC"). Attached as Exhibit
10 "J" is the form of LIFOC for the Property to be leased by the Government to the Authority.

11
12 (b) The Authority agrees to indemnify and hold harmless the
13 Government, its employees and agents for activities conducted by the Authority, its tenants,
14 agents, employees or contractors under the Master Lease or any rights-of-entry's authorized and
15 granted pursuant to this Agreement or any other pre-existing lease between the Authority and any
16 third party or any rights-of-entry authorized by the Government prior to this Agreement. The
17 Authority assumes no liability for damages for personal injury, illness, disability, death or property
18 damage arising from (i) any actions or activities prior to the time the Authority took possession of
19 the Property under the Master Lease, or any other pre-existing lease or right of way between the
20 Authority and the Government, (ii) any exposure or failure to comply with any legal requirements
21 applicable to lead based paint or asbestos on any portion of the Property arising prior to the
22 Government's conveyance of such portion of the Property to the Authority pursuant to this
23 Agreement, or (iii) any lead based paint, asbestos or asbestos containing materials that were
24 located on the Property at any time prior to the date of the Government's transfer of the
25 applicable portion of the Property but are no longer located thereon at the time of such transfer,
26 or (iv) any disposal, prior to the Government's transfer of the applicable portion of the Property,
27 of any lead based paint, asbestos or asbestos containing materials. Nothing contained herein shall
28 affect any liability of the Authority for claims arising under the Master Lease or any sublease of
29 any portion of the Property by the Authority prior to Closing.

30
31 **ARTICLE 21. Liability for Environmental Contamination.** Notwithstanding any
32 other provision of this Agreement, and except as set forth in the Deed described herein, the
33 Authority and its assigns do not hereby assume any liability or responsibility for environmental
34 impacts and damage caused by the Government's use of toxic or hazardous wastes, substances or
35 materials, or petroleum derivatives, on any portion of the Property. The Authority and its assigns
36 have no obligation under this Agreement to undertake the defense of any claim or action, whether
37 in existence now or brought in the future, or to conduct any cleanup or remediation action solely
38 arising out of the use or release of any toxic or hazardous wastes, substances or materials, or
39 petroleum or petroleum derivatives, on or from any part of the Property due to activity on the
40 Property by the Government.

41
42 **ARTICLE 22. Sharing of Roads.** The Government and the Authority shall grant to the
43 other at no cost such easements or licenses as may be required for (a) the use of roads, utilities
44 and other services necessary or desirable for the enjoyment and benefit of those portions of the

1 Property as to which possession has been given, and (b) for ingress and egress as may be
2 necessary to perform services.
3

4 **ARTICLE 23. Right of Entry.** From the Effective Date of this Agreement to the Final
5 Closing, the Government agrees to issue a license, lease, or other appropriate document to the
6 Authority for its representatives, agents, employees, lenders, contractors, appraisers, architects
7 and engineers designated by the Authority access to and entry upon the Property and the
8 improvements thereon to examine, inspect, measure, conduct infrastructure improvements,
9 demolish infrastructure, improvements, hazardous and other material disposal and removal,
10 construction of infrastructure and test the Property. In exercising the right of entry granted by
11 this section, the Authority shall: 1) provide reasonable notice to the Government of the date, time,
12 and purpose of the entry; 2) obtain the Government's prior written consent to any infrastructure
13 demolition, land-disturbing testing, including the taking of core samples, and hazardous and other
14 material disposal; 3) ensure that any activities on the Property do not interfere with Government
15 operations or activities; and 4) comply with terms and conditions specified by the Government
16 (including reasonable insurance requirements), which the Government agrees it shall not
17 unreasonably impose.
18

19 (a) Any work and improvements by the Authority shall be subject to terms,
20 conditions, and restrictions deemed necessary by the Government and set forth in the license,
21 lease or Rights of Entry as appropriate. The cost of said improvements shall be borne entirely by
22 the Authority, and shall remain the property of the Government if the transfers anticipated herein
23 do not occur. The Authority shall indemnify and hold the Government harmless from all claims,
24 liability, loss, cost, environmental contamination, or damage that may occur as a result of the
25 undertaking by the Authority of said improvements or site preparation, except where such claims,
26 liability, loss, cost, environmental contamination, or damage is the result of the gross negligence
27 or willful misconduct of the Government or its employees, agents, or contractors. It shall be the
28 responsibility of the Authority at its expense to obtain all governmental permits and clearances
29 and complete any environmental analysis or documentation required for the undertaking of said
30 improvements or site preparation, including but not limited to:

31 1. permits and clearances from the Government, EPA, and the California
32 Department of Toxic Substance Control, related to the ongoing environmental
33 cleanup at FISC and as may be required by applicable law;

34 2. air quality analysis and documentation; and

35 3. any permits, analysis, and/or documentation required by the National
36 Environmental Policy Act of 1969 (NEPA), the National Historic Preservation Act
37 of 1966 (NHPA), the Endangered Species Act, and the Coastal Zone Management
38 Act,

39 (b) The Government shall cooperate with the Authority as necessary to obtain
40 said permits, provided that the Authority shall satisfy any expense or liability of the Government
41 in connection therewith.

1
2 **ARTICLE 24. Modification; Waivers.** This Agreement contains the entire agreement
3 and understanding of the parties in respect to the purchase and sale of the Property, and may not
4 be amended, modified or discharged nor may any of its terms be waived except by an instrument
5 in writing signed by the parties. A waiver of a specific provision shall not be deemed a waiver of
6 any subsequent provision. The parties hereto shall not be bound by any terms, conditions,
7 statements, warranties or representations, oral or written, not contained herein.
8

9 **ARTICLE 25. Further Assurances.** The Parties acknowledge that it is their mutual
10 intent to effectuate an orderly, amicable, and expeditious transfer of the Property from
11 Government to Authority and that, toward that end, (i) any or all ambiguities herein shall, to the
12 extent practicable, be construed in the way most liberally conducive to the aforesaid conveyance,
13 (ii) the Parties both agree to take such additional acts and/or to permit such additional actions
14 (including but not limited to any actions required in the event it shall become necessary, before or
15 after the conveyances contemplated herein, to effect a formal subdivision or subdivisions of the
16 Property) and (iii) the Parties agree to execute, deliver and perform under the terms of such other
17 documents as their respective legal counsel may deem necessary or appropriate to effect the
18 purposes of this Agreement.
19

20 **ARTICLE 26. Dispute Resolution Procedures.**

21 (a) If a dispute arises under this Agreement, these procedures shall apply.
22 Either Party may invoke this dispute resolution procedure. The Parties shall make reasonable
23 efforts to informally resolve disputes at the lowest level prior to the issuance of a formal written
24 statement of dispute under the procedures set forth below.
25

26 (b) Within thirty (30) days after any action which leads to or generates a
27 dispute or after efforts to informally resolve a dispute have failed, either Party may submit a
28 written statement of dispute to the other Party setting forth the nature of the dispute, the work
29 affected by the dispute, the disputing Party's technical and legal position regarding the dispute,
30 and the relief requested. The Commanding Officer, Southwest Division, Naval Facilities
31 Engineering Command and the City Manager, City of Alameda, shall serve as Dispute Resolution
32 Managers for their respective organizations. The written statement of dispute shall be mailed by
33 the Dispute Resolution Manager for the disputing Party to the Dispute Resolution Manager for
34 the other Party.
35

36 (c) The Dispute Resolution Managers shall have twenty-one working days to
37 resolve the dispute from the date of receipt of the written statement of dispute. The resolution of
38 the dispute shall be memorialized in writing. Both Parties shall abide by the terms and conditions
39 of any final resolution of the dispute.
40

41 (d) The Parties shall diligently perform under this Agreement pending the
42 completion of these dispute resolution procedures.
43
44

1 (e) If the Dispute Resolution Managers are unable to resolve the dispute within
2 twenty-one working days of receipt of the written statement of dispute, the Parties may pursue
3 whatever remedies they may have at law or equity.
4

5 (f) The timeframes set forth above for reporting and resolution of disputes
6 may be extended by mutual agreement of the Parties and such agreement shall be memorialized in
7 writing.
8

9 **ARTICLE 27. Survival and Benefit.** The Authority may not transfer or assign its rights
10 and interests under this Agreement, without the written consent of the Government. All
11 representations, warranties, agreements, obligations and indemnities of the parties shall,
12 notwithstanding any investigation made by any party hereto, survive Closing and the same shall
13 inure to the benefit of and be binding upon the respective successors and assigns of the parties.
14 Nothing in this Agreement otherwise shall be construed as creating any rights of enforcement by
15 any person or entity that is not a party hereto, nor any rights, interest, or third party beneficiary
16 status for any entity or person other than the parties hereto.
17

18 **ARTICLE 28. Interpretation.** The headings and captions herein are inserted for
19 convenient reference only and the same shall not limit or construe the paragraphs or sections to
20 which they apply or otherwise affect the interpretation hereof.
21

22 (a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and
23 any similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the
24 term "heretofore" shall mean before, the date of this Agreement.
25

26 (b) Words of the masculine, feminine or neuter gender shall mean and
27 include the correlative words of other genders, and words importing the singular number shall
28 mean and include the plural number and vice versa.
29

30 (c) Words importing persons shall include firms, associations,
31 partnerships (including limited partnerships), trusts, corporations and other legal entities,
32 including public bodies, as well as natural persons.
33

34 (d) The terms "include," "including" and similar terms shall be
35 construed as if followed by the phrase "without being limited to."
36

37 (e) This Agreement shall be governed by and construed in accordance
38 with Federal law and the laws of the State of California, provided, that in the event of a conflict
39 between Federal law and the laws of the State of California, the Federal law shall govern.
40

41 (f) Whenever under the terms of this Agreement the time for
42 performance of a covenant or condition falls upon a Saturday, Sunday or holiday observed by the
43 performing party, such time for performance shall be extended to the next business day.
44 Otherwise all references herein to "days" shall mean calendar days.

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(g) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(h) Time is of the essence for this Agreement.

ARTICLE 29. Non-Discrimination. The Authority covenants for itself, its successors and assigns and every successor in interest to the Property hereby conveyed, or any part thereof, that the said Authority and such successors and assigns shall not discriminate upon the basis of race, color, sex, religion, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

ARTICLE 30. Further Assurances. The Government shall, upon the reasonable request of the Authority, execute, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in order to carry out the intent and purpose of this Agreement.

ARTICLE 31. Counterparts. This Agreement may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have caused their duly appointed representatives to execute this Agreement as of the Effective Date set forth above.

WITNESS/ATTEST:

THE UNITED STATES OF AMERICA

By: Rex Callaway
Name:
Title:

By: [Signature]
WILLIAM R. CARSILO
Real Estate Contracting Officer

ATTEST:

ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY

By: [Signature]
Name:
Title:

By: [Signature]
JAMES M. FLINT
Executive Director

Approved as to Form:
[Signature]
ASST. GENERAL COUNSEL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

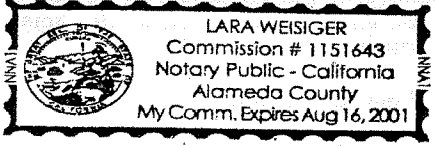
State of California

County of Alameda

On June 4, 2000 before me, Lara Weisiger, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared James M. Flint
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lara Weisiger
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

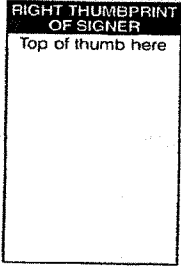
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

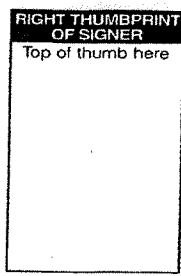
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

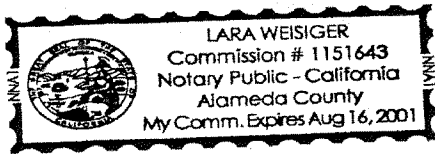
State of California

County of Alameda

On June 16, 2000 before me, Lara Weisiger, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared William R. Carrillo,
Name(s) of Signer(s)

personally known to me – **OR** – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lara Weisiger
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
 Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer
 Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing:

