CITY OF ALAMEDA ORDINANCE NO. ____

New Series

AUTHORIZING THE CITY MANAGER TO: (1) EXCUTE A MEMORANDUM OF UNDERSTANDING, QUITCLAIM DEED AND ALL OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF ALAMEDA AND THE UNITED STATES OF AMERICA ACTING BY AND THROUGH THE U.S. ARMY CORPS OF ENGINEERS TO ACQUIRE 94 PARCELS ON THE ALAMEDA SIDE OF THE OAKLAND INNER HARBOR TIDAL CANAL ('TIDAL CANAL") AND (2) EXECUTE PURCHASE AND SALE AGREEMENTS, QUITCLAIM DEEDS AND ALL OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF ALAMEDA AND VARIOUS PURCHASERS TO SELL APPROXIMATELY 92 PARCELS ON THE TIDAL CANAL AT FAIR MARKET VALUE

WHEREAS, the U.S. Army Corps of Engineers (the "Corps") excavated, dredged, and created the Oakland Inner Harbor Tidal Canal (the "Tidal Canal") between 1882-1905, which is a waterway approximately 1.8 miles long and 400 feet wide and connects the Oakland Estuary with the San Leandro Bay from approximately 1,800 feet northwest of the Park Street Bridge to approximately 2,300 feet south of High Street Bridge. The Corps has retained fee title ownership of the Tidal Canal since its creation. The southern edge of the Alameda side of the Tidal Canal now includes uplands and bulkheads that have been utilized to varying degrees by adjacent private property owners; and

WHEREAS, in 1990, the U.S. Congress authorized the Corps to transfer the Tidal Canal at no cost to the cities of Alameda and Oakland through the Water Resources Development Act ("WRDA") of 1990, as amended by WRDA 1996, 2007, and 2014; and

WHEREAS, starting in 2000, the Corps instituted a moratorium on issuing regulatory permits or real estate licenses for any repairs, upgrades, improvements or new construction along the Tidal Canal, with the exception of emergency repairs, (the "Permitting Moratorium") to encourage the City of Alameda (the "City") to accept the Alameda side of the Tidal Canal. The Permitting Moratorium has prevented repairs and improvements to existing structures along the waterfront, which has negatively affected adjacent property owners and has limited the City's ability to enforce code requirements along the Tidal Canal; and

WHEREAS, the Corps has agreed to take all reasonable steps necessary to effectuate the transfer, including filing a tentative map application under the Subdivision Map Act (CA Gov. Code §§66410-66413.5) to divide the Tidal Canal into approximately 105 individual parcels to facilitate the transfer to the City and the immediate subsequent transfer of portions of the Alameda side of the Tidal Canal to certain adjacent property owners. The Corps also has agreed to lift the Permitting Moratorium on the Alameda side of the Tidal Canal once the property is transferred out of federal ownership; and

WHEREAS, pursuant to the WRDA as amended, the Corps desires to convey (at no costs) fee title to 94 parcels on the Alameda side of the Tidal Canal through execution of a Memorandum of Understanding ("**MOU**") and a Quitclaim Deed ("**Army Deed**") to the City; out of the 99 lots, the Corps desires to transfer Parcels 2 and 4 through 96 to the City (the "**Transferred Property**") and to reserve and retain ownership of Parcels 1 (Oakland side of the canal), 3 (property adjacent to the federally-owned Navy Operational Support Center), and 103 through 105 (footings for the High Street Bridge, the Miller-Sweeney Bridge and the Fruitvale Rail Bridge and the Park Street Bridge) as depicted in the Tentative Map; and

WHEREAS, the City is authorized and empowered to enter into agreements for the acquisition and disposition of real property in the City of Alameda; and

WHEREAS, Article XVI of the California Constitution prohibits the City prohibits the City from selling property for less than its fair market value as such would be a gift of public funds; and

WHEREAS, the City has obtained an appraisal report from Watts, Cohn and Partners, Inc. a licensed appraisers who determined the fair market value of the Transferred Property and the City intends to dispose of the Transferred Property at its fair market value; and

WHEREAS, an application was made on June 1, 2016, by City staff on behalf of the Corps requesting approval to subdivide105 lots out of the approximately 85-acre Tidal Canal; and

WHEREAS, on June 1, 2016, the City published a Draft Initial Study/Negative Declaration ("IS/ND") for the OIHTC Project in accordance with the California Environmental Quality Act ("CEQA"), which addresses all potential environmental impacts associated with the proposed transfer and subsequent transfers into private ownership, amendments to the E, Estuary District, and the proposed subdivision map application; and

WHEREAS, the Planning Board held a public hearing on this application on July 11, 2016 and unanimously recommended that the City Council approve the Tentative Map; and

WHEREAS, by Resolution No. _____, the City Council previously certified the Negative Declaration under the California Environmental Quality Act ("**CEQA**"), California Public Resources Code Section 21000 et seq. and adopted written findings.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Alameda ("**City Council**") that after hearing all qualified and interested persons and receiving and considering all relevant evidence, finds and determines as follows:

Section 1. The City Council hereby delegates to the City Manager the authority to: execute the Quitclaim Deed, substantially in the form attached hereto as Exhibit A; execute the Memorandum of Understanding substantially in the form attached hereto as

Exhibit B; to execute auxiliary documents and to perform any and all acts necessary or desirable to consummate the acquisition and accept on behalf of the City the acquisition of the Army Corps' fee title interest in the Transferred Property.

Section 2. The City Council hereby delegates to the City Manager the authority to: execute Purchase and Sale Agreements containing the price and terms for the City's sale of individual parcels from the City to private purchasers at fair market value, substantially in the form attached hereto as Exhibit C; execute quitclaim deeds transferring the City's fee title interest in said parcels; and to execute auxiliary documents and to perform any and all acts necessary or desirable to consummate the disposition of the City's fee title interest in portions of the Transferred Property to private purchasers at fair market value.

Section 3. If any portion, section, subsection, paragraph, subparagraph, sentence, clause, phrase or application of this Ordinance is held invalid or inapplicable by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity or applicability of any other part of this Ordinance.

Section 4. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

_____
Presiding Officer of the Council

Attest:

_____
Lara Weisiger, City Clerk

U.S. ARMY CORPS OF ENGINEERS
OFFICIAL BUSINESS
REQUEST DOCUMENT BE RECORDED
AND EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE 6103

Recording requested by and
when recorded mail to:

REAL ESTATE DIVISION
U.S. ARMY CORPS OF ENGINEERS
SACRAMENTO DISTRICT
1325 J STREET, 8TH FLOOR
SACRAMENTO, CA 95812-2922

Space above this line reserved for Recorder's use

This deed was reviewed by:

_____
Jesse Anderson
Assistant District Counsel
U.S. Army Corps of Engineers
San Francisco District

QUITCLAIM DEED
PARCELS 2 and 4 THROUGH 96
ALAMEDA SIDE OF THE OAKLAND INNER HARBOR TIDAL CANAL
ALAMEDA COUNTY, CALIFORNIA

This QUITCLAIM DEED for Parcels 2 and 4 through 96 (hereinafter the "Deed") within the Oakland Inner Harbor Tidal Canal is made and entered into by and between the **UNITED STATES OF AMERICA** (hereinafter the "GRANTOR" or the "UNITED STATES"), acting by and through the Director of Real Estate, U. S. Army Corps of Engineers, under authority of the provisions contained in the Water Resources Development Act (WRDA) of 1990, Pub. L. No. 101-640 § 205, as amended by WRDA 1996, Pub. L. No. 104-303 § 501(b), WRDA 2007, Pub. L. No. 110-114 § 3182(b), and WRDA 2014, Pub. L. No. 113-121 § 6005(a) and the **CITY OF ALAMEDA,** a charter city and municipal corporation (hereinafter the "GRANTEE") (each a "Party" and collectively the "Parties").

WITNESSETH THAT:

WHEREAS, the GRANTOR does hereby REMISE, RELEASE, AND FOREVER QUITCLAIM unto the GRANTEE, its successors and assigns, all rights, title, and interest of the GRANTOR in and to that certain 42 acres of land, more or less, containing 94 parcels, situated, lying and being in the County of Alameda, State of California. The approximately 42-acre, 94-parcel property herein conveyed is identified as Parcels 2 and 4 through 96, particularly depicted by the subdivision maps attached as Exhibit A, which map has been duly recorded on the _____ day of _____, 2016 in the official records of the Alameda County Records Office and made a part hereof (the transferred parcels are referred to individually each as a "Parcel" and collectively referred to as the "Property").

WITNESSETH THAT the GRANTOR does hereby RESERVE and RETAIN ALL RIGHT, TITLE, AND INTEREST IN Parcels 3 and 97 through 99 and the Unsurveyed Remainder Area 1 within the Oakland Inner Harbor Tidal Canal, which contains the Oakland side of the canal (Unsurveyed Remainder Area 1), property adjacent to the federally-owned Navy Operational Support Center (Parcel 3), and bridge footings for the High Street Bridge (Parcel 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Parcel 98) and the Park Street Bridge (Parcel 99), contained within the Oakland Inner Harbor Tidal Canal.

SUBJECT TO all valid and existing reservations, covenants, conditions, restrictions, and easements, including, but not limited to, rights-of-way for railroads, highways, pipelines, and public utilities, if any, whether of public record or not, and such rights-of-way or other rights as are determined to be necessary for the operation and maintenance of the authorized Federal Channel.

TO HAVE AND TO HOLD the Property granted herein to the GRANTEE, its successors and assigns, together with all and singular the appurtenances, rights, powers, and privileges thereunto belonging or in anywise appertaining, and all the estate, rights, title, interest, or claim whatsoever of the GRANTOR, either in law or in equity, and subject to the reservations, covenants, conditions, and restrictions set forth in the Deed.

AND IT IS FURTHER AGREED AND UNDERSTOOD by and between the Parties hereto that the GRANTEE, by its acceptance of the Deed and the GRANTOR, by its granting of the Deed, and as part of their collective consideration for the conveyance and acceptance made herein, covenants and each promises for itself, its successors and assigns, forever, that the Deed is made and accepted upon each of the reservations, covenants, conditions, and restrictions which shall be binding upon and enforceable against the GRANTEE, its successors and assigns, and the GRANTOR in perpetuity, as stated in the Deed, and as enforceable by the GRANTOR, the GRANTEE, or other interested parties, as applicable, and as may be allowed by law. The reservations, covenants, conditions, and restrictions set forth herein are a binding servitude on the Property and shall be deemed to run with the land. The failure to include the reservations, covenants, conditions, and restrictions in subsequent conveyances of the Property or portions thereof will not abrogate the status of these reservations, covenants, conditions, and restrictions as binding upon the GRANTOR and the GRANTEE, and the GRANTEE'S successors and assigns.

1. CERCLA NOTICE

For the Property, the GRANTOR provides the following notice, description, and covenants and retains the following access rights:

A. 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 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (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 which such substances were stored, released, or disposed of on the Property, as defined in section 120(h), is provided in Exhibit B, attached hereto and made a part hereof.

B. Description of Remedial Action Taken, if Any, Pursuant to Section 1230(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 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (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.

2. CERCLA COVENANT

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

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

(1) 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 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed, and

(2) any additional remedial action found to be necessary after the date of this Deed shall be conducted by the UNITED STATES.

This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, The Grantee shall not be considered a potentially responsible party solely due to the presence of a hazardous substance remaining on the property on the date of this instrument, provided that The Grantee has not caused or contributed to a release of such hazardous substance.

3. CERCLA RIGHT OF ACCESS

A. Access rights pursuant to section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C §9620(h)(3)(A)(iii))):

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

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

(3) In exercising such easement and right of access, neither the GRANTEE nor its successors and assigns, as the case may be, shall have any claim at law or equity against the UNITED STATES or any officer or employee of the UNITED STATES based on actions taken by the UNITED STATES or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause; provided, however, that nothing in this paragraph shall be considered a waiver by the GRANTEE or its successors and assigns of any remedy available under the Federal Tort Claims Act.

4. "AS IS" CONDITION

A. The GRANTEE acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the Property. The GRANTEE understands and agrees that the Property is conveyed in its "AS IS" condition without any representation, warranty, or guaranty by the GRANTOR as to quantity, quality, title, character, condition, size, or kind, or that the same is in a suitable condition or fit to be used for the purpose(s) intended by the GRANTEE, and no claim for allowance or deduction upon such grounds shall be considered.

B. No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. The GRANTEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of the Property including, without limitation, the presence of any asbestos, lead-based paint, or other conditions on the Property. The failure of the GRANTEE to inspect or to exercise due diligence to be fully informed as to the condition of the Property shall not constitute grounds for any claim or demand against the UNITED STATES.

C. Nothing in this "AS IS" condition provision shall be construed to modify or negate the GRANTOR'S obligation under the covenant pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B)), or any other statutory obligations.

5. HOLD HARMLESS

A. To the extent authorized by law, the GRANTEE, its successors and assigns, covenant and agree to indemnify and hold harmless the GRANTOR, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the covenants, conditions, and restrictions in this Deed by the GRANTEE, its successors and assigns, as applicable, and (2) any and all claims, damages and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property related to a discharge or exposure taking place after the date of conveyance and during the GRANTEE's, its successors' and assigns' ownership of such portion of the Property.

B. The GRANTEE, its successors and assigns, covenant and agree that the GRANTOR shall not be responsible for any costs associated with modification or termination of the covenants, conditions, and restrictions in this Deed including, without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property related to a discharge or exposure taking place after the date of conveyance and during the GRANTEE's, its successors' and assigns' ownership of such portion of the Property.

C. Nothing in this Hold Harmless provision shall be construed to modify or negate the GRANTOR'S obligation under the covenant pursuant to sections 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B)), or any other statutory obligations.

6. POST-TRANSFER DISCOVERY OF CONTAMINATION

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property or any individual Parcel(s), after the date of conveyance, the GRANTEE, its successors or assigns, shall be responsible for such release or threatened release of such newly discovered substance, unless the GRANTEE, its successors or assigns is able to demonstrate that such release or newly discovered hazardous substance or petroleum product was due to the GRANTOR'S activities, use, or ownership of the Property. If the GRANTEE, its successors or assigns, believes the discovered hazardous substance or petroleum product was due

to the GRANTOR'S activities, use or ownership of the Property, the GRANTEE, its successors or assigns will immediately secure the site and notify the GRANTOR of the existence of the hazardous substance or petroleum product and the GRANTEE, its successors and assigns shall not further disturb or allow the disturbance of such hazardous substance or petroleum product without the prior written permission of the GRANTOR.

B. The GRANTEE, its successors and assigns, as part of the consideration for the conveyance of the Property or any individual Parcel(s), agree to release the GRANTOR from any liability or responsibility for any claims arising solely out of the release or threatened release of any hazardous substance or petroleum product on any portion of the Property related to a discharge or exposure occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property or any individual Parcel(s) by the GRANTEE, its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the GRANTOR'S responsibility to conduct response actions or corrective actions that are required by applicable laws, rules and regulations.

7. NON-DISCRIMINATION COVENANT

The GRANTEE, its successors and assigns, covenant that such GRANTEE, its successors and assigns, shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale or lease of any Parcels(s), or in its employment practices conducted on or in relation to the Parcel(s), as long as it holds such interest to the Parcel(s). For the avoidance of doubt, the foregoing covenant shall constitute, with respect to each and every Parcel, a "covenant that runs with the land" that applies to and that obligates the GRANTEE, its successors and assigns. The UNITED STATES 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 Parcel(s) and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

8. ANTI-DEFICIENCY ACT

The GRANTOR's obligation to pay or reimburse any money under the Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army and nothing in the Deed shall be interpreted to require obligations or payments by the GRANTOR in violation of the Anti- Deficiency Act, 31 U.S.C. § 1341.

9. NO WAIVER

The failure of the GRANTOR to insist in any one or more instances upon complete performance of any obligation of the GRANTEE, its successors or assigns required by the covenants, conditions, or restrictions set forth in the Deed shall not be construed as a waiver or a relinquishment of the GRANTOR'S right to the future performance of any such obligation of the GRANTEE, or its successors or assigns, required by said covenants, conditions, and restrictions, and such obligations of the GRANTEE, its successors and assigns, shall continue in full force and effect.

----------NO CONDITIONS FOLLOW----------

IN WITNESS WHEREOF the GRANTOR has caused the Deed to be executed in its name by the Director of Real Estate, U.S. Army Corps of Engineers, this _____ day of _____, 2016.

UNITED STATES OF AMERICA

By: _____

Brenda M. Johnson-Turner
Director of Real Estate, U.S. Army Corps of Engineers

ACKNOWLEDGEMENT

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

I, _____, a notary public in and for the District of Columbia, do certify that Brenda M. Johnson-Turner, Director of Real Estate, U.S. Army Corps of Engineers, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the forgoing document, appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by her for the purposes therein stated, on this date, on behalf of the UNITED STATES OF AMERICA and that she had due authority to sign the document in the capacity therein stated.

Given under my hand and seal this _____ day of _____, 2016.

_____

Notary Public

Notary Registration No: _____

My commission expires: _____

(IMPRESS YOUR OFFICIAL NOTARY PUBLIC SEAL OF OFFICE ON
THIS CERTIFICATE OF ACKNOWLEDGMENT)

ACCEPTANCE OF CONVEYANCE

IN WITNESS WHEREOF the GRANTEE, acting by and through its City Manager, hereby accepts the conveyance herein subject to the reservations, covenants, conditions and restrictions contained in the Deed, this _____ day of _____, 2016.

CITY OF ALAMEDA
a charter city and municipal corporation

By: _____
Jill Keimach
City Manager, City of Alameda

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Signature of Notary)

CITY ATTORNEY'S CERTIFICATE

I, Janet Kern, acting as Legal Counsel for the City of Alameda, here referred to as the"GRANTEE," do hereby certify that I have examined the foregoing Deed and the preceding taken by the GRANTEE relating thereto and find that the acceptance of this Deed by the GRANTEE has been duly authorized and that the GRANTEE's execution hereof is in all respects due and proper and in accordance with the laws of the State of California, and further that, in my opinion, the Deed constitutes a legal and binding compliance obligation of the GRANTEE in accordance with the terms thereof.

Dated at _____this _____day of _____, 2016

By _____
Janet Kern, City Attorney

EXHIBIT A
Final Map of Parcels 2 through 4-96

EXHIBIT B
Hazardous Substances

CONFIDENTIAL – DRAFT FOR REVIEW

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
City Attorney's Office
2263 Santa Clara Avenue, #280
Alameda, CA 94501-4456
Attn: Andrico Penick

MEMORANDUM OF UNDERSTANDING

FOR TRANSFER OF THE OAKLAND INNER HARBOR TIDAL CANAL

THIS MEMORANDUM OF UNDERSTANDING (this "Agreement" or this "MOU") is made and entered into as of October ____, 2016, by and between **the City of Alameda**, a charter city and municipal corporation (the "City"), and **the U.S. Army Corps of Engineers**, (a federal agency acting under the U.S. Department of the Army) (the "Corps") (each a "Party" and collectively the "Parties") and reflects the intent of the Parties with respect to the transfer of the Alameda side of the Oakland Inner Harbor Tidal Canal (as defined below) from the Corps to the City.

R E C I T A L S

A. On October 20, 1884, the Superior Court of Alameda granted to the Corps, by Judicial Decree No. 3590, ownership of a strip of land connecting the cities of Alameda and Oakland for purposes of dredging and excavating a tidal canal out of uplands, which property became known as the Oakland Inner Harbor Tidal Canal and is more specifically described in the map attached as "Attachment A" to this MOU (the "Tidal Canal"). Between approximately 1884-1905, the Corps excavated, dredged, and created the Tidal Canal, which is a waterway approximately 1.8 miles long and 400 feet wide and connects the Oakland Estuary with the San Leandro Bay. The Corps has retained fee title ownership of the Tidal Canal since its creation.

B. The Corps desires to remise, release, and forever quitclaim unto the City, its successors and assigns, all rights, title, and interest of the Corps in 94 parcels along the Alameda side of the Tidal Canal, identified as Parcels 2 and 4 through 96, particularly depicted by the subdivision maps attached as "Exhibit B", which map has been duly recorded on the _____ day of _____, 2016 in the official records of the Alameda County Records Office and made a part hereof (the transferred parcels are referred to individually each as a "Parcel" and collectively referred to as the "Property").

C. The Corps desires to reserve and retain ownership of Parcels 3, 97 through 99 and the Unsurveyed Remainder Area 1, which contains the Oakland side of the canal (Unsurveyed Remainder Area 1), property adjacent to the federally-owned Navy Operational Support Center (Parcel 3) and bridge footings for the High Street Bridge (Parcel 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Parcel 98) and the Park Street Bridge (Parcel 99) as particularly depicted on the subdivision map attached as Exhibit B. These five (5) parcels are collectively referred to as the ("Excluded Property").

D. The southern edge of the Property now includes uplands and bulkheads that have been utilized to varying degrees by adjacent private property owners.

E. During its ownership, the Corps has issued various approvals and authorizations to adjacent property owners to use portions of the Property through real estate licenses, leases and regulatory permits.

F. In 1990, the U.S. Congress authorized the Corps to transfer the Tidal Canal at no cost to the cities of Alameda and Oakland through the Water Resources Development Act ("WRDA") of 1990, as amended by WRDA 1996, 2007, and 2014. The Corps has been negotiating with the cities of Alameda and Oakland since 1990 to transfer the Tidal Canal out of federal ownership.

G. Starting in 2000, the Corps instituted a moratorium on issuing regulatory permits or real estate licenses for any repairs, upgrades, improvements or new construction, with the exception of emergency repairs, within the Tidal Canal (the "Permitting Moratorium"). The Permitting Moratorium has prevented repairs and improvements to existing structures and docks along the waterfront that did not fit within the emergency repair exception, which has affected adjacent property owners and the City's code enforcement program.

H. To lift the Permitting Moratorium and to remove the existing cloud on title along the Tidal Canal, the City has agreed to accept ownership of the Property from the Corps subject to certain conditions and, with the intent of transferring portions of the Property immediately to certain adjacent property owners at fair market value for each subdivided parcel, whichever is higher.

I. The Corps desires to transfer the Property to the City, and has agreed to take all reasonable steps necessary to effectuate the transfer, including filing a tentative map application under the Subdivision Map Act (CA Gov. Code §§66410-66413.5) to divide the Alameda side of the Tidal Canal into approximately 99 individual parcels prior to transfer to facilitate the immediate subsequent transfer of portions of the Property to the certain property owners. The filing of the tentative subdivision map application does not implicitly nor explicitly waive sovereign immunity, and is at no cost to the Corps.

J. On _____, 2016 the City Council of Alameda (the "City Council") approved a tentative map to divide the Property into approximately 99 individual parcels subject to certain conditions and authorized the City Manager to enter into this MOU ("City's Initial Approval"). On ___ _____, 2016, the City Council authorized the, City Manager to (i) accept the Property subject to certain conditions, and (ii) enter into the subsequent and immediate transfer of portions of the Property to subsequent purchasers. On _____, 2016, the City Council approved a Final Map to divide the Property into approximately 99 individual parcels.

K. On _____, 2016, the Corps completed the Environmental Assessment/Finding of No Significant Impact to cover the federal transfer of the Tidal Canal in compliance with the National Environmental Policy Act (42 U.S.C § 4321).

L. On _____, 2016, the Corps completed a Finding of Suitability of Transfer (the "FOST"), which provides documentation that the Tidal Canal is environmentally suitable for transfer by deed.

M. To address any potential liability related to environmental contamination, dredging, and maintenance within the Tidal Canal and to establish the conditions precedent to the City's acceptance of the Property, the Corps and the City desire to enter into this MOU to outline clearly the intent and responsibilities of the Parties related to the Tidal Canal and to have this MOU recorded with the deed for the Property.

A G R E E M E N T

Based on the mutual covenants and agreements described herein, the City and the Corps hereby agree as follows:

1. **Grant of Property; Acceptance of Property.**

(a) As soon as possible after the City's Initial Approval, and no later than thirty (30) days after City Initial Approval the Corps shall provide the City with a duly executed and acknowledged quitclaim deed conveying the subdivided Property to the City in the form of "Attachment C" (the "Quitclaim Deed").

(b) The City shall accept fee title to the Property provided that all of the Conditions Precedent (defined below in Section 4) have been met, the City Council has approved the Final Map and escrow is closed (the "Closing Date").

2. **Effective Date.** As used herein, the term "Effective Date" shall mean the date on which each Party has received from the other Party a counterpart signature page to this Agreement.

3. **Termination.** This Agreement may be terminated prior to close of escrow: (i) by the City for the Corps' failure to fulfill a Conditions Precedent; (ii) by the Corps for the City's failure to fulfill a Conditions Precedent; (iii) by the mutual consent of the Parties; or (iv) by the City pursuant to Section 4(d).

(a) Written notice of termination must be delivered to the other Party in accordance with Section 9(h) and is effective upon receipt. Upon termination, neither Party shall have any legal obligation to the other with respect to the proposed transaction. However, each side shall be entitled to their original executed documents in the possession of the other Party or in Escrow and each Party shall take all reasonable actions necessary and convenient to rescind, terminate or otherwise render ineffective the terms of this MOU. This obligation shall survive the termination of the MOU.

4. **Conditions Precedent to Transfer.** The obligation of the City to accept transfer of the Property is expressly conditioned upon the satisfaction, prior to said transfer, of each of the conditions precedent set forth in this Section 4 (each a "Condition Precedent" and, collectively, the "Conditions Precedent"), any of which Conditions Precedent may be waived by the City through its City Manager in his/her sole discretion. If any of the Conditions Precedent are not met within the specified timeframes below, the City Manager, in his/her sole and absolute discretion may elect one or more of the following remedies ("City Remedies"): (i) terminate this MOU and refuse to accept the Property; (ii) extend any applicable deadlines in order to afford the Corps more time to comply with such Conditions Precedent and proceed with the transfer; or (iii) partially or fully waive the fulfillment of the Condition Precedent and proceed with the transfer. If this Agreement is terminated, the City shall be under no legal obligation to accept the transfer of the Property.

(a) Delivery of All Documents. Within the timeframes established in Section 8 below but no later than thirty (30) days after the City's Initial Approval, the Corps shall provide to the City all of the documents necessary to effect the transfer of the Property and closing of the transfer transaction (collectively, the "Closing Documents"), including:

(i) A fully executed FOST, including all related documents;

(ii) Two fully executed original versions of this MOU ("Fully Executed MOU");

(iii) The Quitclaim Deed;

(iv) A copy of the Moratorium Removal Notice (defined below) establishing that the Permitting Moratorium has been lifted as described below in Section 4(b);

(v) Copies of any lease termination letters to adjacent property owners or assigned leases, as applicable, as may be requested by the City pursuant to Section 4(e) hereof; and

(vi) Any other documents deemed necessary by the City, the Corps or the Escrow Agent (defined below in Section 8(b)) to complete the transaction.

(b) Removal of Permitting Moratorium. No later than thirty (30) days after the City's Initial Approval, the Corps shall submit to the City a notice addressed to all property owners adjacent to the Property that the Permitting Moratorium will be removed from all portions of the Property on the Closing Date (the "Moratorium Removal Notice")..

(c) Free and Clear Title. If the survey of the Property completed by the City contains any exceptions to title which are not acceptable to the City in the City Manager's sole and absolute discretion, then the City Manager shall notify the Corps of any and all objections to same in writing to the Corps no later than three (3) business days after the Effective Date. Any such objection by the City Manager shall be deemed to be a title defect ("Title Defect"). Such notice is referred to herein as the "Notice of Title Defect." The Corps shall take all reasonable efforts to cure the Title Defects identified by the City Manager as soon as possible but no later than thirty (30) days from the City's Initial Approval. If the Corps does not timely cure all Title Defects, the City through its City Manager may elect one or more of the City Remedies.

(d) Subsequent Purchaser Participation. The City shall take all reasonable actions to enter into with each owner adjacent to the Property or such other interested purchaser, as applicable, (each a "Subsequent Purchaser") any purchase and sale agreements, other agreements, instruments and other documents that may be required by applicable law (collectively, "Subsequent Transfer Documents") to transfer 86 parcels of the 94 parcels on the Property (each parcel transfer, a "Subsequent Transfer"). In the event that there is not a Subsequent Purchaser committed to enter into a Subsequent Transfer for each of the 86 parcels within sixty (60) days of the City's Initial Approval (the "Subsequent Transfer Commitment Date"), as determined by the City Manager in his/her sole discretion, the City shall be entitled (but not obligated) to terminate this Agreement and decline to accept transfer of the Property. If the Agreement is terminated, the Parties shall follow the termination process in Section 3(a).

(e) Assign or Release Existing Leases With Property Owners. As directed by the City Manager in his/her sole discretion, the Corps shall, within thirty (30) days of the City's Initial Approval, either terminate, assign to the City, or retain in place as an approved title exception, any current leases, licenses, easements or other outgrants applicable to the Property between the Corps, on the one hand, and any tenant, licensee or easement holder on the other hand (collectively, the "Existing Leases"). In the case of termination or assignment of an Existing Lease, the Corps shall submit to the City written evidence of such termination or assignment, reasonably satisfactory to the City Manager. The City shall review and deposit into escrow.

(f) Truth of Representations and Warranties. Each of the representations and warranties set forth in Sections 5, 6 and 7 hereof shall be true and correct as of the Effective Date until the Closing Date (the "Closing Period").

5. **Corps' Representations and Warranties.** To induce the City to enter into this Agreement and to accept the Property pursuant to the terms hereof, the Corps represents and warrants for the benefit of the City, both as of the Effective Date and at all times during the Closing Period as follows:

(a) Authority. The Corps is duly authorized to enter into this Agreement and has all necessary lawful authority, and has taken all necessary actions, to: (i) execute this Agreement, (ii) incur the obligations of the Corps specified herein, and (iii) transfer the Property to the City on the Closing Date in accordance with the terms hereof.

(b) Authority to Assign or Terminate Existing Leases. The Corps has all necessary regulatory and legal authority to either terminate or assign to the City the Existing Leases as directed by the City pursuant to Section 4(e) of this Agreement.

(c) CERCLA Section 120(h). The Corps represents and warrants that all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Cleanup and Liability Act of 1980 ("CERCLA") remaining on the property will have been taken before the date of the Quitclaim Deed.

6. **Corps' Covenants.** To induce the City to enter into this Agreement and to accept the Property pursuant to the terms hereof, the Corps hereby covenants as follows:

(a) Use of All Reasonable Efforts to Complete Transfer. The Corps shall use reasonable efforts and allocate necessary staffing resources to:

(i) ensure the delivery of the Closing Documents within the Closing Period, which efforts shall include, but are not limited to, contacting Corps staff and their respective supervisors in the San Francisco Corps District, the Sacramento Corps District or the Corps Headquarters in Washington D.C., as necessary and applicable, to finalize the Closing Documents; and

(ii) prioritize the process of transferring the Property in accordance with the terms hereof over other projects of the Corps to the greatest extent possible during the Closing Period.

(b) Dredging and Maintenance Obligations. The Corps shall retain any and all dredging and maintenance obligations required by federal law to maintain navigation within the Tidal Canal and within the Property. Such dredging and maintenance obligations of the Corps shall remain in effect until such time as Congress passes legislation relieving the Corps of its obligation to maintain navigation within waters of the United States.

(c) Indemnification and Defense Related to Environmental Liability. The Corps has completed Environmental Baseline Reports which confirm that soil at multiple locations along the commercial/industrial shoreline within the Property are contaminated with petroleum and heavy metals in excess of regulatory benchmarks for industrial land use. (*Environmental Baseline Survey Report*, _____ _____, *2016*.) ("Existing Environmental Contamination"). The Corps acknowledges that as the sole historical owner of the Property after 1884, the Existing Environmental Contamination must have been discharged during the Corps' or predecessor's ownership of the Property.

(i) CERCLA Section 120(h). The Corps shall complete such additional remedial action as may be found to be necessary after the Closing Date, to the extent authorized by Section 120(h)(3) of CERCLA ("CERCLA Remedial Actions"). This covenant will not apply to any remedial action required

directly as a result of any act of the City or any adjacent developer after the Closing Date that causes a new release of hazardous substances on the Property.

(ii) Indemnity. The Corps agrees to indemnify, reimburse and hold harmless the City for any claims brought against the City as the owner of the Property related to remedial actions found to be necessary after the Closing Date to the extent authorized by Section 120(h)(3) of CERCLA and the Federal Tort Claims Act (the "FTCA"), 28, U.S.C. § 1346. This indemnity will not apply to any remedial action required as a direct result of any act of the City or any adjacent developer after the Closing Date that causes a new release of hazardous substances on the Property.

(iii) Waiver of Environmental Liability. To the fullest extent permitted by applicable law, e.g., CERCLA and FTCA, and except as otherwise expressly set forth in this Agreement, the Corps does hereby waive and release the City, its City Council, its boards, its commissions, its officials, and its employees, agents (including any outside legal counsel retained by the City in connection with this Agreement and the transfer of the Property), any of the City's successors and assigns (each an "Indemnitee" and collectively the "Indemnitees") from any present or future claims and liabilities of any nature arising from or relating to the presence or alleged presence of hazardous substances in, on, at, from, under or about the Property, including, without limitation, any claims under or on account of any environmental law, regardless of whether such hazardous substances are located in, on, at, from, under or about the Property or any adjacent property prior to or after the Closing Date. In addition, to the fullest extent permitted by CERCLA and FTCA, the Corps does hereby covenant and agree to defend, indemnify, and hold harmless each Indemnitee from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, known or unknown, existing in future, to the extent relating to any hazardous substances that were placed, located or released on the Property before the Closing Date and, with respect to any such releases, that existed on the Property prior to the Closing Date, including any action or proceeding brought or threatened or ordered by governmental authorities.

(d) Waiver and Release. To the fullest extent permitted by applicable law, e.g., CERCLA and FTCA, the Corps does hereby waive and release the Indemnitees from any future claims related to legal descriptions of the Property, property boundary disputes, encroachments existing prior to the Closing Date or the ongoing Dredging and Maintenance Obligations of the Corps.

7. **City's Representations and Warranties.**

(a) Authority. The City hereby represents and warrants that it is duly authorized to enter into this Agreement and that it has all necessary lawful authority, and has taken all necessary actions, to execute this Agreement and to accept transfer of the Property.

(b) Use of All Reasonable Efforts to Complete Transfer. The City shall use reasonable efforts and allocate necessary staffing resources to facilitate the transfer of the Property within the Closing Period, which efforts shall include but are not limited to: (i) coordinating with and distributing draft purchase and sale agreements to all Subsequent Purchasers in advance of the City Approval to expedite and confirm that all such Subsequent Purchasers have committed to enter into a Subsequent Transfer by the Subsequent Transfer Commitment Date; (ii) reviewing all applicable environmental reports in a timely manner to avoid delays; and (iii) prioritizing this transfer process over other projects of the City to the greatest extent possible during the Closing Period.

8. **Closing Process; Escrow.**

(a) Closing Process Prior to Escrow. The Parties agree to observe the process outlined below in order to complete the transfer of the Property (the "Closing Process").

(i) No later than two (2) business days following the City Approval, the City will execute two originals of this Agreement ("City-Executed MOU") and send the City-Executed MOU to the Corps for review and execution.

(ii) No later than five (5) days after the Corps receives the City-Executed MOU, the Corps will execute and send back to the City for review and delivery into escrow two original Fully Executed MOUs. All other Closing Documents from the Corps will be provided to the City as soon as they become available during the Closing Period but no later than thirty (30) days after the City's Initial Approval.

(iii) The City will review the Closing Documents and notify the Corps within five (5) business days of receiving any Closing Documents of any deficiencies in such Closing Documents (a "Closing Document Deficiency"). In the event of a Closing Document Deficiency, the City Manager, in his/her sole discretion may elect to use one or more City Remedies.

(b) Escrow. The Parties agree that an escrow (the "Escrow") shall be established to facilitate the Property transfer and the Subsequent Transfers. The City shall take all actions necessary to establish the Escrow with Chicago Title Company, 675 N. First Street, Suite 300, San Jose, CA 95112 (the "Escrow Agent"). The Parties agree to enter into any mutually agreeable escrow agreements and other related documents (collectively, the "Escrow Documents") as may be reasonably requested or required by the Escrow Agent to establish the Escrow and give effect to the terms of this MOU.

(c) City Deposits Into Escrow. Once the City has determined that the Closing Documents and Escrow Documents (if any) are complete and that no uncured Closing Document Deficiencies exist, the City shall submit the Closing Documents and written escrow instructions (the "Escrow Instructions") to the Escrow Agent instructing the Escrow Agent to close the Escrow in accordance with the terms of this Agreement and such Escrow Instructions.

(d) Close of Escrow. When the contingencies specified in Section 4 hereof have been satisfied or waived by the City and the Escrow Agent has received all necessary Closing Documents, Escrow Documents, and Escrow Instructions, the Escrow Agent shall close the Escrow in accordance with the Escrow Instructions. The Parties shall cooperate with each other and the Escrow Agent to prepare and execute such further documents (including further escrow instructions) as may be reasonably necessary to close the Escrow.

9. **Miscellaneous.**

(a) Integrated Agreement. This Agreement supersedes any prior agreements of the Parties with respect to the subject matter hereof, whether written or oral.

(b) Effective Date. This Agreement will become effective on the Effective Date.

(c) Mutually Drafted Agreement. Each of the Parties has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Agreement. Accordingly, the Parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Agreement. Further, each of the Parties acknowledges that it has read this entire document, including the attached exhibits, and fully understands its terms and effect.

(d) Further Assurances. The Parties shall execute, acknowledge, and deliver such additional documents or instruments as may be necessary to carry out the intent of this Agreement, including, but now limited to, those expressly referred to in this Agreement.

(e) Entire Agreement; Amendment. This Agreement contains the entire agreement between the Parties with regard to the matters set forth. This Agreement may be amended or modified only by a written agreement executed by each of the Parties.

(f) Attachments. Attachments A, B, and C of this Agreement are each incorporated herein by this reference.

(g) No Third-Party Rights. This Agreement is not intended to, and shall not create, any rights in favor of any persons or entities other than the Parties, and no such third-party beneficiaries are intended.

(h) Notice. Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to be given when served personally, or on the third business day after mailing if mailed by United States mail, postage prepaid, addressed to the applicable Party as set forth below:

If to the City:	City of Alameda Alameda City Hall 2263 Santa Clara Ave., Rm 320 Alameda, CA 94501 Tel: (510) 747-4700 Attn: City Manager
With a copy to:	City of Alameda Alameda City Hall 2263 Santa Clara Ave., Rm 280 Alameda, CA 94501 Tel: (510) 747-4750 Attn: City Attorney
If to the Corps:	US Army Corps of Engineers 1455 Market Street San Francisco, CA 94103 Tel: (415) 503-6760 Attn: District Counsel

(i) Execution in Counterparts. The Parties may execute this Agreement in counterparts, each one of which will be an original or the equivalent thereof, and all such counterparts taken together shall constitute but one and the same agreement.

(j) Construction. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "sections" are the Sections of this Agreement, unless otherwise specifically provided.

(Remainder of page intentionally left blank; signature page follows)

In WITNESS WHEREOF, the Parties have signed this Memorandum of Understanding on the dates indicated below.

CITY OF ALAMEDA

By: _____
Jill Keimach,
City Manager

Date: _____

Attest:

By: _____
Lara Weisiger, City Clerk

Approved as to Form:

By: _____
Andrico Q. Penick
Assistant City Attorney

U.S. ARMY CORPS OF ENGINEERS

By: _____
LTC John C. Morrow
Commander and District Engineer

Date: _____

THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE CORPS ATTORNEY

Approved as to form and legality this _____ day of _____, 2016

By: _____
Merry Goodenough
District Counsel

Authorized by City Council Ordinance No. _____

ATTACHMENT A
Tidal Canal Overview Map

ATTACHMENT B
Subdivision Map of the Property

ATTACHMENT C
Quitclaim Deed

TIDAL CANAL PARCEL
PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

CITY OF ALAMEDA,

a charter city and municipal corporation
AS SELLER

and

_____

a _____
AS BUYER

Residential Parcel:

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Exhibits

A FINAL MAP

B QUITCLAIM DEED

TIDAL CANAL PARCEL PURCHASE AND SALE AGREEMENT

THIS AGREEMENT OF PURCHASE AND SALE ("**Agreement**") is entered into as of this ____ day of ___, 2016 (the "**Effective Date**"), by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("**City**" or "**Seller**"), and _____, ("**Buyer**"), whose address is _____. Seller and Buyer are collectively referred to herein as the "**Parties**". The Parties have entered into the Agreement with reference to the following facts:

R E C I T A L S

A. On October 20, 1884, the Superior Court of Alameda granted to the U.S. Army Corps of Engineers, a federal agency acting under the U.S. Department of Defense (the "**Corps**"), by judicial decree No. 3590, ownership of a strip of land connecting the cities of Alameda and Oakland for purposes of dredging and excavating a tidal canal out of uplands, which property became known as the Oakland Inner Harbor Tidal Canal (the "**Tidal Canal**").

B. Between approximately 1884-1905, the Corps excavated, dredged, and created the Tidal Canal, which is a waterway approximately 1.8 miles long and 400 feet wide and connects the Oakland Estuary with the San Leandro Bay. The Corps has retained ownership of the Tidal Canal since its creation.

C. As a result of accretion and development over the past century, the outer edge of the Tidal Canal on the Alameda side now includes uplands and bulkheads that have been utilized to varying degrees by adjacent private property owners.

D. Over the past century, the Corps has issued various approvals and authorizations to adjacent property owners to use portions of the Tidal Canal through real estate licenses, leases and regulatory permits.

E. In 1990, the U.S. Congress authorized the Corps to transfer the Tidal Canal to the City of Alameda through the Water Resources Development Act of 1990. The Corps has been negotiating with the City of Alameda to transfer the Alameda side of the Tidal Canal out of federal ownership.

F. Starting in 2000 and continuing until present day, the Corps instituted a moratorium on issuing regulatory permits for any repairs, upgrades, improvements or new construction within the Tidal Canal (the "**Permitting Moratorium**"). The Permitting Moratorium has prevented necessary repairs and improvements to existing structures and docks along the waterfront, which has negatively affected adjacent property owners and the City's code enforcement program.

G. To lift the Permitting Moratorium and to remove the existing cloud on title along the Tidal Canal, the City has agreed to accept ownership of the Alameda-side of the Tidal Canal from the Corps, subject to certain conditions, with the intention of immediately transferring portions of the property to the adjacent property owners at fair market value, or the associated transaction costs for each.

H. The Corps desires to transfer the Alameda-side of the Tidal Canal to the City, and has agreed to take all steps necessary to effectuate the transfer, including filing a tentative map application under the Subdivision Map Act (CA Gov. Code §§66410-66413.5) prior to transfer to facilitate the subsequent transfer of portions of the property to the adjacent property owners. The Tentative Map #8337 subdivides the Army Corps land into ninety-nine (99) individual parcels. The Army Corps will retain five (5) parcels: the Oakland side of the canal (Parcel 1), property adjacent to the federally-owned Navy Operational Support Center (Parcel 3), footings for the High Street Bridge (Parcel 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Parcel 98) and the Park Street Bridge (Parcel 99). The City will retain Parcels 2 and 96 (the "**Open Water Parcels**"), which will be preserved for open navigation through the Tidal Canal. The City will offer at fair market value the remaining ninety-two (92) parcels consisting of eight (8) commercial parcels (the "**Commercial Appurtenant Parcels**") and eighty-four (84) residential parcels (the "**Residential Appurtenant Parcels**") to the adjacent property owners.

I. On [DATE], the Corps completed the Environmental Assessment/Finding of No Significant Impact to cover the federal transfer of the Tidal Canal in compliance with the National Environmental Policy Act (42 U.S.C. 4321).

J. On [DATE], the Corps completed a Finding of Suitability of Transfer, which provides documentation that the Tidal Canal is environmentally suitable for transfer by deed.

K. On ____ __, 2016, the City entered into a Memorandum of Understanding with the Corps ("**MOA**") with respect to the transfer of the Residential Appurtenant Parcels from the Corps to the City and the subsequent and immediate transfer of those parcels to the adjacent property owners. It is estimated that the Corps will convey the Residential Appurtenant Parcels to the City on December 13, 2016 (the date upon which the Residential Appurtenant Parcels are conveyed to the City by the Corps is referred to as the "**Army Corps Conveyance Date**"). The Estimated Closing Date for this Agreement (as defined at Section 8.3 below) is therefore December 13, 2016.

L. On July 11, 2016, the Planning Board of the City of Alameda recommended that the City Council adopt a Final Negative Declaration, introduced as Ordinance Amending Chapter 30 of the Alameda Municipal Code Section 3-4.21 E, Estuary District, and approve Tentative Map #8337 (PLN16-0240) for a one hundred five (105) lot subdivision located along the Oakland Inner Harbor Tidal Canal from approximately one thousand eight hundred (1,800) feet northwest of the Park Street Bridge to approximately two thousand three hundred (2,300) feet south of High Street.

M. On or before the Army Corps Conveyance Date, the City caused to be recorded in the Official Records of the County of Alameda, a final subdivision map creating, inter alia, a single parcel designated as Parcel _____ (the property which is the subject of this Agreement), as shown on **Exhibit A** (the "**FINAL MAP**") attached hereto and incorporated herein by this reference.

N. The City has obtained an appraisal dated August 2016 of the fair market value of the Residential Appurtenant Parcels (appraised as unimproved land) from Sara Cohn, M.A.I. of Watts, Cohn and Partners, Inc. (the "**Appraisal**").

O. On September 20, 2016, the City Council: (i) approved the Negative Declaration for the project; (ii) approved and adopted the final subdivision map; (iii) approved the transfer of fee title of the Residential Appurtenant Parcels from the Army Corps to the City; (iv) approved the sale of the Residential Appurtenant Parcels from the City to various buyers at the greater of the fair market value or the transaction costs; and (v) authorized the City Manager to execute all documents and to take such action as necessary and desirable to consummate the transaction.

P. The undersigned Buyer is the owner of that certain parcel of improved property commonly known as [*address*], APN _____ (the "**Buyer's Parcel**") which is immediately adjacent to the Property (as defined in Section 1.1 below). To facilitate the lifting of the Permitting Moratorium, to lift the existing cloud on title to existing structures and docks on or about the Property and to provide Buyer with direct access from the Residential Parcel to the water frontage, it is the intent of the Parties hereto that Buyer purchase and the City sell the Property upon the terms and conditions set forth herein.

NOW THEREFORE for good and valuable consideration, including the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. THE TIDAL CANAL PARCEL. Seller hereby agrees to sell, assign and convey to Buyer, and Buyer hereby agrees to purchase from Seller, all of Seller's right, title and interest in and to the following, upon all of the terms, covenants and conditions set forth in this Agreement.

1.1 Property. The property that is the subject of this transaction includes all of the following (subject to the exceptions, limitations and disclaimers listed in Section 1.2 below): (a) that certain real property located in the City of Alameda, County of Alameda, known as Parcel _____, as shown on the FINAL MAP attached hereto as Exhibit A; (b) all rights, privileges, easements and appurtenances thereto; (c) the improvements located thereon, if any; (d) all of Seller's right, title and interest in and to any and all mineral and water rights, easements, rights-of-way and other appurtenances used or connected with the beneficial use or enjoyment thereof; and (e) all of Seller's interests in any assignable permits, licenses, certificates, authorizations, variances, waivers and approvals, if any, relating to the property so conveyed (collectively hereinafter referred to as the "**Property**").

1.2 Certain Improvements and Structural Encumbrances. Seller makes no representations or warranties with regard to any improvements on the Property, either with regard to their physical condition or compliance with government requirements. In addition, Buyer hereby acknowledges that the Property may contain docks, boat houses and other improvements or structural encumbrances for which parties other than Seller may claim ownership interest. Said improvements or structural encumbrances may already be owned by Buyer. It is expressly agreed by the Parties that the Seller shall have no obligation to remove these improvements and/or structural encumbrances prior to the Closing Date or at any time

thereafter. Buyer hereby expressly acknowledges that Buyer is fully aware of the improvements and/or structural encumbrances on the Property, if any, whether owned by Buyer or third parties. Buyer hereby expressly agrees to enter into this transaction, execute this Agreement and accept title to the Property in exchange for the Purchase Price, despite the presence of the improvements and/or structural encumbrances, if any, even is said improvements and /or structural encumbrances are owned by parties other than Buyer or Seller. Buyer is also directed to Article 3 below as to Buyer's duty of inspection and due diligence.

2. PURCHASE PRICE. The Purchase Price for the Property is _____ Thousand and 00/100 Dollars ($_____.00) together with closing costs (the "**Purchase Price**") which is the fair market value of the Property, as determined by the Appraisal on a per parcel basis, plus the closing costs as determined by the Escrow Agent. The Purchase Price shall be paid by Buyer as follows:

2.1 Deposit. Within ten (10) business days of the Effective Date of this Agreement, Buyer shall deliver to Chicago Title Company, 675 N. First Street, Suite 300, San Jose, CA 95112 ("**Escrow Agent**" and "**Title Company**") an initial earnest money deposit in the amount of Five Hundred and 00/100 Dollars ($500.00) (the "**Deposit**"). The Deposit paid by Buyer pursuant to the terms hereof shall be held by Escrow Agent, pursuant to a separate escrow agreement, in an interest bearing account insured by the federal government. In the event the purchase and sale of the Property is consummated as contemplated hereunder, the Deposit shall be credited against the Purchase Price Balance at Closing. A copy of this Agreement, duly executed by both parties, shall also be deposited with Escrow Agent promptly after execution.

2.2 Balance of Purchase Price. No later than fifteen (15) days before the estimated Closing Date (as defined in Section 8.3(a) below), Buyer shall deposit with Escrow Agent additional cash by wire transfer of immediately available funds in the amount of _____ Thousand and 00/100 Dollars ($_____.00) together with estimated closing costs ("**Purchase Price Balance**").

2.3 Independent Consideration. The Deposit being delivered by Buyer includes the amount of One Hundred and No/100 Dollars ($100.00) as independent consideration for Seller's performance under this Agreement ("**Independent Consideration**"), which shall be retained by Seller and, except as otherwise specified herein, shall be nonrefundable to Buyer. If the Closing occurs, the Independent Consideration shall be applied to the Purchase Price Balance at Closing. The Independent Consideration has been bargained for as consideration for Seller's execution and delivery of this Agreement and for Buyer's review, inspection and termination rights during the Due Diligence Period, and such consideration is adequate for all purposes under any applicable law or judicial decision.

2.4 Obligations and Duties of Escrow Agent.

(a) The duties and obligations of the Escrow Agent are only as herein specifically provided, and are purely ministerial in nature. The Escrow Agent shall incur no liability for any error in judgment, for any act done or step taken or omitted to be taken by it in good faith, for any mistake of fact or law or for any reason whatsoever except for its own willful misconduct or failure to follow an escrow instruction signed by both Seller and Buyer.

(b) In the event that Seller and Buyer cannot agree on the disbursement of the Deposit, the Escrow Agent may place the Deposit with a court of competent jurisdiction and request that the court resolve the dispute.

3. BUYER'S INVESTIGATION OF PROPERTY CONDITIONS. Buyer is aware of Buyer's affirmative duty to exercise reasonable care in the acquisition of real property, including but not limited to investigating (with the advice and assistance of an attorney or other professionals as appropriate) the facts that are known to or within the diligent attention and observation of the Buyer including, but not limited to, with respect to the following:

3.1 Property Lines and Boundaries. Fences, hedges, walls, and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines are verifiable only by survey.

3.2 Separate Parcels. Upon conveyance of the Property to Buyer, the Property and the Buyer's Parcel will remain two separate parcels which may be merged into one parcel only in in compliance with the Subdivision Map Act (California Government Code Section 66410-66413.5), and at Buyer's sole cost and expense. If Buyer chooses to merge the Property and Buyer's Parcel, such merger must occur after the Closing Date (as defined at section 8.3(a) below).

3.3 Governmental Requirements, Fees and Permits. The need for governmental permits, inspections, certificates, or other determinations affecting the Property and any improvements located thereon; limitations, restrictions, and requirements affecting the use of the Property; future development, zoning, building, size, governmental permits, and inspections; and application, processing, inspection, and in-lieu fees and expenses associated therewith. Buyer should investigate the need for regulatory permits for new and existing structures. Any such uses or permits may be governed by the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403) and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 - 1376).

3.4 Water and Utilities. Water and utility availability and use restrictions; hook-up fees, facility fees, and other costs and expenses associated with the provision of utilities to the Property.

3.5 Environmental Hazards. Potential environmental hazards contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, and other substances, materials, products, or conditions.

3.6 Geologic/Seismic Conditions. Geologic/seismic conditions, soil and terrain stability, suitability, and drainage. Some parts of the East Bay have expansive, or adobe, soil which will expand and contract with the wet and dry seasons. This expansion and contraction can cause movement or shifting of structures. Like all regions in the Bay Area, the Property is considered to be subject to high seismic activity. Local moderate seismic activity association with any area faults could produce severe ground shaking.

3.7 Condition of Improvements. The physical condition of any docks, piers or other improvements, the issue of whether such improvements possess necessary permits or authorizations and whether such improvements are located exclusively upon the Property.

3.8 Zoning. Any use or development of the Property must be in conformity with its zoning designation, E, Estuary District, as defined at Section 30-4.21 of the Alameda Municipal Code of Ordinances.

4. RECEIPT OF DISCLOSURE DOCUMENTS. Buyer is hereby advised to thoroughly review all reports and disclosures related to the Property referenced herein or otherwise provided to Buyer (with the advice and assistance of a lawyer or other professionals as appropriate). The following documents in Seller's possession related to the Property (the "**Property Information**") are delivered to Buyer (via the City's website at the following link: https://alamedaca.gov/tidal-canal-project or, at Buyer's request, hard copies or electronic copies will be delivered to Buyer) concurrently herewith:

(a) Subdivision Map;

(b) ___ __, 2016 MOU between the City and the Corps;

(c) ____ __, 2016 Environmental Assessment/Finding of No Significant Impact to cover the federal transfer of the Tidal Canal in compliance with the National Environmental Policy Act;

(d) ____ __, 2016 Finding of Suitability of Transfer;

(e) June 2014 Environmental Assessment Oakland Inner Harbor Tidal Canal Surplus Property Divestiture (Environmental Baseline Survey);

(f) May 12, 2015 Summary Report on Oakland Inner Harbor Tidal Canal Environmental Contamination Issues prepared by Russell Resources, Inc.;

(g) Mitigated Negative Declaration Determination;

(h) Declaration of Restrictions;

(i) Appraisal report from Watts, Cohn and Partners, dated August 2016 showing the aggregate fair market value of the Residential Appurtenant Parcels and the Property on a per parcel basis.

Seller will provide to Buyer, without charge, a hard copy or pdf of any of the above documents upon written request.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF ALL OF THE ABOVE-REFERENCED DOCUMENTS

Buyer's Initials: _____/_____/

5. DUE DILIGENCE PERIOD. As used in this Agreement, the term "**Due Diligence Period**" shall mean the period commencing on the date Buyer executes this Agreement and ending at 5:00 p.m. on the fifteenth (15th) business day after Buyer executes this Agreement. During said Due Diligence Period Buyer is encouraged to undertake such investigations of property conditions, to review documents and undertake such other investigations as it deems prudent.

5.1 Access to Property. Buyer acknowledges that, prior to the Army Corps Conveyance Date, Seller neither possesses nor controls the Property, the same remaining under the ownership of the Corps. Thus Seller will not have title to, nor possession of any of the Property and therefore has no authority to grant Buyer access to conduct environmental, geotechnical or other tests on the land. The foregoing notwithstanding, Buyer acknowledges that Buyer has direct access and/or actual use and possession of the Property with the actual or implied consent of the Corps. Thus Buyer hereby acknowledges that Buyer has sufficient access to the Property to conduct its due diligence during the due diligence period.

5.2 Additional Documents. Seller agrees that any additional documents relating to the Property, beyond those identified in Article 4 above, which come into the possession, custody or control of Seller after the Effective Date but before the Closing Date will be promptly delivered by Seller to Buyer via the City's website at the link as identified at Section 4 above or, at Buyer's request, by hard or electronic copies delivered to Buyer.

5.3 Due Diligence Satisfaction. Buyer may, at any time prior to 5:00 p.m. on the last day of the Due Diligence Period (the "**Due Diligence Satisfaction Date**"), elect to proceed with the purchase of the Property or terminate this Agreement in its sole and absolute discretion for any reason or no reason, by sending to Seller written notice indicating Buyer's election to terminate the Agreement. In the event of such termination, the Deposit (exclusive of the Independent Consideration) then held by Escrow Agent shall be returned to Buyer. If Buyer fails to deliver such notice prior to 5:00 p.m. on the Due Diligence Satisfaction Date in accordance with the provisions of this Section 5.3, then Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 5.3. If Buyer so terminates this Agreement, Seller may thereafter offer the Property to a third party purchaser.

6. CONDITION OF THE PROPERTY.

6.1 Property Sold in an "As Is" Condition and "With All Faults". Except for the representations or warranties of Seller expressly set forth in this Agreement, Buyer and Seller mutually acknowledge and agree that, the Property is being sold in an "AS IS" condition and "WITH ALL FAULTS," known or unknown, contingent or existing. Buyer has the sole responsibility to fully inspect the Property, to investigate all matters relevant thereto, including, without limitation, the condition of the Property and to reach its own, independent evaluation of any risks (environmental or otherwise) or rewards associated with the ownership of the Property. Effective as of the Closing, Buyer hereby waives and releases the City, its City Council, boards, commissions, officials, and its employees, agents, successors and assigns from and against any and all claims, obligations and liabilities arising out of or in connection with the physical condition of the Property.

6.2 Waiver of Environmental Conditions. To the fullest extent permitted by law, and except as expressly set forth in this Agreement, Buyer does hereby unconditionally waive and release the City, its City Council, boards, commissions, officials, and its employees, agents, successors and assigns from any present or future claims and liabilities of any nature arising from or relating to the presence or alleged presence of Hazardous Substances in, on, at, from, under or about the Property or any adjacent property, including, without limitation, any claims under or on account of any environmental law, regardless of whether such Hazardous Substances are located in, on, at, from, under or about the Property or any adjacent property prior to or after the Closing. In addition, Buyer does hereby covenant and agree to defend, indemnify, and hold harmless Seller, its City Council, boards, commissioners, officials and its employees, agents, successors and assigns from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, known or unknown, existing in future, to the extent relating to any Hazardous Substances that are placed, located or released on the Property after the Closing and, with respect to releases, that did not exist on the Property prior to the Closing, including any action or proceeding brought or threatened or ordered by governmental authorities. For purposes of this Agreement, "**Hazardous Substances**" means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

6.3 Waiver of Natural Hazards. Buyer further acknowledges that "Natural Hazards" described in the following California Code Sections (the "**Natural Hazard Laws**") may affect the Property: Government Code Sections 8589.4; 8589.3; Government Code Sections 51183.4, 51183.5 (Fire Hazard Severity Zone); Public Resource Code Section 2621.9 (Earthquake Fault Zone); Public Resource Code Section 2694 (Seismic Hazard Zone); and Public Resource Code Section 4136 (Wildlands Area). Buyer acknowledges and agrees that Buyer has had the opportunity independently to evaluate and investigate whether any or all of such Natural Hazards effect the Property and Seller shall have no liabilities or obligations with respect thereto. Buyer further acknowledges that pursuant to California Civil Code section 1103.1, this transfer is exempt from the natural hazard disclosure requirements set forth in sections 1103 et. seq. Without limiting the foregoing, Buyer acknowledges and agrees that Buyer knowingly and intentionally waives and releases Seller from any disclosures, obligations or requirements of Seller with respect to Natural Hazards, including, without limitation, any disclosure obligations or requirements under the aforementioned Code Sections or under California Civil Code Section 1102.

6.4 Dredging. Buyer shall be solely responsible for any dredging that may be necessary or desirable for Buyer's use of the Property.

6.5 Disclaimer and Release of Claims. The Purchase Price reflects that the Property is being purchased by Buyer on an "as-is," "where is" and "with all faults" basis. Buyer hereby waives and relinquishes all rights and privileges arising out of, or with respect to, any representations, warranties or covenants, whether express or implied, which may have been made or given, or which may be deemed to have been made or given, by Seller or its representatives, except for those representations, warranties and covenants set forth in this

Agreement. Buyer has not relied upon and will not rely upon, and Seller expressly disclaims, any representations or warranties with respect to: (a) the presence of any Hazardous Substances in, on, at, from, under or about the Property or any adjacent property prior to or after the Closing; or (b) the matters referenced in Sections 3.1 through 3.8 above (the "**Buyer's Release Claims**").

6.6 Waiver of Unknown Claims. Buyer hereby acknowledges that Buyer is familiar with and understands the meaning of California Civil Code Section 1542 which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Buyer waives and relinquishes any right or benefit which Buyer has or may have under Section 1542 of the California Civil Code to the fullest extent that it may lawfully waive such rights and benefits. In connection with such waiver and relinquishment, Buyer acknowledges that it is aware that it or its consultants may hereinafter discover facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement, but that it is Buyer's intention hereby to fully, finally and forever settle and release all of Buyer's Released Claims, known or unknown, suspected or unsuspected, which now exist or may exist hereafter between Buyer and Seller with regard thereto.

6.7 Waivers Bargained For. Buyer acknowledges and represents that the waivers set forth in this Article 6 have been negotiated and each is an essential aspect of the bargain between the parties.

6.8 Title. Upon and subject to Close of Escrow, Seller shall convey title to the Property to Buyer by quitclaim deed in the form of **Exhibit B**, subject to any exceptions or restrictions to which the Property is subject upon its conveyance from the Corps to the City.

6.9 Survival. The terms and provisions of this Article 6 shall survive the Closing hereunder until expiration of any applicable statute of limitations.

7. CONDITIONS PRECEDENT TO CLOSING. The obligations of Buyer to purchase and Seller to sell the Property are expressly conditioned upon the satisfaction, prior to said closing, of each of the conditions precedent set forth in this Article 7 (the "**Conditions Precedent**"), any of which conditions may be waived by the party to whose benefit such condition inures. If this Agreement is deemed terminated as a result of the failure or non-occurrence of a Condition Precedent, the Deposit (including the Independent Consideration except as otherwise set forth in Sections 5.3 and 7.2) then held in Escrow shall be returned to Buyer.

7.1 Army Corps Conveyance. The conveyance by the Corps of the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels shall

have occurred in accordance with the terms and conditions of the MOA and Recital K above. If the Army Corps Conveyance Date has not occurred by January 13, 2017, then this Agreement shall be deemed terminated.

7.2 No Termination by Buyer during Due Diligence Period. Buyer shall not have timely exercised the right to terminate this Agreement before the Due Diligence Satisfaction Date in accordance with Section 5.3. If Buyer terminates in accordance with Section 5.3, the Deposit (less the Independent Consideration) shall be returned to Buyer.

7.3 Commitment for all Residential Appurtenant Parcels. The obligation of the Corps to convey the Residential Appurtenant Parcels to the City, and the City's obligation to convey the Property to Buyer are conditioned upon there being buyers for one hundred percent (100%) of the Residential Appurtenant Parcels. For purposes of satisfying this Condition Precedent, the buyer need not be the owner of the adjacent residential parcel. All Residential Appurtenant Parcels must be under contract and the purchase price and documents required to be deposited into escrow shall have all been deposited on or before the Closing Date (as defined in Section 8.3(a) below).

7.4 No Pendency of Legal Challenge. There shall be no pending legal action challenging the conveyance of the Residential Appurtenant Parcels, or any of them, from the Corps to the City, or challenging the reconveyance by the City of the Residential Appurtenant Parcels, or any of them, or challenging the validity of this Agreement or any action to be taken by Seller or Buyer pursuant thereto.

7.5 Alameda City Council Approval. The Alameda City Council in its sole and absolute discretion shall approve by at least four (4) affirmative votes to acquire the Open Water Parcels, Commercial Appurtenant Parcels and Residential Appurtenant Parcels and shall have directed the City Manager to execute any and all documents to consummate the transaction upon terms and conditions the City Council deems appropriate.

8. CLOSING.

8.1 Seller Deposits into Escrow. Seller shall deposit the following into Escrow:

(a) Quitclaim deed. A duly executed and acknowledged quitclaim deed conveying the Property to Buyer;

(b) Certificate of Non-Foreign Status. A Non-Foreign Certificate executed by the City (the "**FIRPTA Certificate**") and a California Form 593-C executed by the City (the "**Cal-FIRPTA Certificate**");

(c) Escrow instructions. Written escrow instructions to Escrow Agent instructing the Escrow Holder to close escrow in accordance with the terms of this Agreement.

(d) Other Documents. Such other documents and instruments as may be required by the provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

8.2 Buyer Deposits into Escrow. Buyer shall deposit the following into Escrow:

(a) Balance of Purchase Price. Cash or immediately available funds in the amount of the Purchase Price Balance and estimated closing costs by no later than thirty (30) days in advance of Closing;

(b) Escrow Instructions. Written escrow instructions to Escrow Holder instructing the Escrow Holder to close escrow in accordance with the terms of this Agreement;

(c) Other Documents. Such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

8.3 Close of Escrow.

(a) Closing Date. The Escrow shall close upon the same date as the Army Corps Conveyance Date and immediately following such conveyance of the Tidal Canal Conveyance Parcels from the Corps to the City (the "**Closing Date**"). For purposes of Buyer's obligation to deposit the Purchase Price Balance into Escrow in accordance with Section 8.2, the estimated Closing Date for this transaction is **December 13, 2016**. For purposes of satisfying a Condition Precedent Seller may, at its sole and absolute discretion, elect to continue the Closing Date for a period of not to exceed thirty (30) days by giving written notice of the same to Escrow Holder and Buyer.

(b) Closing of Escrow. When the contingencies listed in Section 7.1 have been satisfied or waived in writing by Buyer and Seller and Escrow Agent has received all necessary cash and documents, Escrow Agent shall immediately close Escrow as provided below (the "**Closing**"). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement.

(c) Procedure. Escrow Agent shall close Escrow as follows:

(i) Record quitclaim deed. Record quitclaim deed conveying the Property to Buyer;

(ii) Issue title policy. Issue and deliver to Buyer a CLTA owner's policy of title insurance in the amount of the Purchase Price showing title to the Property vested of record of the Closing Date with Buyer;

(iii) Pay to Seller. Pay to Seller the funds in Escrow equal to the Purchase Price, reduced by the closing costs to be paid by Seller as hereinafter set forth;

(iv) Closing statement. Prepare and deliver to Buyer and Seller one (1) signed copy of Escrow Agent's closing statement showing all receipts and disbursements from the Escrow.

8.4 Closing Costs. Buyer shall pay all City and County documentary transfer taxes due on the transfer of the Property from Seller to Buyer, all premium costs and expenses incurred in connection with the issuance of a CLTA owner's policy of title insurance, together with all escrow fees. Each party shall bear the expense of its own counsel.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

(a) Due Authority. Seller has obtained approval of the Alameda City Council authorizing the City Manager to execute this Agreement on its behalf.

(b) Litigation. Seller has received no written notice of any pending action or proceeding which challenges the validity of this Agreement or any action taken or to be taken by Seller pursuant hereto.

9.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that the foregoing matters are true and correct in all material respects as of the execution of this Agreement, and will also be true and correct in all material respects as of the Closing.

(a) Organization, Authorization and Consents. Buyer: (i) is a natural person(s) or is duly organized, validly existing and in good standing under the laws of the state of its formation; (ii) is and shall remain in good standing and qualified to do business in the state of California; (iii) has the full power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by it pursuant to this Agreement (the "**Buyer's Documents**"); and (iv) is lawfully able to perform all obligations arising under this Agreement and under the Buyer's Documents, and such performance does not conflict with any obligations of Buyer. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(b) Authorization of Buyer. Buyer has taken all necessary action to authorize the execution, deliver and performance of this Agreement, and upon the execution and delivery of documents to be delivered by Buyer on or prior to the Closing, this Agreement and such documents shall constitute the valid and binding obligation and agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may

be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.

(c) Buyer not an Employee Benefit Plan. Buyer is not an employee benefit plan (a "**Plan**") subject to the Employee Retirement Income Security Act of 1974, as amended "**ERISA**"), or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), nor a person or entity acting, directly or indirectly, on behalf of any Plan or using the assets of any Plan to acquire the Property, Buyer is not a "party in interest" (as that term is defined in Section 3(14)) of ERISA with respect to any Plan that is an investor in Seller, and Buyer's acquisition of the Property will not constitute or result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

(d) No Violation of Agreements. Neither the execution, delivery or performance of this Agreement by Buyer, nor compliance with the terms and provisions hereof, will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Buyer is bound.

(e) Litigation. Buyer has no knowledge of any pending action or proceeding which challenges the validity of the Agreement or any action taken or to be taken by Buyer pursuant hereto.

10. DISPUTES TO BE RESOLVED BY JUDICIAL REFERENCE.

(a) Any action, proceeding or counterclaim brought by either Party hereto against the other on any matters arising out of or connected with this Agreement shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 — 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the "**Referee Sections**"). Each Party herby acknowledges that in agreeing to resolve any disputes arising hereunder by means of a judicial reference in accordance with the Referee Sections constitutes a waiver of the right to a trial by jury.

(b) Within ten (10) days of receipt by any Party of a written request to resolve any dispute or controversy pursuant to this Article 10, the Parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the Parties are unable to agree upon a referee within such ten (10) day period, then any party may thereafter file a lawsuit in Alameda County Superior Court the purpose of appointment of a referee under the Referee Sections. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., ADR Services, Inc., the American Arbitration Association or similar mediation/arbitration entity. The proposed referee may be challenged by any party for any of the grounds listed in the Referee Sections.

(c) The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies

available at Law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with this Agreement. The Parties shall be entitled to conduct all discovery as provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California law. The Parties agree that the Parties and the referee shall use best efforts to ensure that (i) discovery be conducted for a period no longer than six (6) months from the date the referee is appointed, excluding motions regarding discovery, and (ii) a trial date be set within nine (9) months of the date the referee is appointed.

(d) In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. Any decision of the referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such decision, judgment, or order would be appealable if rendered by a judge of the superior court in which venue is proper hereunder. The referee shall in his/her statement of decision set forth his/her findings of fact and conclusions of law. The parties intend this general reference agreement to be specifically enforceable in accordance with the Code of Civil Procedure.

11. GENERAL PROVISIONS.

11.1 Capacities. Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to find the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

11.2 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

11.3 Entire Agreement. This Agreement including all recitals and exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Seller and Buyer, and pursuant to a resolution or ordinance (as applicable) approved and adopted by the Alameda City Council.

11.4 Attorney's Fees. In the event either party to this Agreement institutes an action or proceeding brought pursuant to Article 10 or otherwise, to interpret or enforce the terms hereof, or to obtain money damages the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as awarded by the referee or court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought on the action or proceeding. In the event Seller is represented in a proceeding by attorneys employed with the City Attorney's Office, any award of

attorney fees to Seller shall be measured by the reasonable fees that would have been paid by Seller had it instead been represented by outside counsel.

11.5 Brokers' Commission. Seller and Buyer each represent and warrant to the other that neither party has dealt with any real estate brokers or finders with respect to the transaction contemplated hereby. Each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any claim or claims of any broker or brokers to a commission in connection with this transaction as a result of the actions of the indemnifying party.

11.6 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of California. The venue of any action brought pursuant to this Agreement shall be the County of Alameda.

11.7 Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

11.8 Time. Time is of essence of every provision herein contained in this Agreement.

11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

11.10 Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, or transmitted by electronic mail addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Seller: City of Alameda
Alameda City Hall
2263 Santa Clara Ave.
Alameda, CA 94501
Tel: (510) 747-4700
Attn: City Manager

with a copy to: City of Alameda
Alameda City Hall
2263 Santa Clara Ave.
Alameda, CA 94501
Tel: (510) 747-4750
Attn: City Attorney

To Buyer: _____
_____
_____

Notices which are delivered by hand shall be deemed received upon delivery or the date on which delivery is refused; Notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery, or the date on which delivery is refused. The foregoing addresses may be changed by notice to the other party as herein provided.

11.11 Escrow Instructions. The Parties agree to execute such instructions to Escrow Agent and such other instruments and do such other and further acts as may be reasonably necessary to carry out any of the provisions of this Agreement.

11.12 Construction. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "sections" are the Sections of this Agreement, unless otherwise specifically provided.

11.13 Possession. Possession of the Property shall be delivered to Buyer upon Closing.

11.14 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to Buyer, or any successor in interest, in the event of a default under or breach of this Agreement by Seller.

11.15 Severability. If any section, term or provision of this Agreement is held invalid by the referee or a court of competent jurisdiction, all other sections, terms or severable provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

[*Signatures follow on next page.*]

IN WITNESS WHEREOF, the Parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written.

SELLER:

City of Alameda,
a charter city and municipal corporation

By: _____
Jill Keimach
City Manager

Date: _____

Approved as to Form

By: _____
Andrico Q. Penick
Assistant City Attorney

BUYER:

By: _____
Name: _____

Date: _____

By: _____
Name: _____

Date: _____

<u>EXHIBIT A</u>

FINAL MAP

EXHIBIT B

QUITCLAIM DEED

* * * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda on the ___ day of _____, 2016, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ___ day of _____, 2016.

_____
Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

_____
Janet C. Kern, City Attorney
City of Alameda