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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, 8<sup>TH</sup> FLOOR  
SACRAMENTO, CA 95812-2922

Space above this line reserved for Recorder's use

This deed was reviewed by:

Merry Goodenough  
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, as authorized by the River and Harbors Act of 1922, Pub. L. No. 67-362, as amended.

**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 Parcel(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.

**10. FEDERAL CHANNEL OPERATIONS AND MAINTENANCE.**

The Grantor reserves a superior right of access to, over, across and through any and all portions of one-half of the Federal Channel from the centerline of the channel to a distance of 137.5 feet towards the shoreline located in the City of Alameda for its operations and maintenance of the channel, as authorized by the River and Harbors Act of 1922, Pub. L. No. 67-362, as amended. These rights shall be exercisable in any case in which the Corps is authorized to dredge or clear said channel. Pursuant to this reservation, the GRANTOR and its officers, agents, employees, contractors, and subcontractors shall have the right to enter upon the herein described Property to, including but not limited to, conduct investigations, conduct surveys, dredge, and/or clear the channel of any obstructions or potential obstructions to navigation. In exercising its right of access, the GRANTOR 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.

-----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

NOTARIAL CERTIFICATE

DISTRICT OF COLUMBIA SS

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

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

DRAFT

**EXHIBIT A**  
**Final Map of Parcels 2 and 4 through 96**

DRAFT

**EXHIBIT B**  
**Hazardous Substances**

DRAFT