

**PROPERTY MANAGEMENT AGREEMENT
(FISC)**

THIS PROPERTY MANAGEMENT AGREEMENT (FISC) (this "Agreement"), made as of March 1, 2004 ("Effective Date"), between the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body, corporate and politic (the "CIC"), and PM REALTY GROUP, L.P., a Delaware limited partnership ("Property Manager"), of 910 Travis Street, Suite 1000, Houston, Texas 77002.

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of the CIC and Property Manager, sometimes collectively referred to herein as the "Parties".

A. CIC owns certain real property together with buildings and other improvements situated thereon (the "Site"), located within the boundaries of the Alameda Point Improvement Project ("APIP") and the Business and Waterfront Improvement Project (the "BWIP Project") redevelopment areas in the City of Alameda (the "City"), County of Alameda, State of California. The Site, also referred to as the "Development," is shown on the "Map of Site" attached hereto as Exhibit A and incorporated herein by reference.

B. CIC desires to obtain the services of Property Manager as property manager of the Development with responsibilities for managing, operating, maintaining and servicing the Development and for the performance on behalf of CIC of certain obligations with respect to the Development, as more specifically set forth in this Agreement, all such responsibilities being in furtherance of the redevelopment and reuse of the Site.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

**ARTICLE I
DUTIES OF PROPERTY MANAGER**

Section 1.1 Appointment of Property Manager. CIC hereby appoints Property Manager as property manager of the Development with the responsibilities and upon the terms and conditions outlined in this Agreement; and Property Manager hereby accepts such appointment.

Section 1.2 Property Management of the Development. The Property Manager shall diligently perform its duties hereunder and shall devote sufficient time and effort to the Development to ensure that it is managed, leased, operated, maintained and serviced in good, well-maintained condition and in a manner comparable to similar professionally managed developments. In addition to providing the Property Management Services (as hereinafter defined), Property Manager shall perform such other services as CIC may reasonably request in connection with the Development, consistent with its status as a professionally managed

Development of its type.

Section 1.3 Specific Management Services. Without limiting the generality of any other term or provision of this Agreement, Property Manager shall provide the following services (the "Property Management Services") in furtherance of the redevelopment and reuse of the Site:

(a) Personnel. Property Manager shall, as employees of Property Manager and not of CIC, hire, pay, supervise and discharge all employees and personnel necessary for the operation of the Development. Such personnel shall in every instance be the employees or independent contractors of Property Manager and not of CIC. Subject to reimbursement as hereafter set forth, the salaries, wages and other compensation and fringe benefits (including, without limitation, workers' compensation and other insurance, employer's and employee's taxes and vacation, hereafter collectively "Wages") of such employees and personnel shall be paid by Property Manager and approved by CIC. Additionally, at the expense of Property Manager, executive personnel of Property Manager will be charged with the performance of Property Manager's obligations under this Agreement and with the general supervision, direction and control of Development personnel. Property Manager shall comply with all laws, statutes and ordinances relating to the employment of its employees, including, without limitation, those requiring workers' compensation insurance to cover all of Property Manager's employees. Property Manager shall remove from the Development all persons whom the Property Manager, in the exercise of its good business judgment, or whom CIC, in its reasonable judgment, deems unnecessary or undesirable for the operation and management of the Development, which removal shall be in compliance with applicable laws, statutes and ordinances.

(b) Collection and Handling of Money.

(i) Property Manager shall diligently undertake the collection of rents and other charges payable by tenants in the Development under the terms of their leases and any sums otherwise payable to CIC with respect to the Development. All sums collected by Property Manager shall be deposited immediately in an interest-bearing account (all interest shall accrue to the benefit of CIC), approved by and established in CIC's name, for the benefit of, and held in trust for, CIC, in a bank which has been approved by CIC. Funds collected by Property Manager from the Development shall not be commingled with any other funds collected by Property Manager from properties not a part of the Development. If required by law, Property Manager shall establish separate accounts for holding tenants' security deposits, and funds in such accounts shall not be commingled with other funds of Property Manager. Funds may only be withdrawn from the account by Property Manager for permissible expenditures pursuant to this Agreement.

(ii) Property Manager acknowledges that CIC has certain regularly scheduled payments that it must make on a regular basis out of the revenues from the Development, including debt service on bonds. Within fifteen (15) days after the end of each calendar month, Property Manager shall cause to be disbursed to CIC all funds in any of the bank accounts established by Property Manager (other than any accounts established for the deposit of tenants' security deposits), less any amounts which are necessary in order to meet anticipated expenses of the Development coming due during the next thirty (30) days, accompanied by the reports required under Section 1.3(d) below.

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

(d) Books and Records.

(i) Property Manager shall maintain complete books and records in accordance with generally accepted accounting principles applied on a consistent basis in connection with its management and operation of the Development and such books and records shall be clearly identified and readily accessible.

(ii) Property Manager shall make the books of account and all other records relating to, or reflecting the operation of the Development, including without limitation, computer records and electronic data, all of which Property Manager agrees to keep safe, available and separate from any records not relating to the Development, available to CIC and its representatives at all reasonable times for examination, audit, inspection and transcription. Property Manager shall provide access to CIC or its respective designees during normal business hours upon request by CIC. The records shall be kept on-site at the Development as soon as Property Manager establishes a property management office on-site; prior to such time Property Manager shall make the records available to CIC at the Development within three (3) business days of request by CIC. CIC may examine and audit the records, make any copies or transcripts therefrom it wishes, and inspect all work, data, documents, proceedings, and activities related to this Agreement. Such records shall be kept separate from other documents of Property Manager and shall be maintained for a period of three (3) years after receipt of final payment. For purposes of this provision, the term "record" shall have the definition it has in the Public Records Act of the State of California (Cal. Gov't. Code Section 6250 *et seq.*).

(iii) Upon CIC's reasonable request, Property Manager shall deliver to CIC copies of any source materials utilized by Property Manager in preparing the records, books and accounts.

(iv) Upon termination of the Agreement, Property Manager, at CIC's written request, shall turn over copies of all such books and records to CIC.

(v) Property Manager agrees to render to CIC on or before the twentieth (20th) day of each calendar month a detailed financial report as specified in Article III. Property Manager shall, at CIC's request (such notice to be not less than sixty (60) days), have an annual audit of the books and records of the Development made by a firm of certified public accountants or other auditors approved by CIC, which audit shall be certified as to the fairness of the presentation of such financial statements and notes and the preparation thereof in accordance with generally accepted accounting principles applied on a consistent basis, but shall in no event include any tax return preparation relating to the Development. The expense of the annual audit shall be an expense of CIC.

(vi) If supplemental examination or audit of the records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Property Manager shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

(vii) Property Manager will cooperate with, and give reasonable assistance to, any accountant or other person designated by CIC to examine such records.

(e) Repairs and Maintenance.

(i) Property Manager shall make all repairs and perform all maintenance on the buildings, grounds and other improvements of the Development necessary to maintain the Development in good well-maintained condition, in a manner comparable to similar professionally managed Developments and any other standards approved by CIC from time to time. Property Manager shall also perform or furnish any and all emergency repairs or services necessary for the preservation of the Development or to avoid the suspension of any service to the Development or danger to life or property. Property Manager shall give prompt notice of any emergency repairs to CIC and to make reasonable efforts to secure CIC's prior written approval. Emergency repairs or services may be made or furnished by Property Manager without CIC's prior approval, but only if it is not reasonably feasible to secure such prior approval. In any event, Property Manager shall, not later than two (2) business days after performing or furnishing an emergency repair or service, notify CIC of the details and cost thereof.

(ii) Notwithstanding the provisions of Section 1.3(e)(i) above, Property Manager's obligations for repair and maintenance of the Site and the Development shall not include repair and maintenance of utilities located within the public rights of way. The Property Manager shall maintain, or cause to be maintained, shall include the lateral utility lines from the public rights of way and within the buildings for the Development. The utilities located within the public rights of way (or street areas which are intended to become public rights of way) shall be the responsibility of CIC, the City or the responsible utility. For purposes of determining what constitutes "public rights of way," the parties hereto agree the "public rights of way" shall mean the existing roadways up to the curb line.

(f) Service Contracts. Subject to the provisions of Section 2.2 below, Property Manager shall enter into, as "PM Realty Group, L. P. as agent for Community Improvement Commission of the City of Alameda" as contractor (unless CIC otherwise directs), contracts (in the CIC's approved form of contract attached hereto as Exhibit D) for the furnishing to the Development of such utility, maintenance and other services and for the acquisition of such equipment and supplies as may be necessary for the management, operation, maintenance and servicing of the Development in accordance with this Agreement. Unless otherwise approved in writing by CIC, all such contracts entered into pursuant to this subsection shall be cancelable upon not more than thirty (30) days' prior written notice and shall be assignable to CIC, at CIC's request. To the extent that any such contracts entered into pursuant to this subsection are required to be in the name of the CIC or the City, as contractor, such contracts shall be submitted to CIC for processing, review and execution by CIC or the City, as

appropriate. Property Manager shall be responsible for the performance of all such contracts entered into pursuant to this subsection and CIC shall have the right to enforce the obligations of the contractor under such contracts, whether such contractor is Property Manager, CIC, or the City directly against Property Manager and it shall be Property Manager's responsibility to enforce the terms of such contracts against the party(ies) to such contracts other than the contractor, whether such contractor is Property Manager, CIC, or the City.

(g) Other Services. Property Manager shall perform all other services which are normally performed in connection with the operation and management of similar professionally managed developments; and specifically, without limiting the generality of the foregoing, Property Manager shall perform, without additional charge, all services normally provided to tenants of similar developments.

(h) Compliance With Laws, Permits and Licenses. With regard to the performance of the Property Management Services, Property Manager shall take such action as may be necessary to comply with all laws, rules and regulations and any and all orders or requirements of any governmental authority having jurisdiction there over affecting the Development, including, but not limited to, SB-975 enacted by the State of California on January 1, 2002. Property Manager shall be responsible for assuring that all use permits necessary for tenancies are obtained. Property Manager shall not knowingly permit the use of the Development for any purpose which might void or increase the premiums payable under any insurance policies held by CIC. Property Manager shall obtain and maintain during the term of this Agreement all appropriate permits, certificates and licenses, including, but not limited to, a City of Alameda Business License, that may be required in connection with the performance of services hereunder. To the extent permits, certificates or licenses are necessary for Property Manager to conduct its operations, the cost of such permits, certificates and licenses shall be at Property Manager's sole expense and not an expense paid out of revenues from the Development.

(i) Legal Actions. Any proposed legal action in connection with a tenant, including actions to evict tenants in default and to recover possession of such tenants' premises, shall be referred to the City Attorney's office acting as general counsel for CIC for review and handling. Property Manager shall have no right to settle, compromise or release such actions or suits or reinstate such tenancies without prior written approval of CIC and the City Attorney.

(j) Notices. Property Manager shall promptly deliver to CIC all notices received from any contractor, subcontractor, governmental or official entity, any tenant or any other party with respect to the Development. Property Manager may sign and serve in the name of CIC any and all notices required in connection with the proper performance by Property Manager of the Property Management Services.

(k) Notices of Claim of Injury or Damage. Property Manager shall notify the CIC of any personal injury or property damage occurring to, or claimed by, any tenant or third party on or with respect to the Development promptly upon obtaining actual knowledge thereof and to promptly forward to CIC any summons, subpoena, or legal document served upon the Property Manager relating to actual or alleged potential liability of the CIC, the Property Manager or the Development within two (2) business days.

(l) Cooperation. Property Manager shall give CIC all pertinent information and reasonable assistance in the defense or disposition of any claims, demands, suits or other legal proceedings which may be made or instituted by any third party against CIC which arise out of any matters relating to the Development, this Agreement or Property Manager's performance hereunder.

(m) Leasing. Property Manager shall provide those services set forth in Exhibit B attached to and made a part of this Agreement, in connection with the marketing and leasing of the premises within the Development and shall receive, in consideration therefor, the leasing commissions specified in Exhibit B.

(n) Tenant Relations. Property Manager shall make itself fully familiar with the terms and provisions of all leases for space within the Development, shall perform all delegable duties of CIC as landlord under each such lease, so that such lease shall remain in full force and effect, with no default by CIC, and shall enforce the full performance of all obligations of the tenant under each such lease. Property Manager shall maintain business-like relations with tenants, receive requests, complaints and the like from tenants and respond and act upon the foregoing in reasonable fashion. To insure full performance by tenants of all of their obligations, Property Manager shall inspect the Development at least monthly, and, if appropriate, shall make demands on any tenants who have not performed such obligations to do so. Property Manager shall notify all tenants of all rules, regulations, and notices as may be promulgated by CIC, governing bodies and insurance carriers. If a lease with any tenant requires that the tenant maintain any insurance coverage, Property Manager shall obtain insurance certificates and endorsements from such tenant evidencing compliance with the lease terms, and shall promptly notify CIC if it is unable to obtain such certificates.

(o) Taxes and Assessments. Property Manager, at CIC's request, agrees to annually review, and submit a report on all real estate and personal property taxes and assessments affecting the Development (and if so requested, Property Manager may engage outside consultants at CIC's expense with CIC's prior written approval) and to initiate and pursue appeals of same, if so directed by CIC.

(p) Inventories and Supplies. Property Manager agrees to supervise and purchase, or arrange for the purchase, in an economical manner, of all inventories, provisions, supplies and operating equipment which, in the normal course of business, are necessary and proper to maintain and operate the Development in a first-class manner.

(q) Hours. At all times during normal business hours, Property Manager agrees to be available to, or cause a representative of Property Manager to be available to, tenants in the Development.

(r) Inspections. Property Manager shall perform periodic comprehensive inspections of the Development, and report on such inspections to CIC at least annually. In addition, Property Manager shall inspect all exterior areas of the Development for safety hazards on a monthly basis and shall report on such inspections to CIC. Property Manager shall also inspect all premises upon termination of leases, and shall inspect the roofs of buildings within the Development on a periodic basis as specified by CIC.

(s) Assistance with Proposed Sale, Financing, Refinancing. Property Manager agrees to cooperate with, and assist CIC in any attempt by CIC to sell, finance or refinance the Development without such cooperation giving rise to compensation. Such cooperation shall include, without limitation, answering prospective purchasers' or lender(s)' questions about the Development or tenant leases, notifying tenants about the sale of the Development, and obtaining estoppel certificates. When requested by CIC, Property Manager shall prepare a list of all personal property owned by CIC and used at the Development or in its operation. Upon request, Property Manager shall diligently seek to obtain lease estoppel certificates (on a form approved by CIC) from tenants for the benefit of CIC and/or any proposed purchaser and/or mortgagee.

ARTICLE II CIC RIGHTS AND OBLIGATIONS

Section 2.1 Development Materials in Possession of CIC. Property Manager acknowledges and agrees that it has all documents and information required for the management of the Development including, but not limited to, all leases, amendments and correspondence related thereto, the status of rental payment, copies of service contracts in effect, and all applicable insurance policies. Upon Property Manager's request, CIC shall provide any additional such documents it may have in its possession.

Section 2.2 Approval of Contracts. Notwithstanding any term or provision of this Agreement to the contrary, except in the case of an emergency situation involving danger to persons or property, or as otherwise approved by CIC, no contract or agreement for equipment, supplies, services or any other item shall be entered into by "PM Realty Group, L. P. as agent for Community Improvement Commission of the City of Alameda" or by Property Manager, in its name, on behalf of CIC, unless Property Manager shall have first complied with, or used a procurement process consistent with, CIC's procurement policies applicable to equipment, supplies and materials, a copy of which has been furnished to Property Manager, or in the case of services, Property Manager shall have first obtained and submitted to CIC three competitive, written bids for the performance or furnishing of the same, and CIC shall have approved the awarding of such contract or agreement. All service contracts shall contain a provision permitting CIC to terminate such contracts and shall comply with the provisions of Section 1.3(f) above. Notwithstanding any other provision of this Agreement to the contrary, in no event shall Property Manager enter into, on behalf of CIC, any agreement with Property Manager (including "PM Realty Group, L. P. as agent for Community Improvement Commission of the City of Alameda") and/or any affiliate of Property Manager without the prior written consent of CIC, which consent shall specifically reference the affiliation of Property Manager with the contracting party.

Section 2.3 CIC's Representative. For the purposes of administering this Agreement, Property Manager shall communicate with and take direction from CIC's representative, Nanette Banks, in connection with Property Manager's performance of its obligations under this Agreement.

ARTICLE III
BUDGETS AND REPORTS

Section 3.1 Budget. Property Manager acknowledges that the fiscal year for CIC and the City is July 1-June 30. No later than May 1st of each year, or such other date specified in a written notice from CIC to Property Manager, Property Manager shall submit to CIC, for CIC's written approval (which shall not be unreasonably withheld), proposed budgets for each building comprising the Development and for the Development as a whole, and a description of the Property Management Services to be provided by Property Manager during next fiscal year. Property Manager shall provide such other financial data and other information as may be required by CIC in connection with the preparation of its annual business plan or which may otherwise be reasonably requested by CIC. The initial budget is attached hereto as Exhibit C.

Section 3.2 Compensation for Property Management Services. CIC shall pay to Property Manager as compensation for performing the Property Management Services in furtherance of the redevelopment, reuse and further development of the Development amounts budgeted for costs and expenses of all services provided under this Agreement, including those costs and expenses which are specifically reimbursable pursuant to Section 4.1 below, in accordance with the budget attached hereto as Exhibit C, as such budget may be adjusted pursuant to Section 3.3 below.

Section 3.3 Budget Adjustment. The initial budget attached hereto as Exhibit C may be adjusted on an annual basis as follows:

(a) If the Property Manager desires to adjust the budget shown on Exhibit C, the Property Manager shall send written notice (the "Budget Adjustment Request") to CIC no later than April 1. The Budget Adjustment Request shall include the proposed budget adjustments. In no event shall such adjustments collectively exceed three percent (3%) of the prior year's annual budget.

(b) The parties hereto agree to negotiate in good faith any such budget adjustments requested in the Budget Adjustment Request for a period not to exceed June 1 of the same year of the Budget Adjustment Request.

(c) If the parties hereto either (i) do not reach agreement regarding the requested budget adjustments, or (ii) if CIC does not approve the requested budget adjustments by July 1 of the same year as the Budget Adjustment Request, then the annual budget shall not be adjusted and shall be the same as the annual budget approved and in place at the time the Budget Adjustment Request was received by CIC.

Section 3.4 Monthly Reports. On or before the fifteenth (15th) day of each calendar month, Property Manager shall deliver to CIC, for each building comprising the Development, and also for the Development as a whole, the following reports, for the preceding month:

(a) Accounting. A cash flow operating statement, a funds from operations statement (cash basis), an income statement (cash basis), a balance sheet (cash basis) and a statement of cash flows. Such statements shall present the results of operations of each building and the Development as a whole for the preceding calendar month and for the year-to-date.

(b) Rent Roll and Accounts Receivable Aging Reports. Reports setting forth a rent roll, presentation rent roll, tenant delinquencies and the aging of accounts payable.

(c) Inspection Reports. A report of all significant and material findings, if any, of Property Manager's inspections of tenants' premises pursuant to this Agreement.

(d) Capital Expenditure Reports. Reports providing details of capital expenditures, including tenant improvements, for the preceding month and for the remainder of the calendar year, itemized by type of capital expenditure.

(e) Updated Forecast. A statement setting forth in detail the estimated revenues, expenses, capital expenditures, for each of the remaining months of the calendar year. Property Manager shall also set forth on a monthly basis the estimated cash flow to CIC.

(f) Book and Tax Projections. If requested by CIC (at CIC's cost), projections of the current year's net income or loss on a book and tax basis, together with statements supporting the calculation of these projections. CIC will notify Property Manager of the specific date on which the Projections are due.

(g) Receivables Aging Reports. A list of all accounts receivable outstanding as of the end of the preceding month, specifying the amount due, the nature of the receivable, the person or entity from whom due, the age of the receivable and a summary of collection efforts to date.

(h) Bank Reconciliation. A reconciliation for each of CIC's bank accounts related to the Development of the activity in such account for the preceding month and for the year-to-date.

Section 3.5 Annual Reports. Within forty-five (45) days after the end of each calendar year, Property Manager shall deliver to CIC a cash flow operating statement, a funds from operations statement (cash basis), an income statement (cash basis), a balance sheet (cash basis) and a statement of cash flows, each for or as of the end of the immediately preceding year.

Section 3.6 Format. At CIC's request, Property Manager shall make available to CIC all reports required hereunder in an electronic format reasonably acceptable to CIC and compatible with CIC and the City's computer system and software. All reports required to be provided by this Agreement shall be printed on recycled paper.

Section 3.7 Use of Reports. All reports prepared by Property Manager may be used by CIC or the City in execution or implementation of:

- (a) The original services for which Property Manager was hired;
- (b) Continuation of the services by others;
- (c) Subsequent additions to the original services; and/or
- (d) Other services being furnished to CIC or the City, as the City and CIC

deem appropriate.

Section 3.8 No Distribution Without Approval. No report, information or other data given to or prepared or assembled by Property Manager pursuant to this Agreement shall be made available to any individual or organization by Property Manager without prior approval by CIC.

ARTICLE IV EXPENSES

Section 4.1 Expense of CIC. All payments made, or expenses incurred, by the Property Manager in the performance of the Property Management Services shall be paid or reimbursed by CIC, except as otherwise provided in this Agreement. Both parties acknowledge that CIC shall not be obligated to pay or reimburse the Property Manager for any expenses incurred by the Property Manager in connection with the leasing of premises within the Development, or for office equipment, office supplies of the Property Manager postage or overnight delivery costs, for any general overhead expense of the Property Manager, or for any salaries of those employees and/or agent types (other than those identified on Exhibit C attached hereto), and all such employees shall be compensated directly by the Property Manager. The employee and/or agent types identified on Exhibit C attached hereto ("Reimbursable Employees") shall be subject to the obligation of CIC to reimburse the Property Manager for such salaries in accordance with, and not to exceed, the budget attached hereto as Exhibit C, as such budget may be adjusted pursuant to Section 3.3 above.

Section 4.2 Payment by the Property Manager. Subject to Section 4.3 below, without the necessity of obtaining the prior written consent of CIC, the Property Manager shall make all payments for repairs and maintenance costs incurred and equipment and supply purchases made in accordance with this Agreement, and under contracts existing prior to the effective date of this Agreement or approved or authorized pursuant to this Agreement, but only if such payments (a) will not cause the annual expenditure under a budget line item to exceed the approved budget by the lesser of Five Thousand and No/100ths Dollars (\$5,000.00) or ten percent (10%) or more of the amount of such budget line item, and (b) will not, as a result of actual savings to date in other budget line items, cause the total projected annual expenditures to exceed the approved budget. However, in the case of casualty, breakdown in machinery or other similar emergency, the Property Manager may make reasonable payments for repairs, maintenance, equipment or supplies in excess of such authorization amounts if, in the reasonable opinion of the Property Manager, emergency action prior to written approval is necessary to prevent additional damage or a greater total expenditure, to protect the Development from damage or to prevent a default on the part of CIC as landlord under a lease, but in no event shall the Property Manager be authorized to expend more than Five Thousand and No/100ths Dollars (\$5,000.00). In such cases, such authority shall terminate upon the cessation of the emergency and the Property Manager shall notify CIC of the expenditure within two (2) days after such expenditure.

Section 4.3 Source of Payment. Any authorized payments made by the Property Manager on behalf of CIC shall only be made out of such funds as the Property Manager may from time to time hold for the account of CIC or as may be provided by CIC.

ARTICLE V NONDISCRIMINATION AND EQUAL OPPORTUNITY

Section 5.1 Nondiscrimination. Neither CIC, Property Manager nor anyone authorized to act for any of them, shall, in the rental, lease or sale, in the provision of service, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, handicap, sex or national origin, and Property Manager hereby agrees to comply with all laws, regulations and ordinances pertaining thereto.

Section 5.2 Equal Opportunity. Property Manager is an equal opportunity non-discriminatory employer. Property Manager and CIC each mutually agree that there shall be no discrimination against, or segregation with respect to any person or of a group of persons on account of race, color, religion, creed, sex, or national origin in leasing, transferring, use, occupancy, tenure or enjoyment of the Development, nor shall CIC or Property Manager permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants.

ARTICLE VI INDEMNIFICATION

Property Manager shall indemnify, defend and hold harmless CIC, the City, its City Council, Alameda Power and Telecom, the Alameda Housing Authority, the Alameda Reuse and Redevelopment Authority, and their boards, councils, commissions, officials, employees and volunteers (collectively, "Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees (collectively, "Claims"), regardless of the merits or outcome of any such Claim, arising from or in any manner (a) connected to Property Manager's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement or any acts beyond the scope of Property Manager's authority hereunder, (b) by any person or entity for commissions or brokerage fees based on agreements between the claimant and Property Manager, or (c) accruing to or resulting from any and all persons, firms or corporations furnishing or supplying work, services, materials, equipment or supplies arising from or in any manner connected to Property Manager's negligent act or omission regarding performance of services or work conducted or performed pursuant to this Agreement or any acts beyond the scope of Property Manager's authority hereunder. If Claims are filed against Indemnitees which allege negligence on behalf of the Property Manager, Property Manager shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Property Manager. However, Property Manager shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees. The foregoing indemnities shall survive termination of this Agreement.

ARTICLE VII
INSURANCE

Section 7.1 Liability Coverages. Property Manager, at its cost, shall maintain, or cause to be maintained, the following insurance coverage during the term of this Agreement:

(a) Comprehensive, broad form general liability insurance, in an amount not less than Six Million Dollars (\$6,000,000), combined single limit. At least \$1,000,000 shall be primary and the remainder may be maintained, as applicable, as umbrella or excess liability coverage.

(b) Automobile liability insurance for owned, hired or non-owned vehicles, in an amount not less than One Million Dollars (\$1,000,000), combined single limit.

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

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

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

(f) With respect to construction or other services by contractors in the Development other than as described in Subsection (e) above, Property Manager shall cause the construction contractors and subcontractors to provide the following insurance coverages:

(i) Comprehensive, broad form general liability insurance, including products and completed operations, in amounts not less than:

(A) For construction contracts under \$100,000 and all service and consultant contracts:

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

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

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

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

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

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

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

(B) For all other construction contracts over \$100,000:

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

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

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

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

(iv) If required by the CIC's risk manager (to be determined on a case by case basis), professional liability insurance in an amount not less than One Million Dollars (\$1,000,000).

(v) If required by the CIC's risk manager (to be determined on a case by case basis), pollution legal liability insurance in an amount not less than One Million Dollars (\$1,000,000).

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

(h) To the extent Property Manager is directly or indirectly involved in any type of excavation at Alameda Point, it must obtain prior written approval of CIC, which may

condition such approval on requiring pollution legal liability insurance in an amount to be determined by CIC based on the scope of work.

Section 7.2 General Requirements.

(a) **Required Provisions.** All insurance policies required under this Article VI other than workers' compensation and professional liability insurance for errors and omissions shall (i) name CIC and all other parties specified in Section 7.2(f) below as additional insureds, (ii) be issued by an insurer and be in a form and contain terms, all as reasonably approved by CIC and the City's Risk Manager, (iii) provide that such policies shall not be canceled nor shall any material change be made therein without at least thirty (30) days' prior written notice to CIC, and (iv) provide that any loss shall be payable to CIC and any other additional named insured specified in Section 7.2(f) below notwithstanding any act or negligence of Property Manager which might otherwise result in forfeiture of such insurance. All insurance commercial general liability, vehicle liability policies, and workers' compensation insurance required under this Article VI shall include a waiver of subrogation endorsement.

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

(c) **Certificates of Insurance.** On or before the commencement of the term of this Agreement, Property Manager shall furnish CIC and the City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Agreement. Such certificates, which do not limit Property Manager's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager." It is agreed that Property Manager shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company or companies licensed to do insurance business in the State of California and domiciled in the United States of America. Endorsements naming the additional insureds specified in Section 7.2(f) below shall be submitted with the insurance certificates. Property Manager shall also provide CIC with certificates evidencing and further insurance coverages required by this Article VI (whether maintained by Property Manager or by contractors and subcontractors) prior to the commencement of any activity or operation which could give rise to a loss to be covered by such insurance. Replacement certificates shall be sent to the City's Risk Manager as policies are renewed, replaced or modified.

(d) **Investigation of Claims.** Property Manager shall promptly report any conditions or incidents of which Property Manager becomes aware which could give rise to a claim or lawsuit against CIC or involving the Development. Property Manager shall promptly investigate and make a full, timely, written report to any insurance company providing coverage, with a copy to CIC and the City's Risk Manager, of all accidents, claims, or damage relating to the ownership, operation and maintenance of the Development, any damage or destruction to the Development and the estimated cost of repair thereof, and shall prepare any and all further

reports required by any such insurance company in connection therewith. Property Manager shall have no right to settle, compromise or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance, without the prior written consent of CIC and the City's Risk Manager.

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

(f) Additional Insureds. CIC, the City, the City Council, Alameda Power and Telecom, Alameda Housing Authority, and the Alameda Reuse and Redevelopment Authority and their respective boards, commissions, officers, employees and agents shall be named as additional insureds under all insurance coverages required by this Agreement except the Workers' Compensation coverage and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. The insurance Property Manager is required to carry or cause to be carried under this Agreement shall be primary. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance required to be provided by this Agreement.

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

(b) Subrogation Waiver. Property Manager agrees that in the event of loss due to any of the perils for which Property Manager has agreed to provide comprehensive general and automotive liability insurance, Property Manager shall look solely to Property Manager's insurance for recovery. Property Manager hereby grants to the City and CIC, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Property Manager or the City or CIC with respect to the services of Property Manager herein, a waiver of any right to subrogation which any such insurer of Property Manager may acquire against the City or CIC by virtue of the payment of any loss under such insurance.

(c) Sufficiency of Insurance. The insurance limits required by CIC or the City are not represented as being sufficient to protect Property Manager. Property Manager is advised to confer with Property Manager's insurance broker to determine adequate coverage for Property Manager.

ARTICLE VIII TERM AND TERMINATION

Section 8.1 Term. The term of this Agreement commenced on the Effective Date, and shall continue until February 28, 2005, unless sooner terminated in accordance with its terms. Subject to termination pursuant to Sections 8.2 or 8.3 below, this Agreement shall be

automatically renewed for similar terms at the expiration of each preceding year unless one party notifies the other, in writing within ninety (90) days prior to the renewal date, that it elects not to renew. Upon any termination of this Agreement by CIC or Property Manager, with or without cause, Property Manager shall be entitled only to the fees and reimbursement which have accrued hereunder but have not yet been paid through the effective date of termination.

Section 8.2 Termination by CIC.

(a) **For Cause.** CIC may terminate this Agreement, effective immediately upon receipt by Property Manager of written notice of CIC's election to do so, if:

(i) In CIC's reasonable judgment, Property Manager has mismanaged the Development or has been negligent in the management, operation, maintenance or servicing of the Development or has otherwise defaulted in the performance of its obligations hereunder, and has not remedied or cured the facts giving rise to CIC's right to terminate under this subsection within thirty (30) days after receipt of written notice from CIC specifying such facts;

(ii) A receiver, liquidator, or trustee of Property Manager shall be appointed by court order, or a petition to liquidate or reorganize Property Manager shall be filed against Property Manager under any bankruptcy, reorganization, or insolvency law and such order or petition is not vacated or dismissed within sixty (60) days, or Property Manager shall file a petition in bankruptcy or request a reorganization under any provision of the bankruptcy, reorganization, or insolvency laws, or if Property Manager shall make an assignment for the benefit of its creditors, or if Property Manager is adjudicated a bankrupt;

(iii) There is damage or destruction to the Development and CIC elects not to rebuild or restore the Development;

(iv) Property Manager fails to make payment of any amounts payable to CIC on the due dates set forth hereunder; provided that such failure shall not be an event of default if Property Manager makes such payment within seven (7) days after notice from CIC of such failure, but Property Manager shall not be entitled to such seven (7) days' notice more than twice in any twelve month period.

(b) **Without Cause.** Upon ninety (90) days' written notice to Property Manager, CIC may terminate this Agreement at any time, in its sole discretion, without cause of any kind.

Section 8.3 Termination by Property Manager.

(a) **For Cause.** Property Manager may terminate this Agreement, by written notice to CIC, if CIC has defaulted in its obligations hereunder, and has not cured such default within thirty (30) days after receipt of written notice from Property Manager specifying such default.

(b) **Without Cause.** Upon ninety (90) days' written notice to CIC, Property Manager may terminate this Agreement at any time, in its sole discretion, without cause of any kind.

Section 8.4 Manager's Obligations after Termination. Upon the expiration or termination of this Agreement pursuant to Sections 8.2 or 8.3 of this Agreement, Property Manager shall:

(a) deliver to CIC, or to such other person or persons designated by CIC, copies of all books and records of the Development and all funds in the possession of Property Manager belonging to CIC or received by Property Manager pursuant to the terms of this Agreement;

(b) deliver to CIC any and all funds of CIC on hand or in any bank account, including all security deposits of tenants, if not previously delivered to CIC, less any unpaid compensation due to Property Manager pursuant to this Agreement, and less any other reimbursements due to Property Manager under this Agreement;

(c) deliver to CIC, as received, any funds due to CIC under this Agreement but received after such termination;

(d) deliver to CIC all materials, supplies, keys, contracts, documents, plans, specifications, promotional materials and other materials pertaining to the Development; and

(e) assign, transfer or convey to such person or persons all service contracts and personal property relating to or used in the operation and maintenance of the Development, except any personal property which was paid for and is owned by Property Manager. Property Manager shall, at its cost and expense, remove all signs that it may have placed at the Development indicating that it is Property Manager of the Development and repair and restore any damage resulting therefrom. Property Manager shall also, for a period of ninety (90) days after such expiration or termination, make itself available to consult with and advise CIC, or such other person or persons designated by CIC, regarding the operation and maintenance of the Development.

ARTICLE IX ASSIGNMENT

Section 9.1 Personal Services. This Agreement is a contract for the personal services of Property Manager, and Property Manager may not assign, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without CIC's prior written approval, which may be withheld in the sole discretion of CIC. CIC shall not be required to accept performance hereunder by any person other than Property Manager, including without limitation, Property Manager as debtor in possession under the Bankruptcy Code, any trustee of Property Manager appointed under the Bankruptcy Code, or any assignee of such trustee or of Property Manager.

Section 9.2 Property Manager Identity. For purposes of this Agreement, any change in the constituent entities comprising Property Manager as of the Effective Date shall be deemed to be an assignment requiring the approval of CIC in its sole discretion.

Section 9.3 Binding. Without derogating from the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors

and assigns.

ARTICLE X
NOTICES

Section 10.1 Notices. Unless otherwise specifically provided, all notices, demands, statements and communications required hereunder shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, or by Federal Express or similar overnight courier, if intended for CIC, addressed to CIC at:

Alameda: City of Alameda
 2263 Santa Clara Avenue
 Alameda, California 94501
 Attention: City Manager

With copies to: City of Alameda
 2263 Santa Clara Avenue
 Alameda, California 94501
 Attention: City Attorney

 Community Improvement Commission
 of the City of Alameda
 950 West Mall Square
 Alameda, CA 94501-2272
 Attention: Finance & Administrative Division Manager

and if intended for Property Manager, addressed to Property Manager at:

 PM Realty Group, L.P.
 910 Travis, Suite 1000
 Houston, TX 77002
 Attention: Rick Kirk, President and CEO

or to such other address as shall, from time to time, have been designated by written notice by either party to the other party as herein provided. Unless otherwise specified herein, such notices, demands, statements and communications shall be deemed received (a) on the date delivered (or the date delivery is refused) if delivered in person; (b) three (3) business days after being deposited with the U.S. Mail, if sent by registered or certified mail, postage prepaid, or (c) one (1) business day after being sent, if sent by Federal Express or similar overnight courier.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter hereof, and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by both parties.

Section 11.2 Severability. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

Section 11.3 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed with the Courts of the County of Alameda, State of California.

Section 11.4 Authority Limited. Property Manager's authority shall be derived wholly from this Agreement, and Property Manager has no authority to act for or represent CIC except as herein specified.

Section 11.5 Exclusiveness of Compensation. The payments to be made to Property Manager hereunder shall be in lieu of all other and further compensation or commissions of any nature whatsoever for the services described herein and this Agreement shall be considered as a special agreement between the parties hereto covering the appointment and compensation of Property Manager to the exclusion of any other method of compensation unless otherwise agreed to in writing.

Section 11.6 Independent Contractor. Property Manager is an independent contractor and, as such, shall be solely responsible for all of its employees, for the supervision of all persons performing services in connection with the performance of all of CIC's obligations relating to the maintenance and operation of the Development, and for determining the manner and time of performance of all acts hereunder. Nothing herein contained shall be construed to establish Property Manager as an agent of CIC beyond the scope of authority expressly granted hereunder, or to create a joint venture or partnership between Property Manager and CIC. No civil service status or other right of employment will be acquired by any person by virtue of Property Manager's services pursuant to this Agreement. None of the benefits provided by the City or CIC to their employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available to Property Manager, its employees, independent contractors or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from the compensation due Property Manager under this Agreement. Payments of the above items, if required to or on behalf of any individual providing services under this Agreement, are the responsibility of Property Manager.

Section 11.7 Transactions With Affiliates. Notwithstanding anything to the contrary

contained in this Agreement, Property Manager shall not enter into or advise CIC to enter into, any agreement or arrangement with Property Manager or any party affiliated with Property Manager, directly or indirectly at CIC's expense or directly or indirectly on behalf of CIC, without the written notification of CIC. The provisions of this Section 11.7 are not intended to limit the fiduciary duties of Property Manager to CIC contained in this Agreement or under common law.

Section 11.8 Limitation on Liability. Property Manager agrees that the obligations incurred by CIC under this Agreement shall not constitute personal obligations of the employees, or any other principals or representatives of CIC. Property Manager further agrees that its recourse against CIC under this Agreement shall be strictly limited to CIC's interest in the Development, and that Property Manager shall have no recourse to any other asset of CIC, or any other principal or representative of CIC for the satisfaction of any of CIC's obligations hereunder.

Section 11.9 Consents and Approvals. To be effective, consents and approvals of CIC shall be in writing. All such requests shall be directed to the City Manager or such representative as the City Manager shall have designated in writing ("Designated CIC Representative"), and approvals from such person shall constitute the approval of CIC.

Section 11.10 Disclosure. Property Manager shall disclose to CIC for CIC's reasonable approval of any controlling ownership interest of Property Manager, any officer or employee of Property Manager, or any immediate family member (parent or parent-in-law, spouse, child, brother, sister, brother-in-law or sister-in-law or step-parent), of any officer or employee of Property Manager in any corporation, partnership, joint venture or other business which provides materials, products or services, directly or indirectly, for the Development. Such disclosure shall be made to CIC, in writing, at least ten (10) days prior to the proposed entering into any contract or agreement with such business for the provision of such products, materials, or service.

Section 11.11 Time. Time is of the essence with respect to this Agreement.

Section 11.12 Confidentiality Clause. Property Manager shall not reveal proprietary information with respect to CIC or CIC's properties, other than required by law, without prior written approval by CIC.

Section 11.13 Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by the party granting the waiver, and only to the extent expressly provided in such written waiver. Further, the failure of CIC to seek redress for breach, or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement, shall not constitute a waiver thereof, and CIC shall have all remedies provided herein and by applicable law with respect to any subsequent act which would have originally constituted a breach.

Section 11.14 Captions. The captions of this Agreement are inserted only for the purpose of convenient reference and do not define, limit or prescribe the scope or intent of this Agreement or any part hereof.

Section 11.15 Conflict of Interest. Property Manager warrants that is not a conflict of

interest for Property Manager to perform the services required by this Agreement. Property Manager may be required to fill out a conflict of interest form if the services provided under this Agreement require Property Manager to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

Section 11.16 Immigration Reform and Control Act. Property Manager assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder pursuant to the Immigration Reform and Control Act ("IRCA") and all other applicable federal and state laws, rules and regulations governing the immigration and citizenship status of employees. In addition to the indemnification provided by Article V hereof, Property Manager shall indemnify and hold CIC and the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Property Manager.

Section 11.17 Compliance with Fair Housing Act of 1968. Property Manager shall comply with the requirements of the Fair Housing Act of 1968 and all other applicable federal and state fair housing laws, rules and regulations.

Section 11.18 Non-Discrimination. Property Manager agrees that harassment or discrimination directed toward any person, including a job applicant, a City or CIC employee, or a citizen by Property Manager or any of Property Manager's employees or subcontractors on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated in the delivery of services or otherwise in connection with the performance of this Agreement. Property Manager agrees that any and all violations of this provision shall constitute a material breach of this Agreement and may result in its termination.

Section 11.19 Warranty of Authority. Each party hereto represents and warrants to the other that this Agreement has been duly authorized, executed, delivered and that the individual executing this Agreement on behalf of such party is duly authorized to do so.

Section 11.20 Compliance with Marsh Crust Ordinance. Property Manager shall perform or cause its contractors to perform all excavation work in compliance with the City's Marsh Crust Ordinance as set forth at Section 13-56 of the Municipal Code. Prior to performing any excavation work, Property Manager shall verify with the City's Building Official whether the excavation work is subject to the Marsh Crust Ordinance. Property Manager or its contractor shall apply for and obtain permits from the City's Building Services on projects deemed to be subject to the Marsh Crust Ordinance.

Section 11.21 Exhibits. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

IN WITNESS WHEREOF, CIC and Property Manager have executed this Agreement in duplicate originals on the date set forth below, effective as set forth above.

PROPERTY MANAGER:

PM REALTY GROUP, L.P.,
a Delaware limited partnership

By: Provident Investor GP, LLC,
a Texas limited liability company
as general partner and authorized agent

By: _____

Name: _____

Title: _____

CIC:

COMMUNITY IMPROVEMENT COMMISSION
OF THE CITY OF ALAMEDA,
a public body, corporate and politic

By: William C. Norton

Name: William C. Norton

Title: Interim Executive Director

Approved as to form:

By: Teresa L. Highsmith

Name: Teresa L. Highsmith

Title: Assistant City Attorney

RECOMMENDED FOR APPROVAL:

By: Leslie Little

Name: Leslie Little

Title: Development Services Director

LIST OF EXHIBITS

- Exhibit A Map of Site
- Exhibit B Leasing and Commissions
- Exhibit C Budget
- Exhibit D CIC's Approved Contract Form

FISC North

A parcel of land lying in the City and County of Alameda, State of California, and being a portion of Parcel 1 and Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records and a portion of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records more particularly described as follows:

BEGINNING at the most northwesterly corner of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records:

1. Thence along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North $86^{\circ}38'46''$ East, 16.02 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504, Official Records Alameda County, being the TRUE POINT OF BEGINNING;
2. Thence continuing along the northerly line of said parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North $86^{\circ}38'46''$ East, 402.97 feet;
3. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South $84^{\circ}06'14''$ East, 567.60 feet;
4. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North $87^{\circ}53'46''$ East, 726.00 feet;
5. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South $87^{\circ}21'14''$ East, 858.00 feet;
6. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South $58^{\circ}36'14''$ East, 153.54 feet to the most

northwesterly corner of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records;

7. Thence leaving said northerly line and along the westerly line of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records, South $15^{\circ}28'16''$ West, 579.96 feet to the most northwesterly corner of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35;
8. Thence leaving said westerly line and along the northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South $31^{\circ}40'14''$ East, 82.16 feet;
9. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South $81^{\circ}24'14''$ East, 285.99 feet;
10. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South $88^{\circ}00'44''$ East, 87.24 feet to the most northwesterly corner of Parcel B described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South $65^{\circ}48'44''$ East;
11. Thence leaving said northerly line and along the westerly line of Parcel B described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 30050.01 feet, through a central angle of $0^{\circ}12'27''$, for an arc length of 108.83 feet to a point on the southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South $13^{\circ}02'54''$ West;
12. Thence leaving said westerly line along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 741.84 feet, through a central angle of $1^{\circ}33'38''$, for an arc length of 20.21 feet to a point of compound curvature;

13. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 980.54 feet, through a central angle of $1^{\circ}47'59''$, for an arc length of 30.80 feet to a point of compound curvature;
14. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 1457.97 feet, through a central angle of $1^{\circ}12'01''$, for an arc length of 30.54 feet to the beginning of a non-tangent curve to the left from which point a radial line bears South $08^{\circ}27'44''$ West;
15. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 2890.33 feet, through a central angle of $0^{\circ}36'00''$, for an arc length of 30.27 feet;
16. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, North $82^{\circ}06'43''$ West, 848.13 feet to a point on the southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records;
17. Thence leaving said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, and along said southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records, North $88^{\circ}07'13''$ West, 422.49 feet to the most southeasterly corner of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;
18. Thence along said southerly of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, North $89^{\circ}46'04''$ West, 1515.46 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County;

19. Thence along said easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County, North 0°30'14" West, 746.23 feet to the TRUE POINT OF BEGINNING;

Containing an area of 45.45148 acres, more or less.

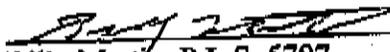
Basis of Bearings:

Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS Station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:


Billy Martin, P.L.S. 5797
Expires: 6/30/2004



Dated: JULY 12, 2000

K:\MARTIN\99090022\LOCALS\FISCNOK\11071700.DOC

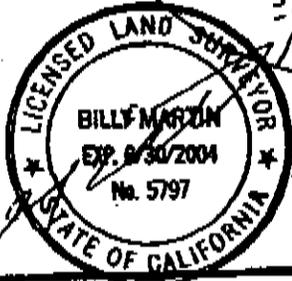
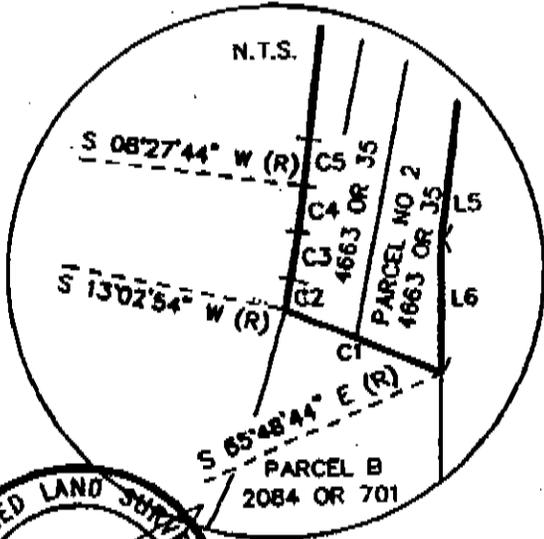
PARCEL 10
 DOC NO. 84064504
 (EASTERLY LINE OF PARCEL 10)



LINE TABLE		
LINE	BEARING	LENGTH
L1	N 00°30'14" W	746.23'
L2	S 58°36'14" E	153.54'
L3	S 15°28'16" W	100.37'
L4	S 31°40'14" E	82.16'
L5	S 81°24'14" E	285.99'
L6	S 89°00'44" E	87.24'
L7	N 86°38'46" E	16.02'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	00°12'27"	30050.01'	108.83'
C2	01°33'38"	741.84'	20.21'
C3	01°47'59"	980.54'	30.80'
C4	01°12'01"	1457.97'	30.54'
C5	00°36'00"	2890.33'	30.27'

DETAIL "A"



SEE DETAL "A"

PARCEL NO. 2
 4652 OR 168

PARCEL B
 2084 OR 701

FISC SOUTH

FISC NORTH
 45.45148
 ACRES±

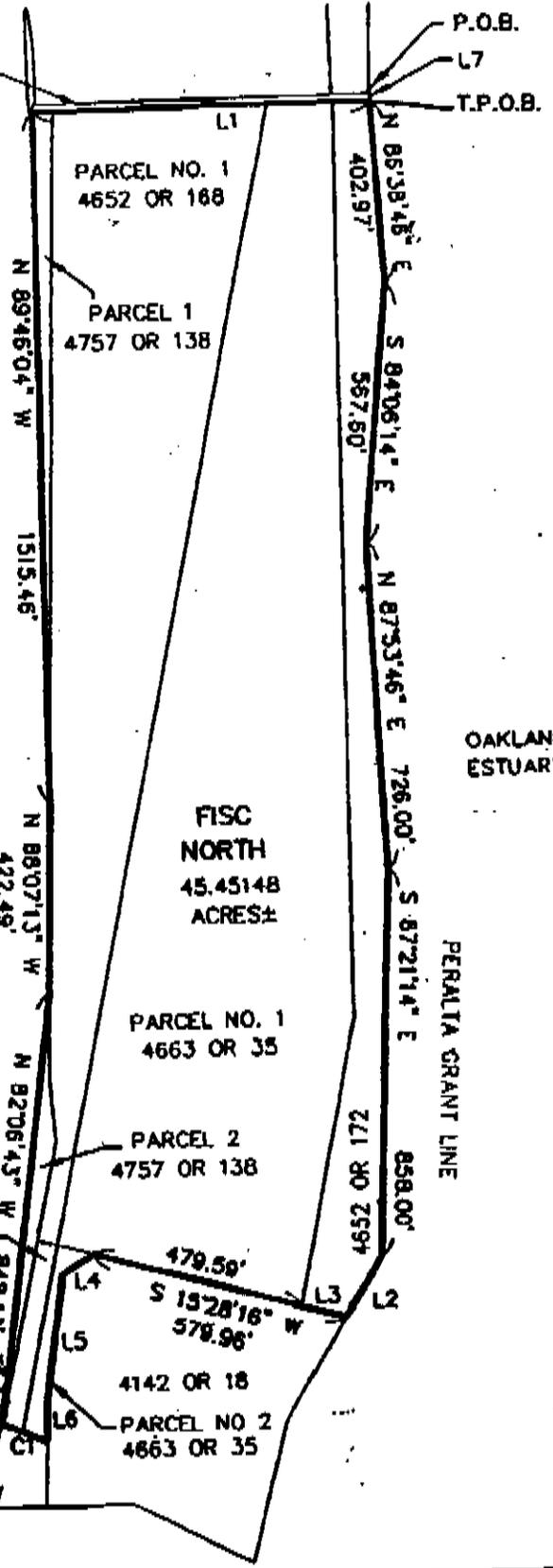
PARCEL NO. 1
 4663 OR 35

PARCEL 2
 4757 OR 138

479.59'

4142 OR 18

PARCEL NO 2
 4663 OR 35



OAKLAND ESTUARY

PERALTA GRANT LINE

Subject EXHIBIT "B"
FISC NORTH
 Job No. 980221-10
 By RCS Date 05/15/00 Chkd. MP
 SHEET 1 OF 1

Brian Kasper Funk
 Engineers - Surveyors - Planners

540 Price Avenue
 Redwood City, CA 94063
 650/482-6300
 650/482-6399 (FAX)

EXHIBIT B

Leasing and Commissions

I. LEASING.

1.1 Leasing Services. CIC hereby engages the Property Manager as the exclusive leasing broker for the purpose of leasing those portions of the Development which may be available for lease during the term of this Agreement. The Property Manager shall:

(a) Diligently pursue new, renewal, extension and replacement tenants for premises within the Development on the best terms available in the market.

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

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

(d) Prepare and present proposed leases (including amendments and renewals) to CIC for approval.

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

1.3 Outside Brokers.

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

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

Subsequently and pursuant to Article II of this Exhibit B, Property Manager will provide monthly invoices to CIC reduced by the amount of the advance paid by CIC in the manner approved by CIC in writing.

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

1.4 Reports.

(a) Leasing Status Reports. On or before the fifteenth day of each month, the Property Manager shall deliver to CIC for each building comprising the Development a leasing status report for the preceding month. The leasing status report shall identify, with square footage and locations specified, all space occupied under leases which are expected to terminate or which contain termination options exercisable during the ensuing twelve months.

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

II. LEASING COMMISSIONS.

2.1 Compensation for Leasing.

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

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

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

(ii) the amount of such leasing commission shall be: (A) five percent (5%) of the Fixed Annual Minimum Rent for the first five (5) years of the initial term of the lease, and (B) as applicable, two and one-half percent (2-1/2%) of the Fixed Annual Minimum Rent for the second five (5) years of the initial term of the lease; excluding any

renewal, extension or expansion options included in such lease, any period of free rent and any period after the tenant may, at its option, terminate the lease.

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

2.2 Renewals.

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

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

2.3 Payment Terms. The parties hereto contemplate payment of the leasing commissions will be payable only out of rental payments from tenants actually received (except as approved in writing by the CIC pursuant to Section 1.3(b) of this Exhibit B). Accordingly, the Property Manager has agreed to the foregoing schedule of payments set forth in Sections 2.1 and 2.2 of this Exhibit B calculated in accordance with the illustrative examples set forth below (subject to reduction pursuant to any alternative arrangement approved in writing by the CIC pursuant to Section 1.3(b) of this Exhibit B).

(a) Commissions for New Leases – Examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) If, prior to the termination of the initial term of its lease, an existing tenant relocates within the Development, the commission applicable to the portion of the relocation lease term equal to the unexpired term of the original lease shall be based upon the increase, if any, in the rent.

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

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

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

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

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

III. ENTIRE COMPENSATION. Except as expressly set forth herein, no leasing commission, finder's fee, broker's fee or other type of commission shall be payable to the Property Manager for any lease, ground lease, sale, conveyance, or transfer of the Development or any interest in the Development, or for any financing or refinancing of the Development.

FISC
2004/05 Budget Approval Form

	2002/03 Budget Total	2003/04 Budget Total	2003/04 Reforecast Total	2004/05 Budget Total	Variance	Comments
Total Revenue	\$ -	\$ -	\$ -	\$ 776,437.98	\$ 776,437.98	Includes existing leases only as determined by available files and accounting records. Assumes one renewal with Bobac, to include leasing commission (cost reflected below as "Major Expenditures").
Operating Expenses						
Repairs & Maintenance	\$ -	\$ -	\$ -	\$ 39,017.10	\$ 39,017.10	Includes 10% of maintenance person's time, securing Bldg. 6, hauling dumped items, sweeping trash/dumped items and pothole repair. One position to manage leases/operators Property Management fees
Administrative	\$ -	\$ -	\$ -	\$ 59,896.00	\$ 59,896.00	
General Building Services Management Fees	\$ -	\$ -	\$ -	\$ 33,000.00	\$ 33,000.00	
Total Operating Expenses	\$ -	\$ -	\$ -	\$ 131,913.10	\$ 131,913.10	
Net Operating Income	\$ -	\$ -	\$ -	\$ 644,524.88	\$ 644,524.88	
Major Expenditures	\$ -	\$ -	\$ -	\$ 6,300.00	\$ 6,300.00	
Net Income after Expenditures	\$ -	\$ -	\$ -	\$ 638,224.88	\$ 638,224.88	

Prepared by: Shayna Eskew Date

Reviewed by: David Jaber Date

Approved by: Nanette Banks Date

EXHIBIT D

CONTRACTOR AGREEMENT

No.

THIS AGREEMENT, entered into this ___th day of _____, 200_, by and between PM REALTY GROUP, L.P. ("Manager"), as agent for the Community Improvement Commission of the City of Alameda, a public body corporate and politic, (hereinafter referred to as "CIC"), whose address is 2175 Monarch St, Alameda, CA 94501, and _____, a _____, whose address is _____ (hereinafter called "Contractor"), in reference to the following:

RECITALS:

- A. CIC has an interest in certain real property and improvements known as Alameda Point located in Alameda, California, on behalf of the CIC (the "**Project**").
- B. PM Realty Group, L. P., a Delaware limited partnership, has been appointed as the manager of the Project and is authorized to enter into this Agreement as "**Agent**" for the CIC.
- C. Manager and Contractor desire to enter into an agreement for _____ in accordance with Specifications, Special Provisions and Plans as attached in "**Exhibit A.**"

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

The Contractor shall begin work within five (5) working days after receiving notice from the Manager to commence the work, and shall diligently prosecute the work to completion before the expiration of thirty (30) consecutive working days from the date of receipt of notice to begin work.

2. **SERVICES TO BE PERFORMED:**

Contractor agrees, at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with Specifications, Special Provisions and Plans, which Specifications, Special Provisions and Plans are hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein.

3. **COMPENSATION TO CONTRACTOR:**

Contractor shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Contractor's bid, which is attached hereto as "**Exhibit B**" and incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the Manager, with checks drawn on the treasury of the CIC, to be taken from the operating fund.

Payment will be made within thirty (30) days by the Manager in the following manner: On the first day of each month, Contractor shall submit a written estimate of the total amount of work done the previous month. Payment shall be made for 90% of the value of the work. The Manager shall retain 10% of the value of the work as partial security for the completion of the work by Contractor. Retained amounts shall be paid to Contractor within 15 days of acceptance by the Owner of the project. Payment shall not be construed as acceptance of defective work. No interest will be paid to Contractor on retained funds.

4. **TIME IS OF THE ESSENCE:**

Contractor and Manager agree that time is of the essence regarding the performance of this Agreement.

It is agreed by the parties to the Agreement that in case all the work called for under the Agreement is not completed before or upon the expiration of the time limit as set forth in paragraph 1 above, damage will be sustained by the Manager, and that it is and will be impracticable to determine the actual damage which the Manager will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor will pay to the Manager the sum of \$500.00 (five hundred dollars) per day for each and every day's delay beyond the time prescribed to complete the work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the Manager may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement.

It is further agreed that in case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified, the Manager shall have the right to extend the time for completion or not, as may seem best to serve the interest of the Manager; and if it decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge the Contractor, his or her heirs, assigns, or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual costs and overhead expenses which are directly chargeable to the Agreement, and which accrue during the period of such extensions.

The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the Manager, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided that the Contractor shall, within one (1) day from the beginning of such delay, notify the Manager in writing of the causes of delay. The Manager shall ascertain the facts and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

5. **STANDARD OF CARE:**

Contractor agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the Manager, or CIC, nor have any contractual relationship with Manager or CIC.

6. **INDEPENDENT PARTIES:**

Manager and Contractor intend that the relationship between them created by this Agreement

is that of employer-independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services. None of the benefits provided by Manager to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from Manager to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

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

8. **NON-DISCRIMINATION:**

Consistent with the Manager's policy that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, a Manager or City of Alameda employee, or a citizen by Contractor or Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

Contractor shall indemnify, defend, and hold harmless Manager, Alameda Point Community Partners, CIC, the City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Contractor's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor. However, Contractor shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

10. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Contractor shall furnish Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C and D. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be

canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to CIC by certified mail, "Attention: Risk Manager." It is agreed that Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Manager and licensed to do insurance business in the State of California. Endorsements naming the United States Department of the Navy, Alameda Reuse and Redevelopment Authority, City of Alameda, Alameda City Council, their respective Boards, Commissions, Officers, Employees and Agents, Alameda Point Community Partners, LLC, PM Realty Group, their Officers and Employees as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Contractor shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Personal Injury or Death: \$3,000,000 each occurrence

Property Damage: \$1,000,000 each occurrence

If submitted, combined single limit policy with aggregate limits in the amounts of \$3,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limit:

Combined Single Limit: \$1,000,000 each occurrence

B. SUBROGATION WAIVER:

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

C. FAILURE TO SECURE:

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

D. ADDITIONAL INSURED:

The United States Department of the Navy, Community Improvement Commission, City of Alameda, Alameda City Council, their respective Boards, Commissions, Officers, Employees and Agents, Alameda Point Community Partners, LLC, PM Realty Group, their Officers and

Employees shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **SUFFICIENCY OF INSURANCE:**

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

11. **BONDS:**

Contractor shall furnish the following bonds from a bonding company acceptable to the CIC's Risk Manager:

A. **Faithful Performance:**

A bond in the amount of 100% of the total contract price guaranteeing the faithful performance of this contract, and

B. **Labor and Materials:**

A bond for labor and materials in the amount of 100% of the total contract price.

12. **PROHIBITION AGAINST TRANSFERS:**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Manager. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Contractor from Manager under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Manager by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Contractor is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL:**

Unless prior written consent from Manager or CIC is obtained, only those people and subcontractors whose names are listed in Contractor's bid shall be used in the performance of this Agreement.

Requests for additional subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing estimated costs for the subcontractor's services. Approval of the subcontractor may, at the option of Manager, be issued in the form of a Work Order.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. **PERMITS AND LICENSES:**

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

15. **REPORTS:**

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

No report, information or other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by the CIC, or Manager.

Contractor shall, at such time and in such form as the CIC, or Manager may require, furnish reports concerning the status of services required under this Agreement.

16. **RECORDS:**

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by Manager that relate to the performance of services under this Agreement.

Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to Manager or CIC at all proper times, and gives Manager or CIC the right to examine and audit same, and to make transcripts there from as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by the CIC, or Manager's preliminary examination or audit of records, and the CIC, or Manager's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Contractor shall reimburse The CIC for all reasonable costs and expenses associated with the supplemental examination or audit. This section limits the records available to payroll, invoices, contracts, or manufacture correspondences to the project covered under this Agreement.

17. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given

in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to Manager shall be addressed to Manager at:

Community Improvement Commission
c/o PM Realty Group L.P.
2175 Monarch St.
Alameda CA 94501
Attention: Property Manager

All notices, demands, requests, or approvals from Manager to Contractor shall be addressed to Contractor at:

18. SAFETY REQUIREMENT

All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. Manager reserves the right to issue restraints or cease and desist orders to Contractor when unsafe or harmful acts or conditions are observed or reported relative to the performance of the work under this Agreement.

Contractor shall maintain the work sites free of hazards to persons and/or property resulting from his or her operations. Any hazardous condition noted by Contractor, which is not a result of his or her operations, shall immediately be reported to Manager.

19. REQUIREMENT TO PAY PREVAILING WAGE

Contractor shall comply with the City of Alameda Labor Compliance Program and all other requirements set forth in Labor Code section 1770 et seq. The Manager shall require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work. Contractor will submit monthly certified payroll records to the Manager or all employees and subcontractors in a pre-approved format or a City of Alameda provided form. Any delay in remitting certified payroll reports to the Manager upon request from the Manager will result in either delay and/or forfeit of outstanding payment to Contractor.

20. URBAN RUNOFF MANAGEMENT:

The Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

A. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block storm drain inlets prior to the start of the rainy season (October 15),

in site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and remove from the site).

B. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.

C. Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain as well as at the end of the each work day. At the completion of the project, the street shall be washed and the wash water shall be collected and disposed of offsite in an appropriate location.

D. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.

E. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each work day. Contractor shall also clean up any leaks, drips, and other spills as they occur.

The objective is to ensure that the City and County of Alameda County-Wide Clean Water Program is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These recommendations are intended to be used in conjunction with the State's Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specifications and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this program will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance of the above program is two hundred and fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act can also impose a fine on the contractor, pursuant to Cal. Water Code ' 13385.

21. **COMPLIANCE WITH MARSH CRUST ORDINANCE:**

Contractor shall perform all excavation work in compliance with the City of Alameda's Marsh Crust Ordinance as set forth at Section 13-56 of the Municipal Code. Prior to performing any excavation work, Contractor shall verify with the Building Official whether the excavation work is subject to the Marsh Crust Ordinance. Contractor shall apply for and obtain permits from Building Services on projects deemed to be subject to the Marsh Crust Ordinance.

22. **TERMINATION:**

In the event Contractor fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Contractor from Manager of written notice of default, specifying the nature of such default and the steps necessary to cure such default, Manager may terminate the Agreement forthwith by giving to the Contractor written notice thereof.

Manager shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

23. **COMPLIANCES:**

Contractor shall comply with all laws, state or federal and all ordinances, rules and regulations enacted or issued by The CIC, City of Alameda, or Manager.

24. **CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

25. **ADVERTISEMENT:**

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from The CIC or Manager to do otherwise.

26. **WAIVER:**

A waiver by the CIC or Manager of any breach of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

27. **INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both Manager and Contractor.

28. **INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

29. **CAPTIONS:**

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

30 **SEVERABILITY**

If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

CONTRACTOR

MANAGER:
PM REALTY GROUP, L.P., as agent for
the Community Improvement Commission of the City
of Alameda, a public body corporate and politic

By _____
Title _____

By: David Jaber
Title: Regional Vice President

STANDARD AGREEMENT #1
OPTIONAL CLAUSES FOR CONTRACTOR AGREEMENT

Unless otherwise noted in the text of the standard form Agreement, insert any necessary optional clauses immediately after section 7 and renumber the remaining standard sections accordingly.

Optional Clause A:
Insert when Agreement Involves
State or Federal Funds
Nondiscrimination

Contractor certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, or condition or physical or mental handicap (as defined in 41 C.F.R. Section 60-741, et. seq.), in accordance with requirement of state or federal law. Contractor shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap in accordance with requirements of state and federal law. Such shall include, but not be limited to, the following:

A. Employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.

B. Selection for training, including interns and apprentices.

Contractor agrees to post in conspicuous places in each of Contractor's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirements of state and federal law.

Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Contractor's commitments under this paragraph.

Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirement of state and federal law.

In accordance with applicable state and federal law, Contractor shall allow duly authorized county, state and federal representatives access to its employment records during regular business hours in order to verify compliance with the anti-discrimination provisions of this paragraph. Contractor shall provide such other information and records as such representatives may require in order to verify compliance with the anti-discrimination provisions of this paragraph.

If the City finds that any of the provisions of this paragraph have been violated, the same shall constitute a material breach of Agreement upon which City may determine to cancel, terminate, or suspend this Agreement. City reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated state and federal anti-discrimination laws shall constitute a finding by City that Contractor has violated the anti-discrimination provisions of Agreement.

The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this paragraph, City shall be entitled, at its option, to the sum of \$500.00 pursuant to California Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating, or suspending this Agreement.

Contractor hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), all requirements imposed by the applicable regulations (45 C.F.R.), and all guidelines and interpretations issued pursuant thereto, to the end that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program

or activity of Contractor receiving Federal Financial Assistance. In addition, Contractor shall comply with the Uniform Federal Accessibility Standards, and Contractor, Engineer, or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

Contractor's attention is directed to laws, including but not limited to:

A. CIVIL RIGHTS/EQUAL OPPORTUNITY

(1) Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, no person shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(2) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

B. PROGRAM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

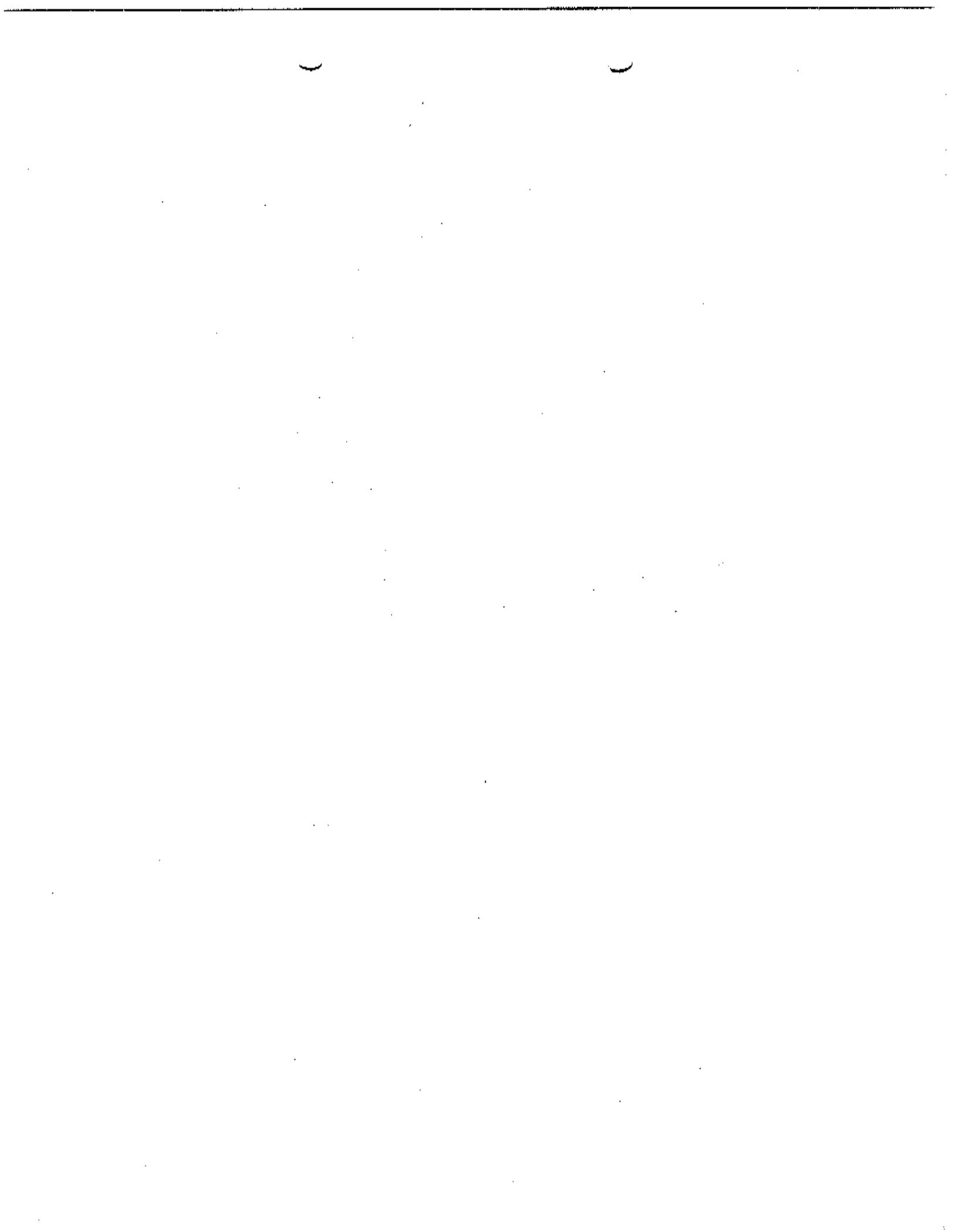
This Agreement is subject to laws and regulations concerning the rights of otherwise qualified individuals with handicaps for equal participation in, and benefit from federally assisted programs and activities, including but not limited to:

(1) Americans with Disabilities Act of 1990 (ADA) (28 C.F.R. 35). Title II, Subpart A of the Americans with Disabilities Act of 1990 applies to all publicly funded activities and programs. Contractor shall also comply with the public accommodations requirements of Title III of the ADA, as applicable.

(2) Nondiscrimination on the Basis of Handicap (24 CFR 8). These regulations, which implement Section 504 of the Rehabilitation Act of 1973, as amended, and as cited in Section 109 of the Housing and Community Development Act, apply to all federally assisted activities and programs and are implemented through the regulations at 24 C.F.R. 8.

(3) Architectural Barrier Act of 1968. Any building or facility, excluding privately owned residential structures, designed, constructed, or altered with federal funds, shall comply with the Uniform Federal Accessibility Standards, 1984 (41 C.F.R. 3) and the Handicapped Accessibility Requirements of the State of California Title 24. The Consultant, Engineer or Architect responsible for such design, construction or alteration shall certify compliance with the above standards.

(4) In resolving any conflict between the accessibility standards cited in paragraphs (1), (2) and (3) above, the more stringent standard shall apply.



Optional Clause B:
Environmental Insurance
For Use When Excavating in Marsh Crust

Environmental Risk Insurance covering the liability of Contractor arising out of any Services involving the abatement, use or disposition of hazardous materials. Such insurance shall be written by an environmental risk insurance company, or equivalent, or better, and shall be in a form and with insurers acceptable to Owner. The policy shall be on an "occurrence" rather than "claims made" basis, with a combined single limit for bodily injury and property damage of at least \$3,000,000 "per occurrence", or the limit carried by Contractor, whichever is greater, with a deductible no greater than \$10,000 per occurrence and shall provide continuous protection after policy expiration (without a "sunset clause") for all occurrences during the term of this Agreement. Such insurance shall be made available solely for the Services hereunder. Contractor shall comply with all policy warranties, and shall do nothing to invalidate coverage and shall give Owner a true copy of the policy prior to commencing the Services to be performed pursuant to this Agreement.

Optional Clause C:
Restrictions on Lobbying

This Agreement is subject to 24 C.F.R. 87 which prohibits the payment of Federal funds to any person for influencing or attempting to influence, any public officer or employee in connection with the award, making, entering into, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or agreement.

Optional Clause D:
Utilities

Contractor shall pay all charges for fuel, gas, water, electricity, telephone services and any other utilities necessary to carry on the operations of Contractor.

Optional Clause E:
Nuisance

Contractor shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

Optional Clause F:
Safety Requirement

All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. City reserves the right to issue restraints or cease and desist orders to Contractor when unsafe or harmful acts or conditions are observed or reported relative to the performance of the work under this Agreement.

Contractor shall maintain the work sites free of hazards to persons and/or property resulting from his or her operations. Any hazardous condition noted by Contractor, which is not a result of his or her operations, shall immediately be reported to City.



Optional Clause H:
Hours of Operation

Contractor shall be allowed to operate only for the hours of ____ a.m. to ____ p.m. unless prior written approval has been secured from City to do otherwise.

