

PROPERTY MANAGEMENT AGREEMENT
(Tidelands Trust Property)

THIS PROPERTY MANAGEMENT AGREEMENT (Tidelands Trust Property) (this "Agreement"), made as of July 1, 2006 ("Effective Date"), between the CITY OF ALAMEDA, a municipal corporation (the "City"), and PM REALTY GROUP, L.P., a Delaware limited partnership ("Property Manager"), of 1000 Main Street, Suite 2400, Houston, Texas 77002.

RECITALS

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

A. The City owns certain real property (the "Tidelands Trust Property") granted by the State of California by Statutes 1913, Chapter 348, as amended by Statutes 1917, Chapter 594 (collectively, the "Tidelands Grant"), shown on the "Map of Tidelands Trust Property" attached hereto as Exhibit A and incorporated herein by reference.

B. Pursuant to the Tidelands Grant, the City holds the Tidelands Trust Property in trust for the following uses and purposes and express conditions:

That said lands shall be used by said City and its successors, solely for the establishment, improvement and conduct of a harbor, and for the constructions, maintenance and operation thereof of wharves, docks, piers, slips, quays and other utilities, warehouses, structures and appliances necessary or convenient for the promotion, benefit and accommodation of commerce and navigation, and said City or its successors shall not except as herein authorized, at any time grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation for any purpose whatever, provided, that said City or its successors may grant franchises thereon for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and this grant, for a term not to exceed 25 years, and on such other terms and conditions as said City may determine, including a right to renew such lease or leases for a further term not exceeding 25 years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to the said City on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said City may determine, but for no purpose which will interfere with the navigation or commerce; subject also to a reservation in all such lease or such wharfing out privileges of a street, or of such other reservation as the said City may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electrical

cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said City, upon compensation being made for the injury and damage done to any improvement or structure thereon.

C. In accordance with the Tidelands Grant by the State of California, the City, in the granting of any and all such lease, shall, whenever in its judgment it can reasonably do so, give preference to the owners of upland abutting the Tidelands Trust Property.

D. The City desires to obtain the services of Property Manager as property manager of the Tidelands Trust Property with responsibilities for managing, operating, maintaining and servicing the Tidelands Trust Property in compliance with the Tidelands Grant and for the performance on behalf of the City of certain obligations with respect to the Tidelands Trust Property, as more specifically set forth in this Agreement.

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. The City hereby appoints Property Manager as property manager of the Tidelands Trust Property 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 Tidelands Trust Property. The Property Manager shall diligently perform its duties hereunder and shall devote sufficient time and effort to the Tidelands Trust Property 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 the City may reasonably request in connection with the Tidelands Trust Property, consistent with those normally performed in connection with the operation and management of similar, professionally managed developments.

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"):

(a) Personnel. Property Manager shall, as employees of Property Manager and not of the City, hire, pay, supervise and discharge all employees and personnel necessary for the operation of the Tidelands Trust Property. Such personnel shall in every instance be the employees or independent contractors of Property Manager and not of the City. 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 the City. 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 Tidelands Trust Property 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 Tidelands Trust Property all persons whom the Property Manager, in the exercise of its good business judgment, or whom the City, in its reasonable judgment, deems unnecessary or undesirable for the operation and management of the Tidelands Trust Property, 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 of the Tidelands Trust Property under the terms of their leases and any sums otherwise payable to the City with respect to the Tidelands Trust Property. All sums collected by Property Manager shall be deposited immediately in an interest-bearing account (all interest shall accrue to the benefit of the City), approved by and established in the City's name, for the benefit of, and held in trust for, the City, in a bank which has been approved by the City. Funds collected by Property Manager from the Tidelands Trust Property shall not be commingled with any other funds collected by Property Manager from properties not a part of the Tidelands Trust Property. 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 the City has certain regularly scheduled payments that it must make on a regular basis out of the revenues from the Tidelands Trust Property, including debt service on bonds. Within fifteen (15) days after the end of each calendar month, Property Manager shall cause to be disbursed to the City 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 Tidelands Trust Property 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 the City 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 City in form, amount, and substance approved by the City'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 Tidelands Trust Property 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 Tidelands Trust Property, 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 Tidelands Trust Property, available to the City and its representatives at all reasonable times for examination, audit, inspection and transcription. Property Manager shall provide access to the City or its respective designees during normal business hours upon request by the City. The records shall be kept on-site at the Property Manager's office located at 2175 Monarch Street, Alameda, California. The City 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 the City's reasonable request, Property Manager shall deliver to the City 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 the City's written request, shall turn over copies of all such books and records to the City.

(v) Property Manager agrees to render to the City on or before the fifteenth (15th) day of the months ending each calendar quarter, defined as March, June, September and December a detailed financial report as specified in Article III. Property Manager shall, at the City's request (such notice to be not less than sixty (60) days), have an annual audit of the books and records of the Tidelands Trust Property made by a firm of certified public accountants or other auditors approved by the City, 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 Tidelands Trust Property. The expense of the annual audit shall be an expense of the City.

(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 the City 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 Tidelands Trust Property necessary to maintain the Tidelands Trust Property in good well-maintained condition, in a manner comparable to similar professionally managed developments and any other standards approved by the City from time to time. Property Manager shall also perform or furnish any and all emergency repairs or services necessary for the preservation of the Tidelands Trust Property or to avoid the suspension of any service to the Tidelands Trust Property or danger to life or property. Property Manager shall give prompt notice of any emergency repairs to the City and to make reasonable efforts to secure the City's prior written approval. Emergency repairs or services may be made or furnished by Property Manager without the City'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 the City 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 Tidelands Trust Property 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, the lateral utility lines from the public rights of way and within the buildings for the Tidelands Trust Property. 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 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 the City of Alameda" as contractor (unless the City otherwise directs), contracts (in the City's approved form of contract attached hereto as Exhibit D) for the furnishing to the Tidelands Trust Property 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 Tidelands Trust Property in accordance with this Agreement. Unless otherwise approved in writing by the City, 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 the City, at the City's request. To the extent that any such contracts entered into pursuant to this subsection are required to be in the name of the City, as contractor, such contracts shall be submitted to the City for processing, review and execution by the City. Property Manager shall be responsible for the performance of all such contracts entered into pursuant to this subsection and the City shall have the right to enforce the obligations of the contractor under such contracts, whether such contractor is Property Manager 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 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 Tidelands Trust Property, including, but not limited to, SB-975 enacted by the State of California on January 1, 2002 and the Tidelands Grant. 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 Tidelands Trust Property for any purpose which might void or increase the premiums payable under any insurance policies held by the City. 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 Tidelands Trust Property.

(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 the City 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 the City and the City Attorney.

(j) Notices. Property Manager shall promptly deliver to the City all notices received from any contractor, subcontractor, governmental or official entity, any tenant or any other party with respect to the Tidelands Trust Property. Property Manager may sign and serve in the name of the City 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 City of any personal injury or property damage occurring to, or claimed by, any tenant or third party on or with respect to the Tidelands Trust Property promptly upon obtaining actual knowledge thereof and to promptly forward to the City any summons, subpoena, or legal document served upon the Property Manager relating to actual or alleged potential liability of the City, the Property Manager or the Tidelands Trust Property within two (2) business days.

(l) Cooperation. Property Manager shall give the City 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 the City which arise out of any matters relating to the Tidelands Trust Property, 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 Tidelands Trust Property and shall receive, in consideration therefor, the fees specified in Exhibit B attached hereto.

(n) Tenant Relations. Property Manager shall make itself fully familiar with the terms and provisions of all leases for areas within the Tidelands Trust Property, shall perform all delegable duties of the City as landlord under each such lease, so that such lease shall remain in full force and effect, with no default by the City, 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 Tidelands Trust Property 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 the City, 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 the City if it is unable to obtain such certificates.

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

(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 Tidelands Trust Property 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 of the Tidelands Trust Property.

(r) Inspections. Property Manager shall perform periodic comprehensive inspections of the Tidelands Trust Property, and report on such inspections to the City at least annually. In addition, Property Manager shall inspect all exterior areas of the Tidelands Trust Property for safety hazards on a monthly basis and shall report on such inspections to the City. Property Manager shall also inspect all premises upon termination of leases. At City's prior written request and at City's cost and expense, Property Manager shall have the roofs of buildings within the Tidelands Trust Property inspected by a certified roof inspection company as specified by the City.

(s) Assistance with Proposed Sale, Financing, Refinancing. Property Manager agrees to cooperate with, and assist the City in any attempt by the City to sell, finance or refinance the Tidelands Trust Property without such cooperation giving rise to compensation. Such cooperation shall include, without limitation, answering prospective purchasers' or

lender(s)' questions about the Tidelands Trust Property or tenant leases, notifying tenants about the sale of the Tidelands Trust Property, and obtaining estoppel certificates. When requested by the City, Property Manager shall prepare a list of all personal property owned by the City and used at the Tidelands Trust Property or in its operation. Upon request, Property Manager shall diligently seek to obtain lease estoppel certificates (on a form approved by the City) from tenants for the benefit of the City and/or any proposed purchaser and/or mortgagee.

Section 1.4 Construction Management Services. Without limiting the generality of any other term or provision of this Agreement, Property Manager shall provide the following services (the "Construction Management Services") in furtherance of the redevelopment and reuse of the Site:

(a) Property Manager shall (i) prepare budgets for the construction of certain capital improvements, capital repairs and tenant improvement work designated by the City (collectively the "Work"), (ii) supervise other Consultants (as defined herein) for the Work, and (iii) perform such other services as are reasonably requested in writing by the City from time to time in connection with the planning, development and construction of the Work, or as may be necessary to complete the planning, development and construction of the Work. Property Manager further agrees to perform such other extraordinary services as the City may direct from time to time, in writing, provided that the City shall reimburse Property Manager for Property Manager's cost in performing same.

(b) All contracts for the design, development and construction of any improvements for the Work including, without limitation, all contracts with engineers, architects, consultants, designers and contractors (who shall sometimes collectively be referred to herein as the "Consultants") shall be in the name of the City, shall be executed by the City or by "PM Realty Group, L.P. as agent for the City of Alameda".

(c) At the request of the City, or in the reasonable discretion of Property Manager, contracts for the Work shall be awarded on the basis of competitive bidding, solicited in the following manner:

(i) A minimum of three (3) written bids shall be obtained for any work over \$5,000;

(ii) Compliance with the terms and conditions of this Agreement;

(iii) Each bid will be solicited in a form prescribed by the Property Manager so that uniformity will exist in the bid quote;

(iv) Property Manager shall provide the City with all bid responses accompanied by the Property Manager's recommendations as to the most acceptable bid. If the Property Manager advises acceptance of other than the lowest bidding, the Property Manager shall adequately support, in writing, its recommendations; and

(v) The City shall be free to accept or reject any and all bids.

The City will communicate in writing to Property Manager its acceptance or rejection of bids.

(d) At the request of the City, prior to submitting any of the Work for bid, the City shall approve all plans and specifications relating to the Work and all costs for the completion of any and all plans and specifications shall be deemed to be a part of the Work.

(e) Property Manager shall administer the various contracts relating to the Work. Property Manager shall be responsible for keeping the City informed with respect to the progress of the Work. Property Manager shall not be responsible for (i) the quality or quantity of the Work, nor the construction means, methods, techniques, sequences or procedures employed by contractors in the performance of their contracts, (ii) the failure of any contractor to complete the Work in accordance with the contract documents, the acts or omissions of any contractors, subcontractors or their agents or employees, or any other persons performing portions of the Work, (iii) any errors, inconsistencies or omissions which may be contained in the plans and specifications relating to the Work, (iv) acts or omissions of the City, its agents (other than Property Manager) and employees, (v) any payments to contractors, subcontractors, materials suppliers or any other parties, (vi) any delays in the completion of the Work, (vii) the enforcement of any contract pertaining to the Work, (viii) adherence to any budget for the completion of the Work, and (ix) any other matters not expressly made the responsibility of Property Manager herein.

(f) (i) Subject to the provisions herein set forth, and subject to the availability of funds therefor, Property Manager shall deliver all progress payments to the contractors in accordance with the provisions of the construction contracts relating thereto for Work performed thereunder which is undisputed and in accordance with the plans and specification relating thereto, and shall make all payments to professionals for services rendered under the professional contracts relating thereto. Notwithstanding the foregoing, the City shall have the right to approve the invoices relating thereto, which invoices shall be prepared by the Property Manager and shall detail the particular work performed or service rendered, identify the person or firm performing such work or service, and shall set forth the amount due for such work or services; provided, however, the Property Manager shall have the right, but not the obligation, to pay directly any contractor and/or professional amounts not exceeding Five Thousand Dollars (\$5,000.00) with respect to any such contractor or professional, prior to the City's approval of the invoices relating thereto.

(ii) Property Manager may withhold disbursement to any contractor and/or professional for a period of not more than thirty (30) days following the City's approval of the invoice relating thereto if the Property Manager reasonably deems the performance of such contractor or professional unsatisfactory under the applicable contract.

(iii) Payment of all sums to the contractors and the professionals for Work performed shall be subject to Section 4.3 of this Agreement.

(iv) All construction contracts which are let in accordance with the provisions of this Agreement shall provide for a ten percent (10%) holdback from the amounts due under each progress payment, with the entire amount of the holdback under such contract, subject to the terms and conditions contained in the applicable contract, payable to such contractor or material man within thirty-five (35) days following the recordation of a valid Notice of Completion or upon Property Manager's review and approval of all project costs.

Notwithstanding anything to the contrary set forth in this Section 1.4, the City acknowledges and agrees that the Property Manager shall in no way be construed to be engaging in the performance of any construction or design activities.

ARTICLE II CITY RIGHTS AND OBLIGATIONS

Section 2.1 Tidelands Trust Property Materials in Possession of City. Property Manager acknowledges and agrees that it has all documents and information required for the management of the Tidelands Trust Property 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, the City 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 the City, 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 the City of Alameda" or by Property Manager, in its name, on behalf of the City, unless Property Manager shall have first complied with, or used a procurement process consistent with, the City'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 which are anticipated to cost over Ten Thousand Dollars (\$10,000), Property Manager shall have first obtained and submitted to the City three (3) competitive, written bids for the performance or furnishing of the same, and the City shall have approved the awarding of such contract or agreement. All service contracts shall contain a provision permitting the City 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 the City, any agreement with Property Manager (including "PM Realty Group, L. P. as agent for the City of Alameda") and/or any affiliate of Property Manager without the prior written consent of the City, which consent shall specifically reference the affiliation of Property Manager with the contracting party.

Section 2.3 City's Representative. For the purposes of administering this Agreement, Property Manager shall communicate with and take direction from the City's representative, Nanette Banks, in connection with Property Manager's performance of its obligations under this Agreement. The City's representative may be changed by the City by written notice to Property Manager.

ARTICLE III
BUDGETS AND REPORTS

Section 3.1 Budget. Property Manager acknowledges that the fiscal year for 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 the City to Property Manager, Property Manager shall submit to the City, for the City's written approval (which shall not be unreasonably withheld), a proposed budget for the Tidelands Trust Property 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 the City in connection with the preparation of its annual business plan or which may otherwise be reasonably requested by the City. The initial budget is attached hereto as Exhibit C.

Section 3.2 Compensation.

(a) Compensation for Property Management Services. The City shall pay to Property Manager as compensation for performing the Property Management Services in furtherance of the development of the Tidelands Trust Property (a) a one-time fee of Six Thousand Five Hundred and No/100ths Dollars (\$6,500.00) for property management services rendered by Property Manager with respect to the Tidelands Trust Property prior to the Effective Date of this Agreement, and (b) One Thousand Eight Hundred Dollars (\$1,800) per month plus 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.

(b) Compensation for Construction Management Services. The City shall pay to Property Manager as compensation for performing the Construction Management Services pursuant to Section 1.4 of this Agreement a fee equal to five percent (5%) of One Dollar to One Hundred Thousand Dollars (\$1.00 to \$100,000.00), four percent (4%) of One Hundred Thousand, one dollar to Five Hundred Thousand Dollars (\$100,001.00 to \$500,000.00), three percent (3%) of Five Hundred Thousand, One Dollars to One Million Dollars (\$500,001.00 to \$1,000,000.00), two percent (2%) of One Million, One Dollars to One Million, Five Hundred Thousand Dollars (\$1,000,001.00 to \$1,500,000.00), one percent (1%) of above One Million, Five Hundred Thousand, One Dollars (\$1,500,001.00) (such percentages shall be applied separately to the total cost of the Work on a per project basis (i.e., if an approved Work project costs \$5,500,000.00, the Property Manager's compensation would be by way of example as follows:

<u>Project Cost</u>	<u>Fee %</u>	<u>Fee Dollar</u>
a. \$100,000.00	@ 5%	= \$5,000.00
b. \$400,000.00	@ 4%	= \$16,000.00
c. \$500,000.00	@ 3%	= \$15,000.00
d. \$500,000.00	@ 2%	= \$10,000.00
e. \$4,000,000.00	@ 1%	= \$40,000.00
Total: \$5,500,000.00		\$86,000.00

Property Manager shall invoice the construction management fee for the Construction Management Services performed under Section 1.4 of this Agreement by applying the appropriate percentage to the monthly project invoices. In addition to Property Manager's fee for Construction Management Services, Property Manager shall be entitled to reimbursement for the following expenses: all Work-related costs, including document reproduction, overnight mail and other extraordinary expenses, which are incurred by Property Manager in the performance of Construction Management Services.

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 the City no later than January 15. 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 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 either (i) do not reach agreement regarding the requested budget adjustments, or (ii) if the City 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 the City.

Section 3.4 Quarterly Reports. On or before the fifteenth (15th) day of the months ending each calendar quarter, defined as March, June, September and December, Property Manager shall deliver to the City, for each lease area within the Tidelands Trust Property, and also for the Tidelands Trust Property 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 lease area within the Tidelands Trust Property and the Tidelands Trust Property 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 the City.

(f) Book and Tax Projections. If requested by the City (at the City'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. The City 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 the City's bank accounts related to the Tidelands Trust Property 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 the City 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 the City's request, Property Manager shall make available to the City all reports required hereunder in an electronic format reasonably acceptable to the City and compatible with 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 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 the City, as the City deems 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 written approval by the City.

ARTICLE IV
EXPENSES

Section 4.1 Expense of City. All payments made, or expenses incurred, by the Property Manager in the performance of the Property Management Services shall be paid or reimbursed by the City, except as otherwise provided in this Agreement. Both Parties acknowledge that the City shall not be obligated to pay or reimburse the Property Manager for any expenses incurred by Property Manager in connection with 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 the City 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 the City, 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 Tidelands Trust Property from damage or to prevent a default on the part of the City 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 the City 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 the City shall only be made out of such funds as the Property Manager may from time to time hold for the account of the City or as may be provided by the City.

ARTICLE V
NONDISCRIMINATION AND EQUAL OPPORTUNITY

Section 5.1 Nondiscrimination. Neither the City, 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 the City 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 Tidelands Trust Property, nor shall the City 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 the City, its City Council, Alameda Power and Telecom, the Alameda Housing Authority, the Alameda Reuse and Redevelopment Authority, the Community Improvement Commission of the City of Alameda, 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 the City, 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 Tidelands Trust Property 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 over \$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 Tidelands Trust Property. 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 City'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 City'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 on or adjacent to the Tidelands Trust Property, it must obtain prior written approval of the City, which may condition such approval on requiring pollution legal liability insurance in an amount to be determined by the City 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 the City 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 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 the City, and (iv) provide that any loss shall be payable to the City 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 commercial general liability, vehicle liability, 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 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 the City 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 the City or involving the Tidelands Trust Property. Property Manager shall promptly investigate and make a full, timely, written report to any insurance company providing coverage, with a copy to the City's Risk Manager, of all accidents, claims, or damage relating to the ownership, operation and maintenance of the Tidelands Trust Property, any damage or destruction to the Tidelands Trust Property 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 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, the City shall be permitted to obtain such insurance in Property Manager's name or as an agent of the City 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. The City, the City Council, Alameda Power and Telecom, Alameda Housing Authority, and the Alameda Reuse and Redevelopment Authority,

the Community Improvement Commission of the City of Alameda, 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, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Property Manager or the City 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 by virtue of the payment of any loss under such insurance.

(c) Sufficiency of Insurance. The insurance limits required by 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 September 1, 2010, 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 the City 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 City.

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

(i) In the City's reasonable judgment, Property Manager has mismanaged the Tidelands Trust Property or has been negligent in the management, operation,

maintenance or servicing of the Tidelands Trust Property or has otherwise defaulted in the performance of its obligations hereunder, and has not remedied or cured the facts giving rise to the City's right to terminate under this subsection within thirty (30) days after receipt of written notice from the City 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 Tidelands Trust Property and the City elects not to rebuild or restore the Tidelands Trust Property;

(iv) Property Manager fails to make payment of any amounts payable to the City 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 the City 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, the City 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 the City, if the City 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 the City, 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 the City, or to such other person or persons designated by the City, copies of all books and records of the Tidelands Trust Property and all funds in the possession of Property Manager belonging to the City or received by Property Manager pursuant to the terms of this Agreement;

(b) deliver to the City any and all funds of the City on hand or in any bank account, including all security deposits of tenants, if not previously delivered to the City, 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 the City, as received, any funds due to the City under this Agreement but received after such termination;

(d) deliver to the City all materials, supplies, keys, contracts, documents, plans, specifications, promotional materials and other materials pertaining to the Tidelands Trust Property; 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 Tidelands Trust Property, 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 Tidelands Trust Property indicating that it is Property Manager of the Tidelands Trust Property 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 the City, or such other person or persons designated by the City, regarding the operation and maintenance of the Tidelands Trust Property.

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 the City's prior written approval, which may be withheld in the sole discretion of the City. The City 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 the City 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 the City, addressed to the City at:

City: 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 the City 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 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 the City's obligations relating to the maintenance and operation of the Tidelands Trust Property, 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 the City beyond the scope of authority expressly granted hereunder, or to create a joint venture or partnership between Property Manager and the City. 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 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 the City to enter into, any agreement or arrangement with Property Manager or any party affiliated with Property Manager, directly or indirectly at the City's expense or directly or indirectly on behalf of the City, without the written notification of the City. The provisions of this Section 11.7 are not intended to limit the fiduciary duties of Property Manager to the City contained in this Agreement or under common law.

Section 11.8 Limitation on Liability. Property Manager agrees that the obligations incurred by the City under this Agreement shall not constitute personal obligations of the

employees, or any other principals or representatives of the City. Property Manager further agrees that its recourse against the City under this Agreement shall be strictly limited to the City's interest in the Tidelands Trust Property, and that Property Manager shall have no recourse to any other asset of the City, or any other principal or representative of the City for the satisfaction of any of the City's obligations hereunder.

Section 11.9 Consents and Approvals. To be effective, consents and approvals of the City 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 City Representative"), and approvals from such person shall constitute the approval of the City.

Section 11.10 Disclosure. Property Manager shall disclose to the City for the City'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 Tidelands Trust Property. Such disclosure shall be made to the City, 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 the City or the City's properties, other than required by law, without prior written approval by the City.

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 the City 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 the City 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 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 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.

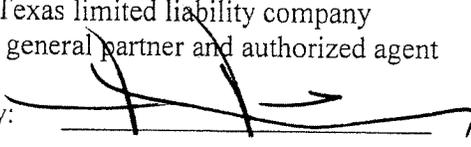
Section 11.21 Exhibits. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

IN WITNESS WHEREOF, the City 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

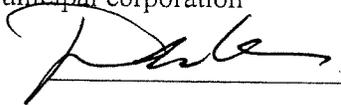
By: 

Name: Rick V. Kirk
Manager

Title: _____

City:

CITY OF ALAMEDA,
a municipal corporation

By: 

Name: Debra Kurita

Title: Executive Director

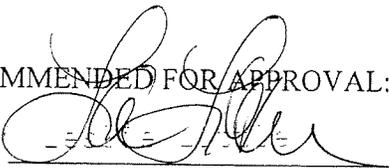
Approved as to form:

By: 

Name: Byron Toma

Title: Assistant City Attorney

RECOMMENDED FOR APPROVAL:

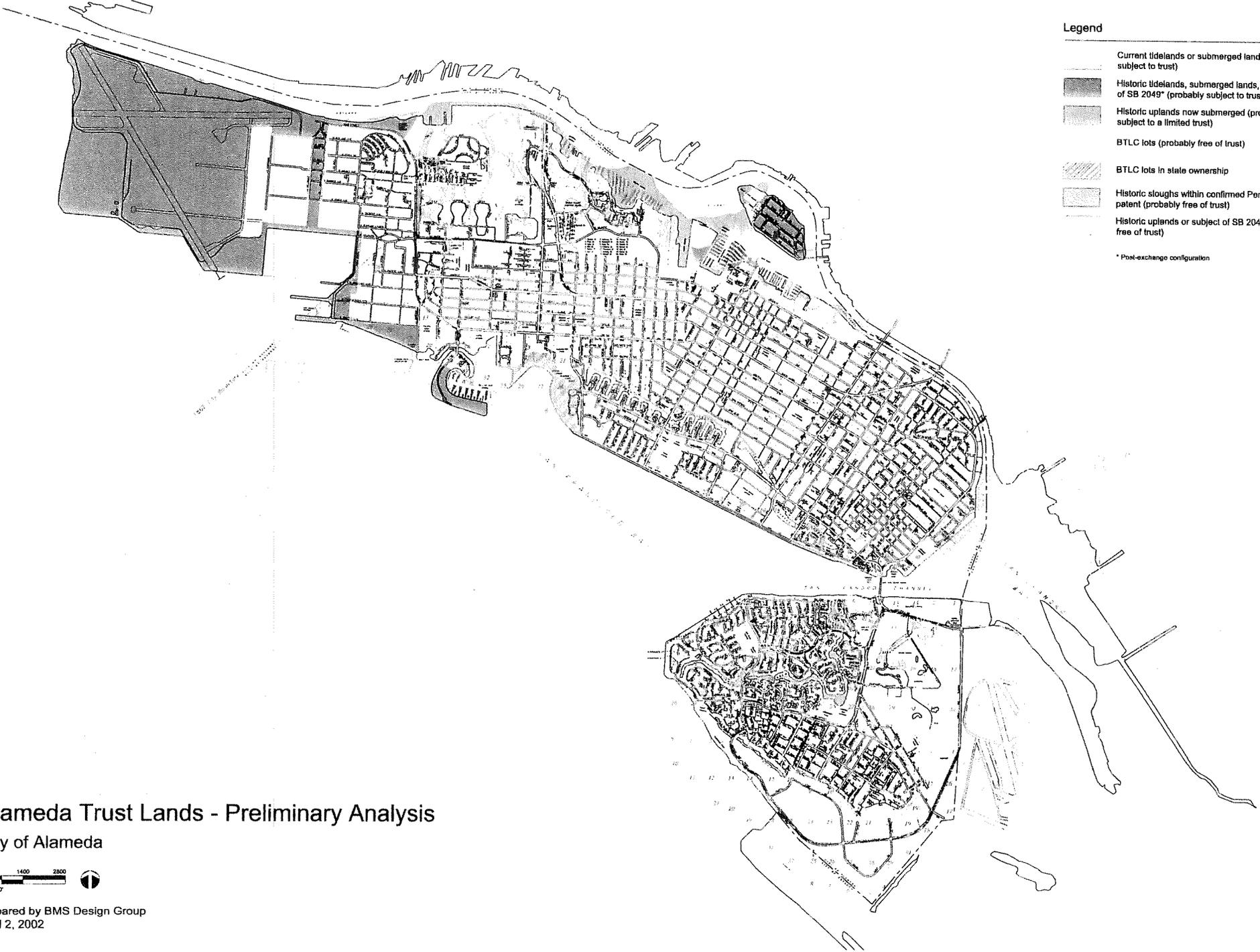
By: 

Name: Leslie Little

Title: Development Services Director

LIST OF EXHIBITS

- Exhibit A Map of Tidelands Trust Property
- Exhibit B Leasing and Related Fees
- Exhibit C Budget
- Exhibit D City's Approved Contract Form

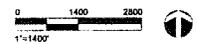


Legend

-  Current tidelands or submerged lands (probably subject to trust)
-  Historic tidelands, submerged lands, or subject of SB 2049* (probably subject to trust)
-  Historic uplands now submerged (probably subject to a limited trust)
-  BTLC lots (probably free of trust)
-  BTLC lots in state ownership
-  Historic sloughs within confirmed Peralta grant patent (probably free of trust)
-  Historic uplands or subject of SB 2049* (probably free of trust)

* Post-exchange configuration

Alameda Trust Lands - Preliminary Analysis
 City of Alameda



Prepared by BMS Design Group
 April 2, 2002

EXHIBIT B

Leasing and Related Fees

I. LEASING.

1.1 Leasing Services. The City hereby engages the Property Manager as the exclusive leasing broker for the purpose of leasing those portions of the Tidelands Trust Property 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 Tidelands Trust Property 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 City 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 the City for approval.

1.2 Right to Approve. The City 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 Tidelands Trust Property 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 Property Manager's fee 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 fee 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 City'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 fee from Property Manager as 50% on execution of the lease and 50% on occupancy of the new lease. If the City consents in writing to Property Manager's paying the outside broker as it requested, then Property Manager will provide an

invoice to the City requesting an advance of a portion of the Property Manager's fee, 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 the City reduced by the amount of the advance paid by the City in the manner approved by the City in writing.

(c) Notwithstanding anything to the contrary in the foregoing and consistent with Article VI (Indemnification) of the Agreement to which this Exhibit B is attached, Property Manager shall be responsible for payment of any commissions or brokerage fees to outside brokers and the City 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 the months ending each calendar quarter, defined as March, June, September and December, the Property Manager shall deliver to the City for each lease area within the Tidelands Trust Property a leasing status report for the preceding quarter. The leasing status report shall identify, with square footage and locations specified, all areas 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 FEES.

2.1 Compensation for Leasing. Property Manager shall be entitled to a fee in the amount of One Thousand Two Hundred Dollars (\$1,200.00) with respect to any new lease of premises within the Tidelands Trust Property entered into during the Term of this Agreement, when (a) the lease has been fully executed, and (b) the tenant takes occupancy of the leased premises. The City acknowledges that Property Manager may pay a portion of its fee to outside brokers pursuant to Section 1.3 above.

2.2 Renewals.

(a) Property Manager shall be entitled to a fee in the amount of Five Hundred Dollars (\$500.00) with respect to any renewal of any lease of premises within the Tidelands Trust Property, when the renewal of the lease has been fully executed.

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

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 Tidelands

Tidelands Trust
2006/07 Budget Approval Form

	2004/05 Budget Total	2005/06 Budget Total	2005/06 Rerecast Total	2006/07 Budget Total	Variance	Comments
Total Revenue	\$ 212,823.76	\$ 218,038.05	\$ -	\$ 218,173.63	\$ 218,173.63	Includes existing leases only as determined by available files and accounting records.
Operating Expenses						
Repairs & Maintenance	\$ -	\$ 106,000.00	\$ -	\$ 186,000.00	\$ 186,000.00	Includes all costs associated with seawall repair, including tenant reimbursements.
Administrative	\$ -	\$ -	\$ -	\$ -	\$ -	
General Building Services	\$ -	\$ -	\$ -	\$ -	\$ -	
Management Fees	\$ -	\$ 21,600.00	\$ -	\$ 21,600.00	\$ 21,000.00	Property Management fees
Total Operating Expenses	\$ -	\$ 207,600.00	\$ -	\$ 207,600.00	\$ 207,600.00	
Net Operating Income	\$ 212,823.76	\$ 10,438.05	\$ -	\$ 10,573.63	\$ 10,573.63	
Major Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -	
Net Income after Expenditures	\$ 212,823.76	\$ 10,438.05	\$ -	\$ 10,573.63	\$ 10,573.63	

Prepared by: Mike Hampen Date _____

Reviewed by: Rick Jones Date _____

Approved by: Nanette Banks Date _____

MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
HOU-000620049-09

PRODUCER

Marsh USA Inc.
1000 Main Street, Suite 3000
Houston, TX 77002

500803-all-06-07

INSURED

PM REALTY GROUP
910 TRAVIS ST., SUITE 1000
HOUSTON, TX 77002

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

- COMPANY
A UNITED STATES FIRE INSURANCE COMPANY
- COMPANY
B CONTINENTAL CASUALTY COMPANY
- COMPANY
C NORTH RIVER INSURANCE CO
- COMPANY
D TWIN CITY FIRE INSURANCE COMPANY

COVERAGES

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR OWNER'S & CONTRACTOR'S PROT	543-710638-8	08/03/06	08/03/07	GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMPROP AGG	\$ 2,000,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 1,000,000
					MED EXP (Any one person)	\$ 5,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	133-721691-3	08/03/06	08/03/07	COMBINED SINGLE LIMIT	\$ 1,000,000
					BODILY INJURY (Per person)	\$ 100,000
					BODILY INJURY (Per accident)	\$ 100,000
					PROPERTY DAMAGE	\$ 10,000
					AUTO ONLY - EA ACCIDENT	\$ 10,000
					OTHER THAN AUTO OTHERS	\$ 10,000
					EACH ACCIDENT	\$ 10,000
					AGGREGATE	\$ 10,000
B	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM OTHER THAN UMBRELLA FORM	L2078521830	08/03/06	08/03/07	EACH OCCURRENCE	\$ 4,000,000
					AGGREGATE	\$ 4,000,000
C	WORKERS COMPENSATION AND EMPLOYERS LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL	408-691244-7	08/03/06	08/03/07	WC STATUTORY LIMITS	\$ 1,000,000
					EL EACH ACCIDENT	\$ 1,000,000
					EL DISEASE-POLICY LIMIT	\$ 1,000,000
					EL DISEASE-EACH EMPLOYEE	\$ 1,000,000
D	Blanket Crime, Dishonesty, Theft, Disappearance & Dest.	00KB1408353-06	08/03/06	08/03/07	Each Claim & Aggregate	5,000,000
E	Errors & Omissions	EON G21639394-005	08/03/06	08/03/07	Crime Ded Ea Claim (Def Cost)	50,000
					\$50,000 Ded Each Claim	5,000,000

Approved as to Form
Debra R. McDaniel
CITY ATTORNEY

RECEIVED
CITY OF ALAMEDA
AUG - 3 PM 12:57

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Re: FISC (Fleet Industrial Supply Center) Alameda, CA
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 are included as Additional Insured (except as respects all coverage afforded by the Workers' Compensation Policy and Professional Liability) and is granted a Waiver of Subrogation where required by written contract, but only for liability

CERTIFICATE HOLDER

City of Alameda
Attn: City Manager
2263 Santa Clara Avenue
Alameda, CA 94501

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.

BY: Jeff Wheeler

MM1(3/02)

VALID AS OF: 07/28/06

ADDITIONAL INFORMATION

DATE (MM/DD/YY)
HOU-000620049-09 07/28/06

PRODUCER

Marsh USA Inc.
1000 Main Street, Suite 3000
Houston, TX 77002

500803--all-06-07

INSURED

PM REALTY GROUP
910 TRAVIS ST., SUITE 1000
HOUSTON, TX 77002

COMPANIES AFFORDING COVERAGE

COMPANY

E ILLINOIS UNION INSURANCE CO

COMPANY

F

COMPANY

G

COMPANY

H

TEXT

CONTINUED FROM DESCRIPTION SECTION:
arising out of the operations of the Named Insured.

CERTIFICATE HOLDER

City of Alameda
Attn: City Manager
2263 Santa Clara Avenue
Alameda, CA 94501

MARSH USA INC. BY

Jeff Wheeler *Jeff Wheeler*

Named Insured: PM Realty Group
Policy Number: 543-710638-8
08/03/06-08/03/07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 20 10 11 85

ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

**Alameda Point Community Partners, LLC
950 West Mall Square, Suite 200
Alameda, CA 94501**

&

The United States Department of the Navy, Alameda Reuse and Redevelopment Authority, City of Alameda, Alameda Power and Telecom, Alameda Housing Authority and Community Improvement Commission, their respective Boards, Commissions, Officers, Employees and Agents

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

This insurance certified here in will apply as primary & non- contributory as required by written contract.

Approved as to Form



CITY ATTORNEY