

QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTION PURSUANT TO
CALIFORNIA CIVIL CODE § 1471

This DEED is made this _____ day of November, 2016, between the UNITED STATES OF AMERICA, acting through the Secretary of Education, by John D. Cogdill, Director, Federal Real Property Division, Office of Management, ("GRANTOR") pursuant to §203(k) of the Federal Property and Administrative Services Act of 1949, as amended ("Act"), 40 U.S.C. §550(c); the Department of Education Organization Act of 1979, 20 U.S.C. §3401 et seq., and Alameda City Unified School District, a public school district in the state of California, having its principal place of business at 2060 Challenger Drive in Alameda, California ("GRANTEE").

I. RECITALS

1. By letter dated November 8, 2016 from the Department of the Navy, certain Federal surplus real property located in the County of Alameda, State of California, known as a portion of the former Alameda Naval Air Station and consisting of 6.73 acres of improved land, more or less, ("Property"), were assigned to GRANTOR for disposal upon the recommendation of GRANTOR that the Property is needed for educational purposes in accordance with the provisions of the Act.

2. GRANTEE has made a firm offer to purchase the Property under the provisions of the Act, has applied for a Public Benefit Allowance, and proposes to use the Property for certain educational purposes as detailed in its April 28, 2015 Application ("Application").

3. The Department of the Navy has notified GRANTOR that no objection will be interposed to the transfer of the Property to GRANTEE at 100 percent Public Benefit Allowance, and GRANTOR has accepted the offer of GRANTEE.

II. AGREEMENT

4. GRANTOR, in consideration of the foregoing, one dollar, the performance by the GRANTEE of the covenants, conditions, and restrictions hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby remise, release and quitclaim to the GRANTEE, its successors and assigns, all right, title, interest, claim and demand, reserving such rights as may arise from the operation of the conditions subsequent, restrictions and covenants of this Deed, which the UNITED STATES OF AMERICA has in and to the Property, which is more particularly described in Exhibit A and as follows:

LEGAL DESCRIPTION
ALAMEDA UNIFIED SCHOOL DISTRICT PARCEL
ALAMEDA, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT CERTAIN DEED RECORDED FEBRUARY 14, 1955, IN BOOK 7567 OF OFFICIAL RECORDS, AT PAGE 117, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, AND A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THAT CERTAIN DOCUMENT ENTITLED "JUDGEMENT" RECORDED DECEMBER 21, 1951, IN BOOK 6618 OF OFFICIAL RECORDS, AT PAGE 339, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, ALSO BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY, AT PAGE 14, IN THE OFFICE OF

THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF SAID PARCEL 2 (7567 OR 117), SAID POINT ALSO BEING A POINT ON THE NORTHERN LINE OF SAID PARCEL OF LAND (6618 OR 339);

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID NORTHERN LINE (6618 OR 339), SOUTH 02°46'51" WEST (THE BEARING OF SAID NORTHERN LINE BEARING TAKEN AS SOUTH 87°13'09" EAST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 2.51 FEET TO A POINT ON THE NORTHERN LINE OF PARCEL 2B OF THOSE CERTAIN LANDS TRANSFERRED TO THE DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD MAINTENANCE AND LOGISTICS COMMAND PACIFIC THROUGH THE DEPARTMENT OF NAVY (DOD) BY THAT CERTAIN DOCUMENT ENTITLED "TRANSFER AND ACCEPTANCE OF MILITARY REAL PROPERTY" (DD FORM 1354), DATED MARCH 11, 2008, SAID PARCEL 2B ALSO BEING SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 2113, RECORDED MAY 1, 2007, IN BOOK 31 OF RECORDS OF SURVEYS, AT PAGE 98, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, ALONG SAID NORTHERN LINE OF PARCEL 2B, THE FOLLOWING FIVE (5) COURSES:

- 1) NORTH 89°07'34" WEST 2.37 FEET,
- 2) NORTH 87°13'17" WEST 705.58 FEET,
- 3) NORTH 02°35'11" EAST 77.17 FEET,
- 4) NORTH 87°00'38" WEST 329.38 FEET, AND
- 5) NORTH 02°48'00" EAST 227.26 FEET;

THENCE, LEAVING SAID NORTHERN LINE OF PARCEL 2B, SOUTH 87°12'11" EAST 762.50 FEET;

THENCE, NORTH 02°46'51" EAST 7.29 FEET TO A POINT ON THE NORTHERN LINE OF SAID PARCEL 2 (7567 OR 117);

THENCE, ALONG SAID NORTHERN LINE OF PARCEL 2 (7567 OR 117), SOUTH 87°13'09" EAST 275.01 FEET TO THE NORTHEASTERN CORNER OF SAID PARCEL 2 (7567 OR 117);

THENCE, FROM SAID NORTHEASTERN CORNER OF SAID PARCEL 2 (7567 OR 117), ALONG THE EASTERN LINE OF SAID PARCEL 2 (7567 OR 117), SOUTH 02°46'51" WEST 310.09 FEET TO SAID POINT OF BEGINNING.

CONTAINING 6.73 ACRES OF LAND, MORE OR LESS.

5. GRANTEE, by acceptance of this Quitclaim Deed, except as otherwise provided herein, or as otherwise provided by law, acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of GRANTOR, except for those provided under Paragraphs 22 through 31 below, regarding the condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. GRANTEE further acknowledges that GRANTOR shall not be liable for any latent or patent defects in the Property, except to the extent provided herein, or as otherwise required by law.

GRANTEE agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances of record, and any facts which a physical inspection or accurate survey of the Property may disclose.

III. CONDITIONS SUBSEQUENT

6. GRANTEE SHALL HAVE AND HOLD THE PROPERTY, subject, however, to each of the following conditions subsequent, which are for the sole benefit of the UNITED STATES OF AMERICA and which shall be binding upon and enforceable against GRANTEE, its successors and assigns as follows:

- (1) For a period of 30 years from the date of this Deed, GRANTEE shall use all the Property herein conveyed solely and continuously for the educational

programs set forth and approved in the proposed program and plan of use described in its April 28, 2015 Application and for no other purpose.

GRANTEE may not modify its approved program and plan of use without the prior written consent of GRANTOR. GRANTOR reserves the right to enter and inspect the Property during said period.

- (2) During the above period of 30 years GRANTEE will not sell, lease or sublease, rent, mortgage, encumber, or otherwise transfer or dispose of any interest in any part of the Property without the prior written consent of GRANTOR.
- (3) One year from the date of this Deed and annually thereafter for the period of 30 years, unless GRANTOR directs otherwise, GRANTEE will file with GRANTOR a report on its maintenance and use of the Property and any other reports required by the GRANTOR to evidence its continuous use of the Property in accordance with the terms of this Deed.
- (4) During the above period of 30 years GRANTEE will at all times be and remain a tax supported institution or a nonprofit institution, organization, or association exempt from taxation under §501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. §501(c)(3).
- (5) For the period during which the Property is used for the purpose for which Federal assistance is hereby extended by GRANTOR or for another purpose involving the provision of similar services or benefits, GRANTEE hereby agrees that it will comply with the requirements of (a) Title VI of the Civil

Rights Act of 1964 (P.L. No. 88-352), 42 U.S.C. §2000d et seq.; (b) Title IX of the Education Amendments of 1972 (P.L. No. 92-318), 20 U.S.C. §1681 et seq.; (c) §504 of the Rehabilitation Act of 1973 (P.L. No. 93-112), 29 U.S.C. §794 et seq.; and all requirements imposed by or pursuant to the Regulations (34 C.F.R. Parts 12, 100, 104 and 106) issued pursuant to the Act and now in effect, to the end that, in accordance with said Acts and Regulations, no person in the UNITED STATES OF AMERICA shall, on the ground of race, color, national origin, sex, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program and plan referred to in condition subsequent number 1 above or under any other program or activity of the GRANTEE, its successors and assigns, to which such Acts and Regulations apply by reason of this conveyance.

7. The failure of GRANTOR to insist in any one or more instances upon complete performance of the conditions subsequent, terms, or covenants of this Deed shall not be construed as a waiver of, or a relinquishment of GRANTOR's right to the future performance of any of those conditions subsequent, terms and covenants and the GRANTEE's obligations with respect to such future performance shall continue in full force and effect.

8. In the event of a breach of any of the conditions subsequent or in the event of a breach of any other terms and covenants of this Deed, whether caused by the legal or other inability of GRANTEE, its successors and assigns, to perform any of the terms

and conditions of this Deed, at the option of the UNITED STATES OF AMERICA, all right, title and interest in and to the Property shall, upon the recording by the UNITED STATES OF AMERICA of a Notice of Entry, pass to and become the property of the UNITED STATES OF AMERICA, which shall have an immediate right to entry thereon, and the GRANTEE, its successors and assigns, shall forfeit all right, title, and interest in and to the Property and in and to any and all of the tenements, hereditaments, and appurtenances thereto.

9. In the event the GRANTOR fails to exercise its options to reenter the Property or to revert title thereto for any breach of conditions subsequent numbered 1, 2, 3, and 4 of Paragraph 6 of this Deed within 31 years from the date of this conveyance, conditions subsequent numbered 1, 2, 3, and 4 of said Paragraph 6, together with all rights to reenter and revert title for breach of those conditions, will, as of that date, terminate and be extinguished.

10. The expiration of conditions subsequent 1, 2, 3, and 4 of Paragraph 6 of this Deed and the right to reenter and revert title for breach thereof, will not affect the obligation of GRANTEE, its successors and assigns, with respect to condition subsequent 5 of Paragraph 6 or the right reserved to GRANTOR to reenter and revert title for breach of condition subsequent 5.

IV. COVENANTS

11. GRANTEE, by the acceptance of this Deed, covenants and agrees for itself, its successors and assigns, that in the event GRANTOR exercises its option to revert

all right, title, and interest in and to the Property to GRANTOR, or GRANTEE voluntarily returns title to the Property in lieu of a reverter, the GRANTEE shall provide protection to and maintenance of the Property at all times until such time as the title to the Property or possession of the Property, whichever occurs later in time, is actually reverted or returned to and accepted by GRANTOR. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in Appendix A of the "GSA Customer Guide to Real Property Disposal" as referenced at 41 C.F.R. §102-75.965 and agreed to in GRANTEE's application.

12. GRANTEE, by the acceptance of this Deed, covenants that, at all times during the period that title to the Property is vested in GRANTEE, its transferees or assigns, subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 6 of this Deed, it will comply with all provisions of the following: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §4321 et seq., including the preparation of environmental impact statements, as required (See 42 U.S.C. §4332); the National Historic Preservation Act of 1966, 16 U.S.C. §470 et seq.; Executive Order No. 11988, 42 Fed. Reg. 26951 (May 24, 1977) as amended by Executive Order No. 12148, 44 Fed. Reg. 43239 (July 20, 1979), governing floodplain management; Executive Order No. 11990, 42 Fed. Reg. 26961 (May 24, 1977), as amended by Executive Order No. 12608, 52 Fed. Reg. 34617 (September 9, 1987), governing protection of wetlands; 41 C.F.R. §102-75.10 et seq.; and other appropriate guidelines, laws, regulations or executive

orders, federal, state or local, pertaining to floodplains, wetlands or the future use of this Property.

13. GRANTEE, by acceptance of this Deed, covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property herein conveyed or any part thereof that it will comply with the requirements of (A) Title VI of the Civil Rights Act of 1964 (P.L. No. 88-352), 42 U.S.C. §2000d et seq.; (B) Title IX of the Education Amendments of 1972 (P.L. No. 92-318), 20 U.S.C. §1681 et seq.; (C) Section 504 of the Rehabilitation Act of 1973 (P.L. No. 93-112), 29 U.S.C. §794 et seq.; and all requirements imposed by or pursuant to the Regulations (34 C.F.R. Parts 12, 100, 104 and 106) issued pursuant to the Act and now in effect, to the end that, in accordance with said Acts and Regulations, no person in the UNITED STATES OF AMERICA shall, on the ground of race, color, national origin, sex, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program and plan referred to in condition subsequent number 1 of Paragraph 6 above or under any other program or activity of the GRANTEE, its successors and assigns, to which such Acts and Regulations apply by reason of this conveyance. This covenant shall attach to and run with the land for so long as the Property is used for a purpose for which Federal assistance is hereby extended by GRANTOR or for another purpose involving the provision of similar services or benefits, and shall in any event, and without regard to technical classifications or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit of, in favor of and enforceable by GRANTOR against GRANTEE, its successors

and assigns, for the Property, or any part thereof. In the event of a breach of this covenant by GRANTEE or by its successors or assigns, GRANTOR, may, in addition to any right or remedy set forth in this agreement, avail itself of any remedy authorized by the violated statute or regulation.

14. In the event title to the Property or any part thereof is reverted to the UNITED STATES OF AMERICA for noncompliance or is voluntarily reconveyed in lieu of reverter, GRANTEE, its successors or assigns, shall at the option of GRANTOR, be responsible for and be required to reimburse the UNITED STATES OF AMERICA for the decreased value thereof that is not the result of reasonable wear and tear, an act of God, or alterations and conversions made by the GRANTEE and approved by the GRANTOR, to adapt the Property to the educational use for which the Property was transferred. GRANTEE shall, in addition thereto, reimburse GRANTOR for damage it may sustain as a result of such noncompliance, including but not limited to costs incurred to recover title to or possession of the Property.

15. GRANTEE may seek abrogation of the conditions subsequent 1, 2, 3, and 4 of Paragraph 6 of this Deed by:

- a. Obtaining the advance written consent of the GRANTOR; and
- b. Payment to the UNITED STATES OF AMERICA of a sum of money equal to the fair market value of the property to be released from the conditions subsequent as of the effective date of the abrogation:

(1) multiplied by the percentage Public Benefit Allowance granted at the time of conveyance,

(2) divided by 360, and

(3) multiplied by the number of months, or any portion thereof, of the remaining period of restrictions to be abrogated.

16. GRANTEE, by acceptance of this Deed, further covenants and agrees for itself, its successors and assigns, that in the event the Property or any part or interest thereof is at any time within the period of 30 years from the date of this conveyance sold, leased or subleased, mortgaged, encumbered or otherwise transferred or disposed of or used for purposes other than those designated in condition subsequent 1 of Paragraph 6 above without the prior written consent of GRANTOR, all revenues therefrom and the reasonable value, as determined by GRANTOR, of any other benefits to GRANTEE deriving directly or indirectly from such sale, lease or sublease, mortgage, encumbrance, transfer, disposal or use, shall be considered to have been received and held in trust by GRANTEE for the UNITED STATES OF AMERICA and shall be subject to the direction and control of GRANTOR; but the provisions of this paragraph shall not impair or affect the rights reserved to GRANTOR under any other provision of this Deed.

17. GRANTEE, by the acceptance of this Deed, further covenants and agrees for itself, its successors and assigns, that at all times during the period that title to the Property is vested in GRANTEE subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 6 of this Deed, GRANTEE shall at its sole cost and expense keep and maintain the Property and the improvements thereon, including all buildings, structures

and equipment at any time situate upon the Property, in good order, condition and repair, and free from any waste whatsoever.

18. GRANTEE, by acceptance of this Deed, covenants that, upon the recording by the UNITED STATES OF AMERICA of a Notice of Entry pursuant to Paragraph 8 above, all right, title and interest in and to the Property shall pass to and become the property of the UNITED STATES OF AMERICA, which shall have an immediate right to enter thereon, and the GRANTEE, its successors and assigns, shall immediately and quietly quit possession thereof and forfeit all right, title, and interest in and to the Property and in any and all of the tenements, hereditaments, and appurtenances thereunto belonging, conveying all right, title and interest conveyed to it in this Deed except for encumbrances authorized and approved by the GRANTOR in writing as provided in condition subsequent 2 of Paragraph 6 of this Deed.

19. GRANTEE shall protect GRANTOR's residual financial interest in the Property through insurance or other means. If the GRANTEE, its successors or assigns, shall cause the Property and/or any improvements thereon to be insured against loss, damage or destruction, or if the GRANTOR requires such insurance while the Property is subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 6 of this Deed, and any such loss, damage or destruction shall occur during the period GRANTEE holds title to the Property subject to conditions subsequent 1, 2, 3, and 4 set forth in Paragraph 6 of this Deed, said insurance and all monies payable to GRANTEE, its successors or assigns, shall be held in trust by the GRANTEE, its successors or assigns, and shall be promptly used by GRANTEE for the purpose of repairing and restoring the Property to

its former condition or replacing it with equivalent or more suitable facilities; or, if not so used, shall be paid over to the Treasurer of the UNITED STATES OF AMERICA in an amount equal to the unamortized Public Benefit Allowance of the Property multiplied by the current fair market value of the improvements lost, damaged or destroyed. If the Property is located in a floodplain, GRANTEE will, during the period it holds title subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 6 of this Deed insure the Property and any machinery, equipment, fixtures, and furnishings contained therein against loss, damage, or destruction from flood, to the maximum limit of coverage made available with respect to the Property under §102 of the Flood Disaster Protection Act of 1973, 42 U.S.C. §4012a. Proceeds of such insurance will be used as set forth above.

20. GRANTEE further covenants to pay damages for any time period held over beyond the time period stated in a demand to quit possession of the Property at the fair market rental value plus reasonable attorney's fees and costs of the GRANTOR in securing the return of the Property.

21. GRANTEE agrees on behalf of itself, its successors and assigns that it/they shall comply with all applicable Federal, state and local laws, regulations, and standards that are or may become applicable to GRANTEE's activities on the transferred Property.

22. GRANTEE further agrees on behalf of itself, its successors and assigns, that the following reservations, notices, covenants, restrictions, and conditions, in Paragraphs 23 through 31 shall be binding upon and enforceable against GRANTEE, its successors and assigns, and every successor in interest to the Property herein described, or any part thereof, in perpetuity.

23. GRANTEE hereby covenants, agrees and declares that the entire property shall be held, used, occupied and improved, subject to the Covenants, Conditions, Restrictions in Paragraphs 24 through 31 are hereby declared to be for the benefit of the Property, the Owners thereof and their successors and assigns. The following covenants, conditions, restrictions and easements shall run with the Property and shall be binding upon, and inure to the benefit of, the property, notwithstanding exceptions noted above.

24. GRANTEE acknowledges that a Notice of Environmental Condition: A Finding of Suitability to Transfer (FOST) for the Property has been completed which references environmental conditions on the Property. The GRANTEE acknowledges that it has received a copy of the FOST; that it is aware of the notifications therein; and that all documents referenced therein have been made available to GRANTEE for inspection and copying. The FOST is included as Exhibit B to this Quitclaim Deed.

25. GRANTEE understands that the Property is covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)): For the Property, GRANTOR provides the following notice, description, and covenants and retains the following access rights:

A. Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C § 9620(h)(3)(A)(i)(I) and (II)): Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42

U.S.C § 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in Exhibit C, attached hereto and made a part hereof.

B. Description of Remedial Action Taken, if any, Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)): Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit C, attached hereto and made a part hereof .

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

1. all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed, and

2. any additional remedial action found to be necessary after the date of this Deed shall be conducted by the United States.

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

The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigations, survey, monitoring, sampling, testing, drilling, boring, coring, test pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the GRANTEE and shall run with the land.

In exercising such easement and right of access, the United States shall provide GRANTEE with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with GRANTEE's quiet enjoyment of the Property. At the

completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due GRANTEE for the exercise of the easement and right of access hereby retained and reserved by the United States.

In exercising such easement and right of access, GRANTEE, shall not have any claim at law or equity against the United States or any officer or employee of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by GRANTEE any remedy available to them under the Federal Tort Claims Act.

26. Asbestos Containing Materials.

The GRANTEE is hereby informed and does hereby acknowledge that hazardous materials in the form of asbestos or asbestos containing materials ("ACM") have been found and are otherwise presumed to exist in buildings and structures on the Property. The EBS and FOST disclose the presence of known asbestos or ACM hazards in such buildings and structures on the Property.

The GRANTEE covenants that it will prohibit occupancy and use of buildings and structures, or portions thereof, containing known friable ACM prior to abatement of the friable ACM or demolition of the building or structure, as may be required by applicable law. In connection with its use and occupancy of the Property, including, but not limited

to, demolition of buildings and structures containing asbestos or ACM, GRANTEE will comply with all applicable Federal, State and local laws relating to asbestos or ACM.

The GRANTEE acknowledges that the United States assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE, its employees, invitees, or to any other person, including members of the general public, arising from or incident to GRANTEE's purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with ACM in the structures on the Property, arising after the conveyance of the Property from GRANTOR to GRANTEE, whether the GRANTEE has properly warned, or failed to properly warn the persons injured.

The United States shall provide a Notice of Release, in recordable form, to the GRANTEE when demolition of the buildings or structures on the Property containing ACM have been completed and the appropriate Federal, State or local regulatory agency(s) have concurred in writing that ACM has been removed from the buildings in accordance with all applicable Federal, State, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to ACM from applicable portions of the Property.

27. Lead Based Paint (LBP).

The Property may include improvements that are presumed to contain LBP because they are thought to have been constructed prior to 1978. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Pursuant to 40 CFR Section 745.113 and the FOST, the following notice is provided: "Every purchaser of

any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. The GRANTEE will be responsible for managing all lead-based paint and potential lead-based paint in compliance with all applicable federal, state and local laws and regulations.”

The GRANTEE shall be responsible for managing all lead-based paint and potential lead-based paint hazards, including soil lead hazards that arise after the date of transfer, in compliance with the Residential Lead Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (“Title X”) and all applicable federal, state and local laws and regulations. The GRANTEE shall conduct soil sampling and, if necessary, remediation after demolition and removal of demolition debris and prior to occupancy of any newly constructed dwelling units in a manner consistent with Title X and Department of Housing and Urban Development guidelines.

The GRANTEE hereby acknowledges the required disclosure of the presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978 in

accordance with Title X. The GRANTOR agrees that it has provided to GRANTEE, and GRANTEE acknowledges the receipt of, available records and reports pertaining to LBP and/or LBP hazards and receipt of the Environmental Protection Agency (EPA) approved pamphlet "Protect Your Family from Lead in Your Home" (EPA 747-K-94-001). Furthermore, the GRANTEE acknowledges that it has read and understood the EPA pamphlet.

The GRANTEE covenants and agrees that, in any improvements on the Property defined as target housing by Title X and constructed prior to 1978, LBP hazards will be disclosed to potential occupants in accordance with Title X before use of such improvements as a residential dwelling (as defined in Title X). Further, the GRANTEE covenants and agrees that LBP hazards in target housing will be abated in accordance with Title X before use and occupancy as a residential dwelling, in accordance with applicable laws. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides, or is expected to reside, in such housing) or any zero-bedroom dwelling.

The GRANTEE covenants and agrees that in its use and occupancy of the Property, it will comply with Title X and all applicable Federal, State, and local laws relating to LBP. The GRANTEE acknowledges that the United States assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity

causing or leading to contact of any kind whatsoever with LBP on the Property, arising after the conveyance of the Property from the GRANTOR to the GRANTEE, whether the GRANTEE has properly warned, or failed to properly warn, the persons injured.

The United States shall provide a Notice of Release, in recordable form, to the GRANTEE when demolition of the building or buildings on the Property containing LBP have been completed and the appropriate Federal, State or local regulatory agency(s) have concurred in writing that LBP has been removed from the buildings in accordance with all applicable Federal, State, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to LBP from applicable portions of the Property.

28. Pesticide Notification. The GRANTEE is hereby notified that the Property may contain pesticide residue from pesticides that have been applied in the management of the Property. The GRANTOR knows of no use of any registered pesticide in a manner inconsistent with its labeling and believes that all applications were made in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA - 7 U.S.C. Sec. 136, et seq.), its implementing regulations, and according to the labeling provided with such substances. It is the United States' position that it shall have no obligation under the covenants provided pursuant to section 120(h)(3)(A)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9620(h)(3)(A)(ii), for the remediation of legally applied pesticides.

29. Marsh Crust/Subtidal Zone Soil Management Requirements: "Marsh Crust" is defined as the underground layer that is the remnant of the tidal marsh that existed

along the shoreline of Alameda Island before filling to create additional dry land.

“Subtidal Zone” is defined as the underground layer that is the pre-filling San Francisco Bay floor extension of the historic marsh. These layers form a single continuous underground layer that extends Bayward of the original mean high tide line of Alameda Island before filling and contains hazardous materials and hazardous substances, pollutants, and contaminants that were retained in the historic marsh and Subtidal Zone before filling. The GRANTEE covenants and agrees that it shall comply with City of Alameda Ordinance No. 2824 regarding Excavation Into the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility. GRANTEE will record that certain Covenant to Restrict Use of Property (Environmental Restriction) (the “Marsh Crust Covenant”), in substantially the same form as Exhibit D attached hereto, by and between the GRANTEE, and the Department of Toxic Substances Control (DTSC), which sets forth restrictions applicable to the Marsh Crust/Subtidal Zone covered by this paragraph, immediately following conveyance of the Property. GRANTOR and GRANTEE intend that the restrictions set out in this paragraph, which are enforceable by the GRANTOR, shall be interpreted in a manner that is consistent and not in conflict with the restrictions set forth in the Marsh Crust Covenant which is enforceable by DTSC. A failure to enforce the Marsh Crust Covenant by DTSC shall not preclude the GRANTOR from enforcing this restriction.

30. Floodplain Notification. To the extent that any portion of the Property lies within a floodplain as defined in Section 6(c) of Executive Order No. 11988, Floodplain

Management, dated May 24, 1977, construction, development and other uses of that portion of the Property could be restricted by the standards and criteria of the National Flood Insurance Program of the Federal Emergency Management Agency, or other applicable regulations.

31. Non-Interference with Navigable Airspace. GRANTEE shall comply with the provisions of Title 14, Code of Federal Regulations, part 77, titled "Objects Affecting Navigable Airspace," in connection with any construction or alteration on the Property for which notice to the Administrator of the Federal Aviation Administration is required to be provided in accordance with those regulations.

32. All covenants, conditions subsequent and restrictions contained in this Deed shall run with the land and be binding upon GRANTEE, its successors and assigns, to all or any part of the Property. All rights and powers reserved to GRANTOR by the Deed may be exercised by any successor in function to GRANTOR, and all references to GRANTOR shall include its successor in function. All covenants and conditions subsequent contained herein are for the sole benefit of GRANTOR and may be modified or abrogated by it as provided in the Act

VIII. SIGNATURES

TO INDICATE THEIR AGREEMENT to the provisions contained in this agreement, GRANTOR and GRANTEE have executed this document as of the date and year first above written.

UNITED STATES OF AMERICA OF AMERICA
Acting by and through the
Secretary of Education

GRANTOR:

By: _____
John D. Cogdill, Director
Federal Real Property Assistance Program
Office of Management
U.S. Department of Education

GRANTOR ACKNOWLEDGMENT

DISTRICT OF COLUMBIA)
)
)

On this _____ day of November, 2016, personally appeared before me, a Notary Public in and for the District of Columbia, John D. Cogdill, Director, Federal Real Property Assistance Program in the Office of Management, U.S. Department of Education, acting for the United States of America and the Secretary of Education, known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same on the date hereof as her free and voluntary act and deed for the purposes and consideration therein expressed and with full authority and as the act and deed of the UNITED STATES OF AMERICA and the Secretary of Education.

IN WITNESS WHEREOF, I have set my hand and seal at the District of Columbia on the day and year first above written.

Notary Public
My Commission Expires: _____

GRANTEE ACCEPTANCE

The GRANTEE hereby accepts this Quitclaim Deed and accepts and agrees to all the terms, covenants, conditions subsequent, and restrictions contained therein.

GRANTEE:

By: _____
Sean McPhetridge, Ed.D.
Superintendent
Alameda City Unified School District

GRANTEE ACKNOWLEDGMENT

COUNTY OF ALAMEDA)
)
STATE OF CALIFORNIA)

On this ____ day of November, 2016, personally appeared before me, a Notary Public in and for the State of California, Sean McPhetridge, Ed.D., Superintendent, to me known to be the same person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on the date hereof as his free and voluntary act and deed for the purposes and consideration therein expressed and with full authority and as the act and deed of Alameda City Unified School District.

IN WITNESS WHEREOF, I have set my hand and seal on the day and year first above written.

Notary Public
My Commission Expires:_____

Exhibit “A”

Legal Description

to

Quitclaim Deed and Environmental Restriction Pursuant to California Civil Code § 1471

**LEGAL DESCRIPTION
ALAMEDA UNIFIED SCHOOL DISTRICT PARCEL
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT CERTAIN DEED RECORDED FEBRUARY 14, 1955, IN BOOK 7567 OF OFFICIAL RECORDS, AT PAGE 117, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, AND A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THAT CERTAIN DOCUMENT ENTITLED "JUDGEMENT" RECORDED DECEMBER 21, 1951, IN BOOK 6618 OF OFFICIAL RECORDS, AT PAGE 339, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, ALSO BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY, AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF SAID PARCEL 2 (7567 OR 117), SAID POINT ALSO BEING A POINT ON THE NORTHERN LINE OF SAID PARCEL OF LAND (6618 OR 339);

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID NORTHERN LINE (6618 OR 339), SOUTH 02°46'51" WEST (THE BEARING OF SAID NORTHERN LINE BEARING TAKEN AS SOUTH 87°13'09" EAST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 2.51 FEET TO A POINT ON THE NORTHERN LINE OF PARCEL 2B OF THOSE CERTAIN LANDS TRANSFERRED TO THE DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD MAINTENANCE AND LOGISTICS COMMAND PACIFIC THROUGH THE DEPARTMENT OF NAVY (DOD) BY THAT CERTAIN DOCUMENT ENTITLED "TRANSFER AND ACCEPTANCE OF MILITARY REAL PROPERTY" (DD FORM 1354), DATED MARCH 11, 2008, SAID PARCEL 2B ALSO BEING SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 2113, RECORDED MAY 1, 2007, IN BOOK 31 OF RECORDS OF SURVEYS, AT PAGE 98, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, ALONG SAID NORTHERN LINE OF PARCEL 2B, THE FOLLOWING FIVE (5) COURSES:

- 1) NORTH 89°07'34" WEST 2.37 FEET,
- 2) NORTH 87°13'17" WEST 705.58 FEET,
- 3) NORTH 02°35'11" EAST 77.17 FEET,
- 4) NORTH 87°00'38" WEST 329.38 FEET, AND
- 5) NORTH 02°48'00" EAST 227.26 FEET;

THENCE, LEAVING SAID NORTHERN LINE OF PARCEL 2B, SOUTH 87°12'11" EAST 762.50 FEET;

THENCE, NORTH 02°46'51" EAST 7.29 FEET TO A POINT ON THE NORTHERN LINE OF SAID PARCEL 2 (7567 OR 117);

THENCE, ALONG SAID NORTHERN LINE OF PARCEL 2 (7567 OR 117), SOUTH 87°13'09" EAST 275.01 FEET TO THE NORTHEASTERN CORNER OF SAID PARCEL 2 (7567 OR 117);

THENCE, FROM SAID NORTHEASTERN CORNER OF SAID PARCEL 2 (7567 OR 117), ALONG THE EASTERN LINE OF SAID PARCEL 2 (7567 OR 117), SOUTH 02°46'51" WEST 310.09 FEET TO SAID POINT OF BEGINNING.

CONTAINING 6.73 ACRES OF LAND, MORE OR LESS.

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3. DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY AT PAGE 14, ALAMEDA COUNTY RECORDS.

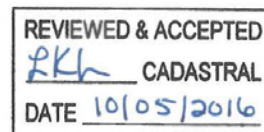
ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

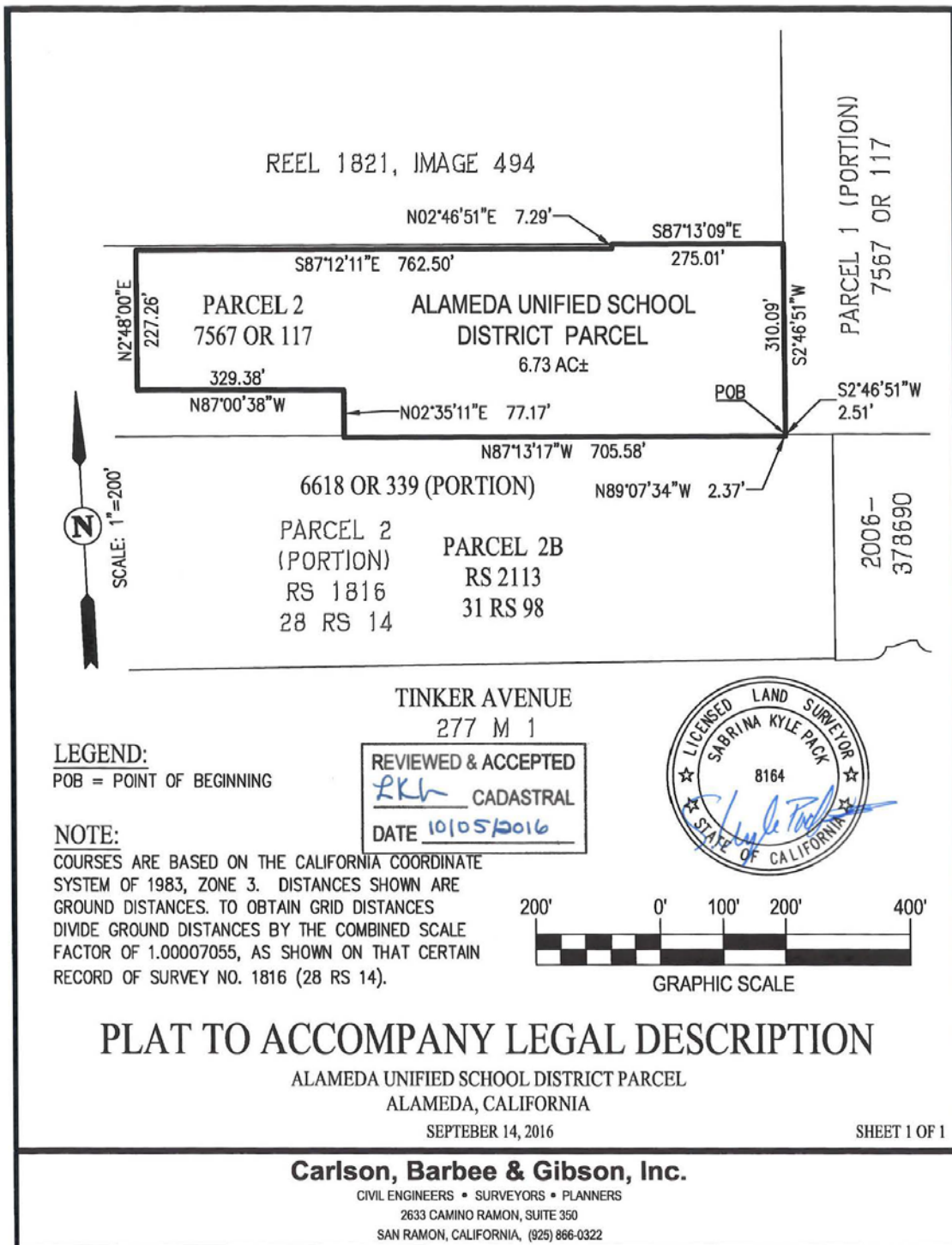
ALL PARCELS SHOWN HEREON ARE INTENDED TO LIE COINCIDENT TO ONE ANOTHER WITH NO GAPS OR OVERLAPS CREATED BY THIS DOCUMENT.

END OF DESCRIPTION




SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164





JOB NO. 1087-010

G:\1087-10\ACAD\PLATS\NORTH HOUSING SITE\PLAT-003A-V2 NH AUSO PARCEL.DWG

9/14/2016 9:11 AM

Exhibit “C”

CERCLA Remedial Action Taken

to

Quitclaim Deed and Environmental Restriction Pursuant to California Civil Code § 1471

Exhibit "___"

Notice Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)) and description of Remedial Action Taken Pursuant to Section 120(h)(3)(A)(i)(III) of CERCLA

PBC-AUSD

Identification	Media/Description	Hazardous Substance ^{a,b}	Reportable Quantity (lb) ^a	CAS Number	RCRA Waste Code ^a	Quantity Stored, Released, or Disposed ^c	Date Stored, Released, or Disposed ^c	Stored (S), Released (R), or Disposed (D)	Action Taken
IR Site 30	Soil	PAHs	NA	NA	NA	Unknown	Unknown	D	Between 1994 and 2005, a series of soil and groundwater investigations and a removal action for soil were conducted at the site. The TCRA was completed at IR Site 30 in 2004 to address PAHs in soil associated with contaminated fill placed at the site prior to the Navy obtaining the property. The TCRA also removed Aroclor 1254, cadmium, chromium, copper, and lead present in one boring location. Following the TCRA, risk assessment results showed that there is no unacceptable risk for school, daycare, residential, or other land uses. The IR Site 30 ROD soil was signed in 2009 and selected NFA for soil.
		Aroclor 1254	1	11097-69-1	NA	Unknown	Unknown	R	
		Cadmium	10	7440-43-9	NA	Unknown	Unknown	R	
		Chromium	5,000	7440-47-3	NA	Unknown	Unknown	R	
		Copper	5,000	7440-50-8	NA	Unknown	Unknown	R	
		Lead	10	7439-92-1	NA	Unknown	Unknown	R	
OUS/FISCA IR-02	Groundwater	Benzene	10	71-43-2	U019	Unknown	Unknown	R	Between 1988 and 2013, a series of environmental investigations and a remedial action were conducted for shallow groundwater at OU-5/FISCA IR-02. Benzene and naphthalene are the COCs; there is stratification, with the highest concentrations located at depths adjacent to the Marsh Crust. A ROD for the shallow groundwater was signed in 2007; the selected remedy was biosparging with soil vapor extraction in the plume centers, monitored natural attenuation, and ICs. Biosparging wells screened at the Marsh Crust were installed between 2008 and 2009. Operation of the treatment system began in 2009 and ended in 2013. A ROD Amendment in 2015 documented the 2013 evaluation of potential vapor intrusion using current methodologies and toxicities and indoor air sampling. NFA was granted for shallow groundwater in 2015 based on the ROD Amendment.
		Naphthalene	100	91-20-3	U165	Unknown	Unknown	R	

Exhibit "___"

Page 1 of 3

Exhibit " ____ "

Notice Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)) and description of Remedial Action Taken Pursuant to Section 120(h)(3)(A)(i)(III) of CERCLA

Notes:	
a	This table was prepared in accordance with 40 CFR 373 and 40 CFR 302.4. The substances which do not have chemical-specific break down (and associated annual reportable quantity) are not listed in 40 CFR 302.4, and therefore have no corresponding CAS number, no regulatory synonyms, no RCRA waste numbers, and no reportable quantities.
b	The Property may contain pesticide residue from pesticides that have been applied in the management of the property. The Grantor knows of no use of any registered pesticide in a manner inconsistent with its labeling and believes that all applications were made in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA - 7 U.S.C. Sec. 136, et seq.), its implementing regulations, and according to the labeling provided with such substances. It is the Grantor's position that it shall have no obligation under the covenants provided pursuant to Section 120(h)(3)(A)(i) of CERCLA, 42 U.S.C. Sections 9620(h)(3)(A)(i), for the remediation of legally applied pesticides.
c	The quantity stored, released, or disposed, and the date stored, released, or disposed, is unknown because documentation related to storage, release, or disposal of these hazardous substances was not available during records searches for the property.

Exhibit "___"

Notice Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)) and description of Remedial Action Taken Pursuant to Section 120(h)(3)(A)(i)(III) of CERCLA

PBC-AUSD (cont.)

Acronyms and Abbreviations:

CAS	Chemical Abstract System	Navy	United States Department of the Navy
CFR	Code of Federal Regulations	NFA	No Further Action
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980	OU	Operable Unit
D	Disposed	PAH	Polycyclic Aromatic Hydrocarbons
FISCA	Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex	R	Released
IC	Institutional control	RCRA	Resource Conservation and Recovery Act
IR	Installation Restoration	ROD	Record of Decision
Lb	Pound	S	Stored
NA	Not Available	TCRA	Time Critical Removal Action
NAS	Naval Air Station Alameda	U.S.C.	United States Code

Exhibit “D”

Covenant to Restrict Use of Property Marsh Crust Environmental Restriction

to

Quitclaim Deed and Environmental Restriction Pursuant to California Civil Code § 1471

COVENANT TEMPLATE

RECORDING REQUESTED BY:
Alameda Unified School
District
ADDRESS
ADDRESS

WHEN RECORDED, MAIL TO:

Department of Toxic Substances
Control
700 Heinz Avenue
Berkeley, CA 94710
Attention: NAME

This document is exempt from payment of
a recording fee pursuant to California
Government Code §27383

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

MARSH CRUST ENVIRONMENTAL

RESTRICTION

(Re: Parcel No. xx
– DTSC Site Code 201971)

This Covenant and Agreement (Covenant) is made by and between the xxxx (or the Covenantor), the current owner of certain property, situated in the City of Alameda, County of Alameda, State of California, described and depicted in

Exhibit "A " (the Property), and the Department of Toxic Substances Control (Department). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonable necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials as defined in California Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, the use of the Property be restricted as set forth in this Covenant; and that the Covenant shall conform with the requirements of the California Code of Regulations, title 22, section 67391.1.

ARTICLE I STATEMENT OF FACTS

1.1 Property Location. The Property, as depicted on Exhibit "A", is made up of approximately 6.73 acres, and is located within the Former Alameda Point Naval Air Station (NAS Alameda), Alameda, California. The hazardous substances of concern are located under the Property within the marsh crust and subtidal area (defined below), as depicted on Exhibit "B".

1.2 Site History. The "marsh crust" means the underground layer that is the remnant of the tidal marsh that existed along the shoreline of Alameda Island before filling to create additional dry land. In many places, this layer contains hazardous materials from former industrial discharges that were retained in the historic marsh before filling. These hazardous materials include petroleum hydrocarbons (TPH) and polynuclear aromatic hydrocarbons (PAHs). The marsh crust is a generally continuous underground layer, at depths of 4 to 20 feet bgs, that extends bayward of the original mean high tide line of Alameda Island, before filling, throughout the intertidal area that was filled. The "former subtidal area" is a layer of sediment that may be contaminated with semivolatile organic compounds (SVOC) that was deposited on tidal flats at the western end of NAS Alameda rather than on the marshes.

The marsh crust is located under two adjoining naval installations in Alameda: Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (Annex), and NAS Alameda. The former subtidal area is located on NAS Alameda west of the marsh crust. NAS Alameda was listed on the U.S. Environmental Protection Agency (U.S. EPA) National Priorities List (NPL) under CERCLA in July 1999. However, the NPL listing specifically excluded the marsh crust and former subtidal area and the Annex.

1.3 Decision Document. The "Remedial Action Plan/Record of Decision for the Marsh Crust at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and for the Marsh Crust and Former Subtidal Area at Alameda Point" (RAP/ROD) was approved and finalized February 2, 2001. The RAP/ROD requires environmental restrictions in the Navy deed and a separate covenant to restrict use of Property between the Department and City at the time of transfer. The Annex property transferred from the Navy to the City in 2000, and at that time, and in accordance with the RAP/ROD requirements, the City recorded a covenant to restrict use. The NAS Alameda property transferred from the United States of America (Department of Education) to the Convenator on DATE, 2017, and this Covenant is fulfilling the requirements in the RAP/ROD.

1.4 City Excavation Ordinance. The City adopted City of Alameda Ordinance No. 2824 on February 15, 2000, that prohibits engaging in any excavation below specified threshold depths without an excavation permit and without taking proper measures to ensure that workers are not unduly exposed and that all contaminated material brought to the surface is properly disposed of. The City will directly implement and enforce the Ordinance.

1.5 Basis for Covenant. As a result of the presence of hazardous substances in the Property, which are also defined as hazardous materials as defined in California Health and Safety Code section 25260, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as

part of the Department-approved remedy for the Property. The Department has also concluded that the Property, when used in compliance with this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

ARTICLE 11

DEFINITIONS

2.1 Department. "Department" means the Department of Toxic Substances Control and includes its successor agencies, if any.

2.2 Excavation ordinance. "Excavation ordinance" means City of Alameda Ordinance No. 2824, which is incorporated herein by this reference.

2.3 Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.3 Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.4 Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.5 Owner. "Owner" means the Covenantor, and any successor in interest including any heir and assign, who at any time holds title to all or any portion of the Property.

2.6 Threshold depth. "Threshold depth" is the elevation above which there is little likelihood that hazardous materials from the marsh crust would have mixed during filling. The threshold depth for any location at the Property is shown on an exhibit to the

Excavation ordinance and will be derived from the RAP/ROD or other applicable remedial decision document. The current Threshold depth is depicted on Exhibit "B".

ARTICLE III

GENERAL PROVISIONS

3.1. Runs with the Land. This Covenant sets forth restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department and Central Valley Water Board, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.2. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and lease for any portion of the Property.

3.4. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each

such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.5 Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.1 Prohibited Activities. The following activities are prohibited on the Property:

Engaging in any excavation below the threshold depth without (a) a City excavation permit; or (b) if the excavation ordinance has been repealed, or if the Department has made a written determination with thirty (30) days prior written notice to the City that the excavation ordinance does not comport with the intent of this Covenant, then a permitted excavation may be conducted only in accordance with a written approval issued by the Department. Owner's application for such an approval shall be submitted to the Department and shall otherwise comply with the permit application requirements of the last version of the excavation ordinance or such other requirements as the Department may specify.

4.3 Access For Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

ARTICLE V
ENFORCEMENT

5.1 Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI
VARIANCE. REMOVAL AND TERM

6.1 Variance. Any person may apply to the Department for a written variance from one of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2 Removal. Any person may apply to the Department to remove any of the restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3 Term. Unless ended in accordance with paragraph 6. 2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.1 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or

any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.2 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within 10 days of the Covenantor's receipt of a fully executed original.

7.3 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Alameda Unified School District
Address
Address
Attention: NAME

To Department:

California Environmental Protection Agency
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710
Attention: NAME

Any party may change its address or the individual to whose attention a Notice is to be sent by giving advance written Notice in compliance with this paragraph.

7.4 Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.5 Statutory References. All statutory or regulatory references include successor provisions.

7.6 Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenator: Alameda Unified School District

By:

Title:

Date:

Department of Toxic Substances Control:

By:

Title:

Date: