

ATTACHMENT K
MISSION BAY NORTH

**ENVIRONMENTAL INVESTIGATION AND RESPONSE
PROGRAM FOR NORTH PLAN AREA
AFFORDABLE HOUSING PARCELS,
OPEN SPACE PARCELS AND STREET PARCELS**

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I. OVERVIEW

This Environmental Investigation and Response Program (“EIRP”) specifies the Environmental Investigation and Response requirements for Owner, City and the Agency in the North Plan Area on the Affordable Housing Parcels, the Open Space Parcels and the Street Parcels (collectively, “North Parcels”). Although the City is not a party to the North OPA, the City has expressly agreed in the Mission Bay North Interagency Cooperation Agreement to be bound by the principles, and implement its obligations, as set forth in this EIRP. The General Principles of the EIRP are set forth in Section III below. These General Principles are applicable to all North Parcels, regardless of whether Owner, City or Agency is responsible for performing the actions specified herein. The specific rights and obligations of each of the Parties and the City on particular North Parcels are set forth in Section IV below. Initially capitalized terms unless separately defined in this EIRP have the meanings set forth in the North OPA.

II. DEFINITIONS

The following terms have the definitions wherever used in this EIRP:

- A. “Claims” means all claims, costs, damages (including consequential damages), fines, judgments, penalties, losses, demands, liabilities or expenses including, without limitation, personal injury claims; payment of liens; sums paid in settlement of claims; fees of attorneys, consultants, and experts; the capital and operating costs of any Investigation or Remediation; loss of use or damages; loss of profits, rentals or other business opportunities or property losses; increased development costs; and damages to natural resources or to property.
- B. “Construction” means construction of the Initial Permanent Improvements, starting with groundbreaking in connection with the commencement of physical construction of such improvements and ending with the completion of physical construction for Open Space and Street Parcels and issuance of a Temporary Certificate of Occupancy for the Affordable Housing Parcels.
- C. “Environmental Laws” means all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements,

Hazardous Substance use or storage, and community right-to-know requirements related to the work being performed under this Agreement.

- D. "Existing Street Parcels" means those existing (public or private) streets or portions thereof in the North Plan Area that the City owns, that will remain streets and whose ownership will not be transferred to Owner under the Land Transfer Agreements. Existing Street Parcels are those portions of the following streets existing on June 30, 1997 that will not be transferred to Owner: Third Street, Fourth Street, Fifth Street, Berry Street, Townsend Street, King Street and Seventh Street, as more particularly identified in attached Exhibit 1.
- E. "Final Site Clearance" means a written statement from the RWQCB providing that the environmental conditions of the North Parcels are appropriate for their designated uses as set forth in the Redevelopment Plan and Plan Documents, and that no further Investigation or Response is required other than that specified in the RMP or are imposed in a recorded Environmental Covenant and Restriction under the Cal. Civ. Code §1471 or other institutional controls approved by the RWQCB. An environmental Certification of Completion issued by the RWQCB under Cal. Health & Safety Code §25264 shall be deemed to be the equivalent of Final Site Clearance; provided, however, that Final Site Clearance may be issued by the RWQCB in the absence of a Certificate of Completion.
- F. "Hazardous Substance(s)" means any substance, material or waste that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is or shall be listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.
- G. "Initial Permanent Improvements" means the first permanent improvements (such as buildings or open space or street improvements) that are made after the Effective Date of the North OPA to the applicable North Parcel, not including any temporary structures such as parking lots.
- H. "Interim Use" means any use of the North Parcels prior to commencing Construction of the Initial Permanent Improvements.
- I. "Investigate" or "Investigation" when used with reference to Hazardous Substances means any activity undertaken to determine the nature and extent of Hazardous Substances that may be located in, on, under or about the property or which have been, are being, or are threatened to be Released into the environment.

- J. “New Street Parcels” means that portion of Berry Street between King Street and Mall Street (adjacent to Seventh Street), and a portion of the King Street frontage road, to be dedicated as public streets, as more particularly identified in Exhibit 1.
- K. “North Parcel” means the Affordable Housing Parcels, Open Space Parcels and Street Parcels.
- L. “Open Space Parcel” means those parcels or portions thereof designated for use as parks, plazas or other public open space in the Mission Bay North Redevelopment Plan.
- M. “Parcel Owner” means the record title owner of real property which comprises the applicable parcel.
- N. “Parties” means Agency and Owner.
- O. “Party” means either Agency or Owner.
- P. “Post Construction” means after the completion of Construction.
- Q. “Pre-Construction” means prior to commencing Construction.
- R. “Regional Water Quality Control Board” or “RWQCB” means the Regional Water Quality Control Board for the San Francisco Bay Region, its Executive Officer, or staff authorized to make decisions regarding the subject at issue.
- S. “Release” when used with respect to a Hazardous Substance means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of the Hazardous Substance into the environment.
- T. “Response” or “Respond” or “Remediate” when used in a reference to Hazardous Substances means any activity undertaken to clean up, remove, contain, treat, stabilize, monitor, or otherwise control or manage, including to manage in place, the Hazardous Substance.
- U. “Risk Management Plan” or “RMP” means a written plan approved by the RWQCB applicable to the North Parcels specifying the requirements to Investigate and Remediate Releases or threatened Releases of Hazardous Substances during Pre-Construction, Construction and Post Construction activities that are consistent with the designated land uses for the parcels and are protective of human health and the environment and meet the requirements of Section III.C.
- V. “Street Parcels” means the Existing Street Parcels and the New Street Parcels.

III. GENERAL PRINCIPLES APPLICABLE TO ALL PARCELS

A. Risk-Based Corrective Action Approach.

In the implementation of environmental responsibilities specified in this EIRP, the Owner, the City and the Agency shall follow principles of risk-based corrective action required by the RWQCB. All of the Parties' and City's environmental obligations are expressly subject to the use of such a risk-based corrective action approach. Any Investigation and Response shall be based on the intended use of such North Parcels as set forth in the Redevelopment Plan and Plan Documents. As approved by the RWQCB, the risk to human health will be evaluated using a 10^{-5} cumulative carcinogenic risk level and a noncarcinogenic Hazard Index of 1. Notwithstanding any other provision of this EIRP (including but not limited to Sections IV.A.3(a), IV.B.3(a), IV.C.3(a), and IV.D.3(a)), Owner shall have no obligation under this EIRP to perform Investigation and Response measures more extensive or more stringent than those required by the RWQCB to obtain Final Site Clearance. The North Parcels will be subject to (1) RMP(s), which shall limit the parcels to uses specified in the RMP, and contain Pre-Construction, Construction and Post Construction Response measures, and (2) a recorded Environmental Restriction and Covenant under Cal. Civ. Code §1471, which will impose certain use restrictions and compliance with the applicable requirements of the RMP on Parcel Owners of the North Parcels. Such covenant must be approved by the Parties, the City, the RWQCB, and any other environmental regulatory agency as required for the issuance of an environmental Certificate of Completion under Cal. Health & Safety Code §25264. Each of the Parties and City agrees to record, and during their ownership, comply with the terms of such covenant (unless the obligation to comply with such terms is assumed by another entity pursuant to this EIRP or a separate agreement). Notwithstanding the foregoing, if City is required to expend funds or to carry out work in order to be in compliance upon recordation with the provisions of such Environmental Restriction and Covenant, City's obligation to record the Environmental Restriction and Covenant shall arise after City has obtained appropriated funds and carried out the required work in accordance with the City's appropriation process and contracting procedures as set forth in the City Charter and applicable laws. Where Owner has in this EIRP committed to obtain Final Site Clearance for a North Parcel, Owner will make a good faith effort to obtain the same kind of Final Site Clearance for such parcels as that which Owner obtains for other parcels in the North Plan Area which will be owned by Owner, to the extent that the respective parcels have identical or closely similar environmental conditions and are otherwise similarly situated in other material respects.

B. Soil Reuse.

The Parties and City understand and acknowledge that as determined and documented by letters dated December 10, 1997 and February 26, 1998, respectively from the RWQCB and the Department of Toxic Substances Control ("DTSC"), soil originating on the North and South Plan Areas may be reused throughout either project area without triggering hazardous waste regulatory requirements if the soil management requirements of the RMP are satisfied.

C. **Timing and Contents of RMPs.**

1. Prior to commencing Construction in the North Plan Area, Owner will develop and obtain RWQCB approval of RMPs to address all Pre-Construction, Construction and Post Construction activities in the North Plan Area. The RMPs will specify Response measures to be implemented Pre-Construction, during Construction and Post Construction on the North Parcels to control potential exposures determined by the RWQCB to be unacceptable to human health or the environment. The RMPs will be compatible with the designated land use for the parcels as set forth in the Redevelopment Plan and Plan Documents. The RMPs will anticipate construction of subsurface piles, utility trenching and other necessary subsurface Infrastructure installations which also will be compatible with the Redevelopment Plan and Plan Documents. The types of Response measures which will be required in the RMPs are outlined in (i) ENVIRON Corporation's April 8, 1998 "Technical Memorandum No. 1: Approach to a Plan for Risk Management, Mission Bay Project Area" and (ii) in the Mission Bay SEIR, Section VI, Subsection J, "Contaminated Soil and Groundwater, Project Features That Avoid Significant Impacts" and will be documented by the final RMPs which will be approved by the RWQCB.
2. Soil or groundwater Response actions (other than operational requirements), if any, may be implemented only during Pre-Construction or during Construction, although in some instances their operations and maintenance may extend to Post Construction if they cannot be completed by the end of such Construction. Such soil or groundwater Response measures specified in the RMP to be followed Pre-Construction or during Construction may include: soil capping; onsite construction of a soil or vapor barrier; removal, containment, or treatment of soil; and extraction, containment or monitoring of groundwater. Additional Response measures specified in the RMP to be followed during Construction may include: preparation and implementation of health and safety plans, dust control measures, and access restrictions. Post Construction management measures specified in the RMP may include use restrictions, soil and groundwater management practices and restrictions, operation and maintenance activities (including but not limited to maintenance of a soil cap or soil or vapor barrier), protocols to be observed when the subsurface soil is disturbed, construction workers' health and safety measures, and any other Post Construction measures that are reasonable and customary for RWQCB-approved RMPs at such time such RMPs are being prepared. The RMPs will provide for barriers that are reasonable and customary for similar developments, and which barriers are of a type that do not require Post Construction operation and maintenance costs beyond those which are reasonable and customary for such types of barriers. Any other Response measures proposed in the RMPs also will be reasonable and customary for

similar developments and will not require Post Construction operation and maintenance costs beyond those reasonable and customary for such types of Response measures.

3. The Parties and City understand that Remediation or Response required by the RWQCB to obtain Final Site Clearance may extend to or be limited to passive Remediation such as placing a cap (e.g. a parking lot or building structure) to provide a barrier against exposure to subsurface Hazardous Substances or may include more active Remediation such as soil removal or treatment.
4. Government oversight costs associated with the Investigation and Response measures specified in the RMP for the North Parcels shall be paid by the Party or City designated in this EIRP as responsible for implementing such Investigation and Response measures.
5. There may be one RMP for all North Parcels from the outset, or separate RMPs for each North Parcel or set of North Parcels, or an RMP for one or more parcels may be amended over time to include additional North Parcels. The RMPs as they relate to any North Parcel may be amended with RWQCB approval by the Parcel Owner of the applicable North Parcel; provided, however, that any such amendments must have the approval of the Owner, Agency or City if (i) such entity is not the Parcel Owner but may become the Parcel Owner pursuant to the North OPA or other agreement between said entities or (ii) such entity's respective obligations under the RMP (as specified in this EIRP) are (or will be) affected by the amendment. Notwithstanding anything herein to the contrary, Agency's approval rights under this section shall be limited to amendments affecting an Approved Site, as defined in Attachment C to the North OPA, Housing Program.
6. For the North Parcels, Owner will submit the RMPs to the City and Agency at least sixty (60) days prior to the time that Owner proposes to submit the RMPs to the RWQCB. Prior to submittal of an RMP to the RWQCB, the City and Agency may review and approve (which approval shall not be unreasonably withheld) any Post Construction management measures in the RMP as being consistent with the provisions of this EIRP. If the City or Agency believes that such Post Construction measures in the RMP are not consistent with this EIRP, the City or Agency may within sixty (60) days of receiving the proposed RMP advise Owner of the basis of the City's belief. The failure of the City or Agency to submit such notice within sixty (60) days shall be deemed that entity's approval of the RMP. After receiving the City's or Agency's written notice of the basis of City's or Agency's belief that the RMP Post Construction measures are inconsistent with the EIRP, the Owner and City or Agency, will have a thirty (30) day period to attempt to resolve the dispute through informal discussions. If the dispute is not resolved to the

satisfaction of the Owner and City or Agency at the end of the thirty (30) day informal dispute resolution period, the Parties and City agree that Owner may at its discretion initiate a declaratory relief action in the Superior Court for the City and County of San Francisco under Cal. Civ. Proc. Code §1060 and §1062.3 for resolution of the dispute over the Post Construction measures in the RMP. The Parties and City agree that the circumstances of this matter make it imperative that the dispute be resolved at the earliest possible date. Toward that end, the Parties and City agree that the City's or Agency's response time to the complaint shall be shortened to fifteen (15) days, that the litigants shall exchange all documents upon which they rely to support their respective positions regarding Post Construction measures within thirty (30) days after the complaint has been served, that all motions other than summary judgment motions will be heard on ten (10) days notice, that summary judgment motions will be heard on thirty (30) days notice, and that the litigants waive their rights to discovery; provided, however, that no motion for summary judgment may be filed by any litigant which has not completed such document exchange. Unless the deadlines are triggered by Owner's decision to construct Initial Permanent Improvements, all deadlines for Owner's performance of its obligations under the EIRP shall be extended for the period of time (in excess of the sixty (60) day period) required to resolve RMP issues through informal dispute resolution or litigation.

D. Permit to Enter to Owner; Catellus Lease.

Owner shall have no right or obligation to undertake any of the activities specified in this EIRP on a parcel which it does not own until it has either (i) been granted a Permit to Enter to Owner in the form attached as Attachment G to the North OPA or (ii) entered into a Lease with either City or Agency.

E. Post-Transfer Releases.

Unless altered by other agreement between the Parties and City, Owner's obligations under this EIRP shall not extend to the Investigation, Response or any other activity or Claims arising out of the Release of Hazardous Substances added to a North Parcel: (i) following transfer to the Agency or City (with respect to North Parcels whose title is being transferred), or (ii) after the Effective Date (for all other parcels), unless the Release is (x) caused by Owner or (y) results from migration of Hazardous Substances from property owned by Owner and such Hazardous Substances had previously been placed on Owner's property when it was owned by Owner or otherwise under Owner's control.

F. Third Party Beneficiary.

The signatories to the North OPA are the Owner and the Agency. However, the City shall be an express third party beneficiary of any Owner responsibility in this EIRP that concerns a North Parcel which is owned or will be owned by the City. The City has expressly

agreed in the Mission Bay North Interagency Cooperation Agreement to be bound by the principles, and implement its obligations, as set forth in this EIRP.

G. Interim Uses.

Owner's obligations under this EIRP shall not be broadened or accelerated by any Interim Use which the City or Agency elects to place on a North Parcel prior to Construction. The City and Agency expressly assume responsibility for all costs, liabilities or other Claims which arise out of their Interim Use of North Parcels.

IV. SPECIFIC PARCEL CATEGORIES

A. Affordable Housing Parcels

1. Final Site Clearance and Environmental Condition Upon Transfer of Title. Except in the event of an as-is transfer pursuant to Section 3.5. of the Housing Program, Attachment C to the North OPA (unless provided otherwise therein), or in the event of an as-is transfer pursuant to Section 3.4.3. of the North OPA, for all Affordable Housing Parcels, prior to transfer of title of each Affordable Housing Parcel to Agency or its permitted Transferee, Owner will for such parcel: (a) obtain Final Site Clearance from the RWQCB; (b) develop and obtain RWQCB approval of an RMP that meets the requirements of this EIRP; (c) have performed, or caused to be performed, all actions necessary to certify that the parcel is in compliance with operational requirements applicable to Hazardous Substances (such as underground storage tank requirements, and hazardous waste handling and storage requirements); (d) have Remediated to the satisfaction of the RWQCB any Releases or threatened Releases known to Owner that pose an imminent hazard and must be addressed immediately in the judgment of the RWQCB; (e) if the parcel is subject to Pre-Construction requirements in the RMP, have undertaken the capital improvements for any required seeding, fencing, and other site security access or dust control measures, to render the parcel in compliance with the RMP at the time of transfer of title; and (f) provide written confirmation to Agency that the conditions specified in this Section have been met.
2. Pre-Construction RMP Compliance. After transfer of title of an Affordable Housing Parcel to Agency or its permitted Transferee and prior to Construction and except as expressly assumed by Owner in this Section IV.A.2. and IV.A.3. below (or otherwise provided by agreement between the Agency and Owner) Agency shall be responsible for complying with any Environmental Law and satisfying any other environmental requirements or responsibilities prior to Construction including without limitation (a) maintenance of the parcel in compliance with the Pre-Construction

requirements of the RMP (including, without limitation, maintenance of dust control and security requirements such as fencing and no trespassing signs and notification of tenants of RMP requirements); (b) compliance with Environmental Laws arising out of the operation and ownership of such parcel (including, without limitation, hazardous waste requirements and hazardous materials storage requirements); and (c) compliance with any Public Works Code Article 20 requirements triggered by any Interim Uses placed on the parcel by Agency. The Owner's obligations for Pre-Construction RMP Compliance on the Affordable Housing Parcels shall be limited to: (a) implementation of any soil or groundwater Remediation requirements in the RMP that must be satisfied prior to Construction except for Pre-Construction maintenance and management measures (which are assumed by Agency in the preceding sentence), (b) addressing unanticipated environmental conditions discovered on the parcel prior to commencement of Construction if the RWQCB deems any such conditions to be an imminent hazard which must be addressed immediately, unless the environmental condition arises out of Hazardous Substances placed on the parcel by an entity other than Owner after transfer of title to Agency, and (c) closure of any unpermitted underground tanks that existed on the parcel prior to transfer of title.

3. During Construction. Owner will be responsible for the following:
 - a) Complying with Public Works Code Article 20;
 - b) Carrying out the activity or paying for the cost of any Investigation and Response measures specified in the RMP and required during the Construction of the Initial Permanent Improvements; provided, however, that (i) Owner will be responsible only for the incremental costs or actions required beyond the costs and actions that a developer would incur for development if Investigation and Response measures were not required, and (ii) Owner's obligations under this EIRP to Investigate and Remediate Hazardous Substances on Affordable Housing Parcels are based on the understanding that Construction will be at or above existing grade, will not include subterranean garages and will provide for grading to be balanced on site to the extent reasonably possible. When determining incremental costs, in instances where an activity or cost item would be required for development (e.g., landscaping, drainage, substantial utility excavation, soil or geotechnical conditions) assuming no Investigation or Remediation action were required and also would have an environmental use or purpose, the Agency shall be responsible for the activity or cost to the extent it would be needed for development purposes assuming no Investigation or Remediation action were required, and Owner shall be responsible for providing any additional activities or cost (beyond that

provided by the Agency) required for Investigation or Remediation. No incremental costs which the Agency seeks to impose upon Owner will be incurred unless Owner performs the activity giving rise to the cost, or unless Owner and the Agency have agreed in writing that some other entity may perform the activity. Further details and procedures for the implementation of this Section IV.A.3(b) shall be set forth in a Memorandum of Understanding between Owner and Agency. Such Memorandum of Understanding shall be finally executed by the Parties as a condition of the Agency's approval of the first Major Phase containing an Agency Affordable Housing Parcel in the North Plan Area;

- c) Addressing to the satisfaction of the RWQCB any unanticipated environmental conditions discovered on Affordable Housing Parcels during Construction unless the environmental condition arises out of materials placed on the parcel by an entity other than Owner either (i) after title to the Affordable Housing Parcel has been transferred to the Agency or (ii) after the Effective Date but before the Owner has title to the Affordable Housing Parcels (or applicable portion thereof); and
 - d) Ensuring that the fill that is placed around and over any subsurface installations or Infrastructure within the public rights-of-way, if any, complies with the specifications of the San Francisco Department of Public Works generally applicable on a city-wide basis to similar public rights-of-way.
4. Post Construction RMP Compliance. Except as limited by this subsection IV.A.4. (and provided title has been conveyed to the Agency), Agency will comply with all Post Construction management measures specified in the RMP, including without limitation, maintaining any barriers installed during Construction. Except in the event of an as-is transfer pursuant to Section 3.5. of the Housing Program, Attachment C to the North OPA (unless provided otherwise therein), or in the event of an as-is transfer pursuant to Section 3.4.3. of the North OPA, Owner will comply with any groundwater Remediation requirements imposed by the RWQCB in the RMP that continue after Construction, including without limitation groundwater treatment, containment or monitoring.

B. **Open Space Parcels**

1. Final Site Clearance. Prior to the earlier of commencement of the Agency Lease or issuance to Owner of a Permit to Enter for Construction for each Open Space Parcel, Owner will for such parcel: (a) obtain Final Site Clearance from the RWQCB, (b) develop and obtain RWQCB approval of an

RMP that meets the requirements of this EIRP, and (c) provide written confirmation to Agency that the conditions specified in this Section have been met.

2. Pre-Construction RMP Compliance. Except as otherwise provided under the Catellus Lease or other agreement between the Owner and Agency or City, and except as expressly assumed by Owner in this Section, prior to issuance of a Permit to Enter to Owner for Construction on the Open Space Parcels, the Parcel Owner of the applicable Open Space Parcel will be responsible for complying with any Environmental Law and satisfying any other environmental requirements or responsibilities prior to Construction, including without limitation (a) maintenance of the parcel in compliance with the Pre-Construction requirements of the RMP (including, without limitation, maintenance of dust control and security requirements such as fencing and no trespassing signs and notification of tenants of RMP requirements); (b) compliance with Environmental Laws arising out of the operation and ownership of such parcel (including, without limitation, hazardous waste requirements and hazardous materials storage requirements) and (c) compliance with any Public Works Code Article 20 requirements triggered by any Interim Uses placed on the parcel. The Owner will be responsible as to the Open Space Parcels for (a) implementing any soil or groundwater Remediation requirements in the RMP that must be satisfied prior to Construction except for Pre-Construction maintenance and management measures (which are assumed by the Parcel Owner in the preceding sentence), and (b) addressing unanticipated environmental conditions discovered on the Open Space Parcels prior to commencement of Construction if the RWQCB deems any such conditions to be an imminent hazard which must be addressed immediately, unless the environmental condition arises out of Hazardous Substances placed on the parcel by an entity other than Owner after (i) transfer of title under the City Land Transfer Agreement (with respect to Open Space Parcels transferred to the City under such Agreement) or (ii) the Effective Date (with respect to all other Open Space Parcels).

3. During Construction. If Owner constructs the Initial Permanent Improvements on the Open Space Parcels, Owner will be responsible for the following:
 - a) Complying with Public Works Code Article 20;
 - b) Carrying out any Investigation and Response measures specified in the RMP and required during the Construction of the Initial Permanent Improvements;
 - c) Addressing to the satisfaction of the RWQCB any unanticipated environmental conditions discovered on the applicable Open Space Parcels during Construction unless the environmental condition arises out of materials placed on such parcel by an entity other than Owner after (i) transfer of title to the City under the City Land Transfer Agreement (with respect to Open Space Parcels transferred to the City under such Agreement), or (ii) the Effective Date (with respect to all other Open Space Parcels), but prior to the grant to Owner of a Permit to Enter the applicable Open Space Parcel for purposes of Construction of Initial Permanent Improvements; and
 - d) Ensuring that the fill that is placed around and over any subsurface installations or Infrastructure complies with the specifications of the San Francisco Department of Public Works generally applicable on a city-wide basis to similar public rights-of-way.
4. Post Construction RMP Compliance. Except as limited by this Section IV.B.4., and unless alternative provisions are set forth in a separate agreement, Agency will comply with Post Construction management measures specified in the RMP, including without limitation, maintaining any barriers installed during Construction. Owner will comply with any groundwater Remediation requirements imposed by the RWQCB in the RMP that continue after Construction, including without limitation groundwater treatment, containment or monitoring, and paying government oversight costs associated with such Post Construction groundwater Remediation measures.

C. **New Street Parcels**

1. Final Site Clearance. Prior to issuance of a Permit to Enter to Owner for Construction on each New Street Parcel or commencement of Construction pursuant to the Catellus Lease, Owner will for such parcel: (a) obtain Final Site Clearance from the RWQCB, (b) develop and obtain RWQCB approval of an RMP that meets the requirements of this EIRP, and (c) provide written

confirmation to City that the conditions specified in this Section have been met.

2. Pre-Construction RMP Compliance. Except as otherwise provided under the Catellus Lease or other agreement between the Owner and Agency or City, and except as expressly assumed by Owner in this Section IV.C.2., prior to issuance of a Permit to Enter to Owner for Construction of the New Street Parcels or commencement of Construction pursuant to the Catellus Lease, the Parcel Owner of the applicable New Street Parcel shall be responsible for complying with any Environmental Law and satisfying any other environmental requirements or responsibilities prior to Construction, including without limitation (a) maintenance of the parcel in compliance with the Pre-Construction management requirements of the RMP (including, without limitation, dust control and security requirements such as fencing and no trespassing signs and notification to tenants of RMP requirements), (b) compliance with Environmental Laws arising out of the operation and ownership of such parcel (including, without limitation, hazardous waste requirements and hazardous materials storage requirements) and (c) compliance with any Public Works Code Article 20 requirements triggered by any Interim Uses placed on the parcel. The Owner will be responsible as to New Street Parcels for (a) implementing any soil or groundwater Remediation requirements in the RMP that must be satisfied prior to Construction, except for Pre-Construction maintenance and management measures (which are assumed by the Parcel Owner of the New Street Parcel in the preceding sentence), and (b) addressing unanticipated environmental conditions discovered prior to commencement of construction if the RWQCB deems any such conditions to be an imminent hazard which must be addressed immediately unless the environmental condition arises out of Hazardous Substances placed on the parcel by an entity other than Owner after (i) transfer of title under the City Land Transfer Agreement (with respect to New Street Parcels transferred to the City under such Agreement) or (ii) the Effective Date (with respect to all other New Street Parcels).

3. During Construction. If Owner constructs the Initial Permanent Improvements on the New Street Parcels, Owner will be responsible for the following:
 - a) Complying with Public Works Code Article 20;
 - b) Carrying out any Investigation and Response measures specified in the RMP and required during the Construction of the Initial Permanent Improvements;

- c) Addressing to the satisfaction of the RWQCB any unanticipated environmental conditions discovered on New Street Parcels during Construction unless the environmental condition arises out of materials placed on such parcels by an entity other than Owner after (i) transfer of title to the City under the City Land Transfer Agreement (with respect to New Street Parcels transferred to the City under such Agreement) or (ii) the Effective Date (with respect to all other New Street Parcels) but prior to the grant to Owner of a Permit to Enter to Owner the applicable New Street Parcel for purposes of Construction of Initial Permanent Improvements; and
 - d) Ensuring that the fill that is placed around and over any subsurface installations or Infrastructure within the public rights-of-way, if any, complies with the specifications of the San Francisco Department of Public Works generally applicable on a city-wide basis to similar public rights-of-way.
4. Post Construction RMP Compliance. Following transfer of title to the City, for the New Street Parcels, the City shall be responsible for compliance with Post Construction management measures specified in the RMP, including without limitation, maintaining any barriers installed during Construction. Owner shall be responsible for compliance with any groundwater Remediation requirements imposed by the RWQCB in the RMP that continue after Construction, including without limitation groundwater treatment, containment or monitoring, and government oversight costs associated with such Post Construction groundwater Remediation measures.

D. Existing Street Parcels

1. Final Site Clearance. Prior to issuance of a Permit to Enter for Construction, Owner shall prepare and obtain RWQCB approval of the RMP and shall also be responsible for the preparation and processing costs associated with obtaining Final Site Clearance for the Existing Street Parcels, only on the condition that the costs of doing so to Owner are limited to nominal costs. Any Investigation and Response measures required to obtain such approval shall be the responsibility of City.
2. City's Responsibilities. The City shall be responsible for complying with any Environmental Laws and satisfying any other environmental requirements prior to Construction, including without limitation (a) maintenance of the parcel in compliance with all Pre-Construction requirements of the RMP (including without limitation maintenance of dust control and security requirements such as fencing and no trespassing signs and notification of tenants of RMP requirements); (b) compliance with Environmental Laws

arising out of the operation and ownership of such parcel (including without limitation hazardous waste requirements and hazardous materials storage requirements); and (c) compliance with any Public Works Code Article 20 requirements triggered by any Interim Uses placed on the parcel. In addition, except as provided in Section IV.D.3 below, the City shall comply with any RMP requirements applicable during Construction and Post Construction.

3. Owner's Responsibilities. If Owner constructs the Initial Permanent Improvements in the Existing Street Parcels, Owner will be responsible for the following:
 - a) Complying with Public Works Code Article 20;
 - b) Paying for any required excavation of soil or groundwater disposal costs arising from the Infrastructure installation and handling such soil and groundwater in accordance with applicable RMP requirements;
 - c) Notifying the Parcel Owner in advance of commencement of Construction of any environmental condition, known to Owner prior to Construction, that Owner believes will require Response beyond that necessitated by the Infrastructure installation; provided, however, that this Section IV.D.3(c) shall not be construed as imposing any obligation upon Owner to gather any information or knowledge prior to commencement of Construction;
 - d) In the event unanticipated environmental conditions are encountered during Construction which require Response beyond that necessitated by the Infrastructure installation, undertaking emergency environmental stabilization measures necessitated by Infrastructure installation, provided that such costs and measures shall be limited to physical measures necessary to stabilize the Infrastructure installation until the Parcel Owner of the affected parcel can assume responsibility for the situation. Procedures for implementing this Section IV.D.3(d) and Section IV.D.3(c) may be set forth in a Memorandum of Understanding between Owner and City;
 - e) Placement of fill over and around any installation in compliance with the specifications of the San Francisco Department of Public Works generally applicable on a city-wide basis to similar public rights-of-way.

V. COMPLETION OF ENVIRONMENTAL OBLIGATIONS

- A. After Owner's completion of its environmental obligations Pre-Construction and during Construction under this Section V, for any North Parcel, the Owner may request that the Agency, or, if applicable, the City, acknowledge in writing the satisfaction of such obligations of Owner under this EIRP for that North Parcel. To request such acknowledgement, Owner shall submit to Agency or City for such North Parcel (a) a statement and reasonable supporting documentation indicating that Owner has complied with the requirements set forth in this EIRP for such parcel; (b) a declaration that all incremental costs due Agency or City pursuant to this EIRP have been paid; and (c) specification of any Post Construction obligations that Owner will continue to perform. Upon receipt of such information, the Agency or City will provide such acknowledgement within thirty (30) days of the Owner's request unless Agency reasonably believes that Owner has not satisfied its obligations and sets forth in writing within thirty (30) days of Owner's request for acknowledgement the basis of the Agency's belief.
- B. After receiving Agency's or City's written notice of the basis of its belief that the Owner has not satisfied its obligations under this EIRP for a North Parcel, the Parties and City will have a thirty (30) day period to attempt to resolve the dispute through informal discussions. If the dispute is not resolved to the satisfaction of both Parties and City at the end of the thirty (30) day informal dispute resolution period, the Parties and City agree that Owner may at its discretion initiate a declaratory relief action in the Superior Court for the City and County of San Francisco under Cal. Civ. Proc. Code §1060 and §1062.3 for resolution of the dispute. The Parties and City agree that the circumstances of this matter make it imperative that the dispute be resolved at the earliest possible date. Toward that end, the Parties and City agree the Agency's and City's response time to the complaint shall be shortened to fifteen (15) days, that the Parties and City shall exchange all documents upon which they rely to support their respective positions regarding satisfaction of Owner's obligations under this EIRP for the North Parcel within thirty (30) days after the complaint has been served, that all motions other than summary judgment motions will be heard on ten (10) days notice, that summary judgment motions will be heard on thirty (30) days notice, and that the Parties and City waive their rights to discovery; provided, however, that no motion for summary judgment may be filed by any Party or City which has not completed such document exchange. All deadlines for EIRP obligations the completion of which are disputed under this Section V.B. shall be extended for the period of time required to resolve the dispute through informal dispute resolution or litigation.

VI. RELEASES FROM LIABILITY AND INDEMNITY PROVISIONS FOR ALL NORTH PARCELS.

A. Agency Release.

The following release shall be effective with respect to a parcel upon either (i) the transfer of title of any Affordable Housing Parcel by Owner to Agency pursuant to this North OPA, or (ii) the issuance of a Permit to Enter by the Agency for North Parcel;

The Agency, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges the Owner and its shareholders, officers, directors, agents, consultants, affiliates, predecessors, successors, lenders, managers, tenants, servants, employees, invitees, guests, and assigns (collectively, "Owner Entities") from any and all Claims at law or in equity, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of the conveyance or issuance of the Permit to Enter, which the Agency has or may have in the future, arising out of, or in any way connected with, the environmental or physical condition of the parcel either conveyed to it or subject to Permit to Enter, or any law or regulation applicable thereto. Notwithstanding the foregoing, the release set forth in the immediately preceding sentence shall not extend to: (i) any Claim against Agency and its officers, agents, consultants, managers, tenants, employees, invitees, guests, lenders, and assigns ("Agency Entities") arising out of Owner's failure to perform actions or negligent performance of actions specified in this EIRP for which Owner has responsibility, (ii) any Claim against the Agency Entities asserted by any third party alleging injury or damage from acts, omissions, agreements or undertakings by any Owner Entities, (iii) any Claim arising out of a Hazardous Substance which originates on land owned by Owner and which first migrates onto the parcel after Owner obtains Final Site Clearance for it, (iv) any Claim asserted against the Agency Entities by any private party in a citizen's suit capacity, (v) any Claim based on or arising from an obligation under a separate written agreement between the Parties relating to the parcel, (vi) any Claim asserted against the Agency Entities by any governmental entity or agency, or (vii) any Claim asserted by the City in its regulatory capacity, except that the Agency acknowledges that pursuant to Cal. Health & Safety Code §25264(c), no state or local agency (including the City) may take action against the Owner for hazardous materials releases at the parcels once a Certificate of Completion is issued for such parcels under Cal. Health & Safety Code §25264(b) unless provided otherwise in Cal. Health & Safety Code §25264(c).

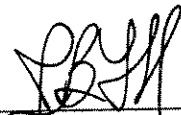
Except as expressly excluded above, the foregoing release includes all Claims, whether direct or indirect, foreseen or unforeseen, or known or

unknown at the time of the transfer of title of the parcel or the issuance of the Permit to Enter, which arise out of (i) the need or alleged need for additional Investigation or Remediation on the parcel (ii) Investigation or Remediation arising from the presence of Hazardous Substances on or originating on and migrating from the parcel, or other environmental conditions of the parcel, whether such conditions or Hazardous Substances existed prior to or subsequent to Owner's ownership or the issuance of the Permit to Enter development. Except as set forth in this Section VI.A, the Agency expressly waives any rights or benefits available to it under the provisions of Cal. Civ. Code §1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Agency hereby specifically acknowledges that it has carefully reviewed this release and discussed its import with legal counsel and that the provisions of this release are a material part of the lease or conveyance. The disclaimer and release contained in this Section shall not merge with the transfer of title and shall survive the transfer of all or any part of the parcel.

In the event that Owner is not Catellus Development Corporation, a Delaware corporation, and subject to Catellus Development Corporation's execution of the release of Agency Entities in Section V.B below, then Agency, on behalf of itself and its agents, affiliates, successors and assigns, agrees that, in addition to the Owner Entities, the release in this Section V.A shall also extend to Catellus Development Corporation and its shareholders, officers, directors, agents, consultants, affiliates, predecessors, successors, lenders, managers, tenants, servants, employees, invitees, guests and assigns ("Catellus Entities"). Agency also makes the same express waiver of rights and benefits regarding its Claims against Catellus Entities as it does for its Claims against Owner Entities in this Section V.A.



[Agency initials]

B. **Owner Release.**

The following release shall be effective with respect to a parcel upon either (i) the

transfer of title of any Affordable Housing Parcel by Owner to Agency pursuant to this North OPA, or (ii) the issuance of the Permit to Enter by Agency for a North Parcel;

The Owner, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges the Agency ("Agency Entities") from any and all Claims at law or in equity, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of the conveyance or issuance of the Permit to Enter, which the Owner has or may have in the future, arising out of, or in any way connected with, the environmental or physical condition of the parcel either conveyed to it subject to the Permit to Enter, or any law or regulation applicable thereto. Notwithstanding the foregoing, the release set forth in the immediately preceding sentence shall not extend to: (i) any Claim against Owner Entities arising out of Agency's failure to perform actions or negligent performance of actions specified in this EIRP for which Agency has responsibility, (ii) any Claim against the Owner Entities asserted by any third party alleging injury or damage from acts, omissions, agreements or undertakings by any Agency Entities, (iii) any Claim arising out of a Hazardous Substance which originates on land owned by Agency and which first migrates onto the parcel after Owner obtains Final Site Clearance for it, (iv) any Claim asserted against the Owner Entity by any private party in a citizen's suit capacity, (v) any Claim based on or arising from an obligation under a separate written agreement between the Parties relating to the parcel, (vi) any Claim asserted against the Owner Entities by any governmental entity or agency, or (vii) any Claim asserted by the City in its regulatory capacity, except that the Agency acknowledges that pursuant to Cal. Health & Safety Code §25264(c), no state or local agency (including the City) may take action against the Owner for hazardous materials releases at the parcel once a Certificate of Completion is issued for such parcels under Cal. Health & Safety Code §25264(b) unless provided otherwise in Cal. Health & Safety Code §25264(c).

Except as expressly excluded above, the foregoing release includes all Claims, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of the transfer of title of the parcel or issuance of the Permit to Enter, which arise out of (i) the need or alleged need for additional Investigation or Remediation on the parcel (ii) Investigation or Remediation arising from the presence of Hazardous Substances on or originating on and migrating from the parcel, or other environmental conditions of the parcel, whether such conditions or Hazardous Substances existed prior to or subsequent to an Agency's ownership or the issuance of the Permit to Enter. Except as set forth in this Section VI.B, the Owner

expressly waives any rights or benefits available to it under the provisions of Cal. Civ. Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Owner hereby specifically acknowledges that he has carefully reviewed this release and discussed its import with legal counsel and that the provisions of this release are a material part of the lease or conveyance. The disclaimer and release contained in this Section shall not merge with the transfer of title and shall survive the transfer of all or any part of the parcel.

In the event that Catellus Development Corporation, a Delaware corporation, is not the Owner, and if Catellus Development Corporation executes the release in this V.B. by signing below, then Catellus Development Corporation, for itself and its affiliates, successors and assigns, agrees that it is providing the same release to Agency Entities as Owner is providing to Agency Entities in this V.B. Catellus Development Corporation makes the same express waiver of rights and benefits regarding its Claims against Agency Entities as provided by Owner regarding Agency Entities in this Section V.B.


[Owner initials]

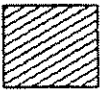
C. **Indemnity.**

Agency shall defend, hold harmless and indemnify Owner Entities and Owner's Transferees from and against any and all Claims resulting from a failure of Agency Entities or Agency's transferees, successors and assigns to comply with the requirements of the RMP on any Affordable Housing Parcel after such

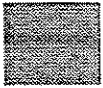
parcel is transferred to Agency unless responsibility for RMP compliance was contractually assumed by Owner under Section IV.A.3. above. The indemnities contained in this Section V.C. shall survive any termination of the North OPA as to matters that arise during the Term of the North OPA.

EXHIBIT 1

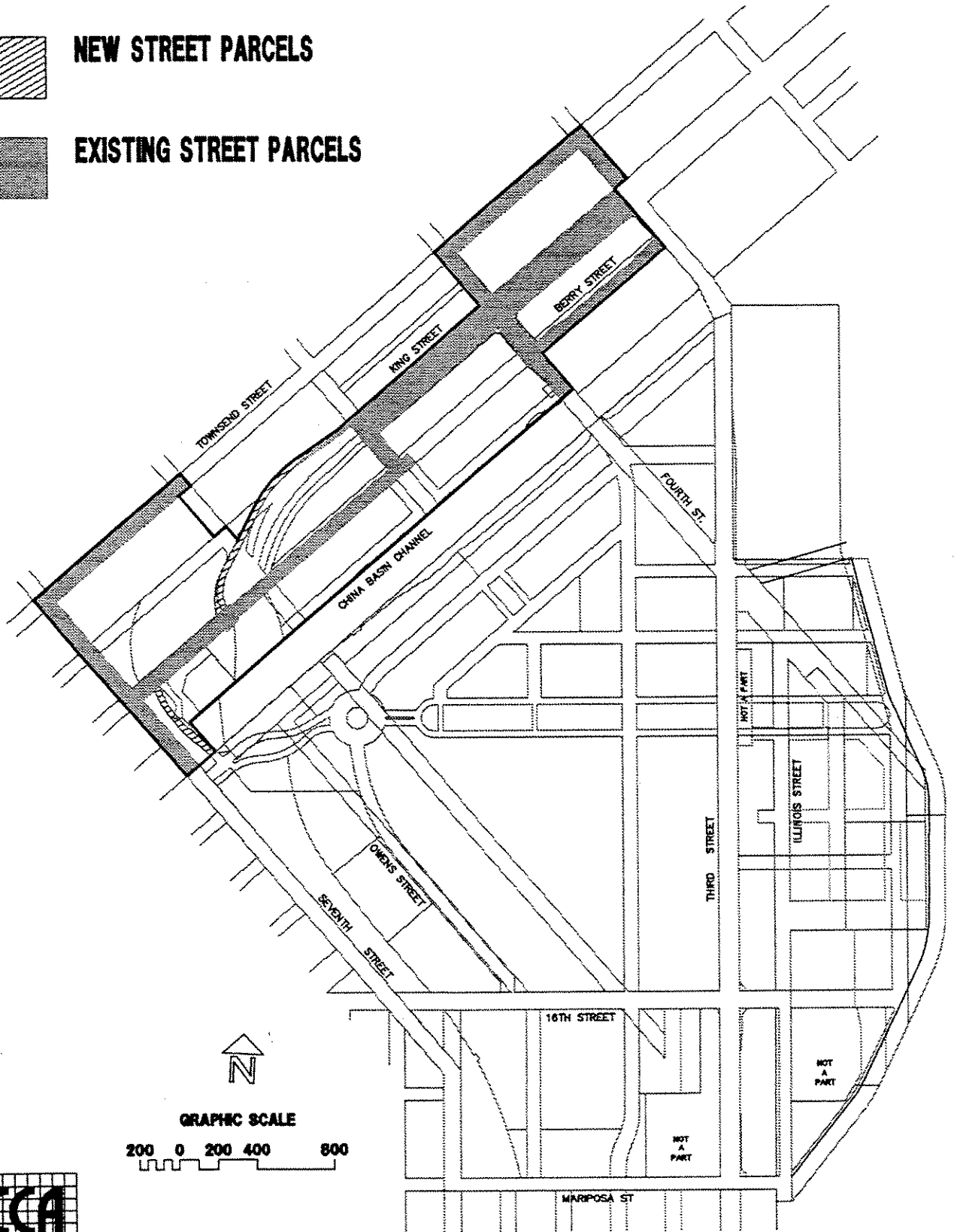
NORTH OPA
EXHIBIT 1 TO ATTACHMENT K



NEW STREET PARCELS



EXISTING STREET PARCELS



ENVIRON3 98.1060/14-L

