

ATTACHMENT K
MISSION BAY SOUTH

**ENVIRONMENTAL INVESTIGATION AND RESPONSE PROGRAM
FOR SOUTH PLAN AREA
AFFORDABLE HOUSING PARCELS,
OPEN SPACE PARCELS, STREET PARCELS
AND COMMUNITY FACILITIES 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 South Plan Area on the Affordable Housing Parcels, the Open Space Parcels, the Terry Francois Parcel, the Community Facilities Parcels and the Street Parcels (collectively, “South Parcels”). Although the City is not a party to the South OPA, the City has expressly agreed in the Mission Bay South 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 South 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 on particular South Parcels are set forth in Section IV below. Initially capitalized terms unless separately defined in this EIRP have the meanings and content set forth in the South 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. “Community Facilities Parcels” shall mean the Police/Fire Station, the School Site and the School Play Yard.
- C. “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.

- D. “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.
- E. “Existing Street Parcels” means those existing (public or private) streets or portions thereof in the South 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 August 1, 1998 that will not be transferred to Owner: Third Street, Fourth Street, a portion of Sixteenth Street, a portion of Terry Francois Boulevard, Mariposa Street, Pennsylvania Street, a portion of Owen Street, a portion of Illinois Street and a portion of Mission Rock, as more particularly identified in the attached Exhibit 1.
- F. “Final Site Clearance” means a written statement from the RWQCB providing that the environmental conditions of the South 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.
- G. “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.
- H. “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 South OPA to the applicable South Parcel, not including any temporary structures such as parking lots.

- I. “Interim Use” means any use of the South Parcels prior to commencing Construction of the Initial Permanent Improvements.
- J. “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.
- K. “New Street Parcels” means that a portion of Sixteenth Street, South Street, Fourth Street from the South Commons to Mariposa Street, and a portion of Terry Francois Boulevard, as more fully identified on the attached Exhibit 1.
- L. “Open Space Parcels” means those parcels or portions thereof designated for use as parks, plazas or other public open space in the Mission Bay South 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 Agency or Owner.
- P. “Pier 64 Order Parcels” means those parcels or portions thereof, which, because of the release of petroleum hydrocarbon or the presence of pipelines containing petroleum hydrocarbons thereon, are subject to Site Cleanup Requirements Order 98-028, adopted by the RWQCB April 15, 1998.
- Q. “Police/Fire Station” means the approximately one and twenty-seven one-hundredths (1.27) acres of real property on parcel 8 as shown on the Land Use Plan that is currently owned by the Port and will be used as a Police/Fire Station. It does not include the 0.26 acres comprising the existing City-owned fire station site, for which the Owner shall expressly have no responsibility, obligation or liability.
- R. “Post Construction” means after the completion of Construction.
- S. “Pre-Construction” means prior to commencing Construction.
- T. “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.

- U. “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.
- V. “Response” or “Respond” or “Remediate” when used in a reference to Hazardous Substances means any activity undertaken to cleanup, remove, contain, treat, stabilize, monitor, or otherwise control or manage, including to manage in place, the Hazardous Substance.
- W. “Risk Management Plan” or “RMP” means a written plan approved by the RWQCB applicable to the South 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.
- X. “School District” means the San Francisco Unified School District.
- Y. “School Play Yard” means the one and five-tenths (1.5) acres of real property on block 14 as shown on the Land Use Plan that shall be developed by Owner as a School Play Yard, subject to the terms of a separate agreement with the School District.
- Z. “South Parcel” means the Affordable Housing Parcels, Open Space Parcels and Street Parcels.
- AA. “School Site” means the seven tenths (0.7) of an acre of real property on block 14 as shown on the Land Use Plan.
- BB. “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 South 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), IV.D.3(a), IV.E.4(a), and IV.F.4(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 South 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 South 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 Environmental Restriction and Covenant (unless the obligation to comply with a particular requirement 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 South Parcel (not including the Pier 64 Order Parcels), 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 South 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 South 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 South Plan Area, Owner will develop and obtain RWQCB approval of RMPs to address all Pre-Construction, Construction and Post Construction activities in the South Plan Area. The RMPs will specify Response measures to be implemented Pre-Construction, during Construction and Post Construction on the South 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 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 South 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 South Parcels from the outset, or separate RMPs for each South Parcel or set of South Parcels, or an RMP for one or more parcels may be amended over time to include additional South Parcels. The RMPs as they relate to any South Parcel may be amended with RWQCB approval by the Parcel Owner of the applicable South 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 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 South OPA, Housing Program.
6. For the South 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 Parcel 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 in the form attached as Attachment G to the South 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 Claim arising out of a Release of Hazardous Substances added to a South Parcel: (i) following transfer to the Agency or the City (with respect to South 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 Owner's property 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 South 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 South Parcel which is owned or will be owned by the City. The City has expressly agreed in the Mission Bay South Interagency Cooperation Agreement to be bound by the principles, and implement its obligations, as set forth in the EIRP.

G. Pier 64 Order Parcels.

Some of the Open Space Parcels and Street Parcels (both New Streets and Existing Streets) are Pier 64 Order Parcels. Notwithstanding any other provision in this EIRP (including without limitations the requirements set forth in Sections IV.B. and IV.C. below), the sole

responsibilities of Owner with respect to petroleum hydrocarbons and pipelines containing hydrocarbons on the Pier 64 Order Parcels are as follows:

1. If Owner commences Construction on the Pier 64 Order Parcels, Owner will prior to Construction prepare and obtain RWQCB approval of an RMP covering such Pier 64 Order Parcels.
2. If the entities named as Primarily Liable Dischargers in Site Cleanup Requirements Order 98-028 have conducted Investigation and Response activities on the Pier 64 Order Parcels to the satisfaction of the RWQCB, and if Owner consequently may obtain Final Site Clearance from the RWQCB without undertaking, or incurring any cost for, additional Investigation and Response measures, then Owner will obtain such Final Site Clearance for the petroleum hydrocarbons on the Pier 64 Order Parcels. If the conditions precedent to Owner's obligations, as stated in the foregoing sentence, of obtaining Final Site Clearance have been satisfied prior to completion of Construction, Owner shall obtain such Final Site Clearance prior to completion of Construction. If such conditions precedent have not been satisfied prior to completion of Construction Owner shall have no obligation under Section III.G.2.
3. If Owner commences Construction in the Pier 64 Order Parcels, subject to the conditions set forth in this Section III.G.3., Owner shall also have the following responsibilities with respect to petroleum hydrocarbons on such parcels:
 - 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 III.G.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 III.G.3(d) and Section III.G.3(c) may be set forth in a Memorandum of Understanding between Owner and City;

- e) Placement of fill over and around any Infrastructure 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;
- f) Coordinate the design and installation of the Infrastructure and open space with the remedial measures implemented by the Primarily Liable Dischargers; and
- g) Owner's obligations under this Section III.G.3 are conditioned on the City providing reasonable coordination between the grant of access to the Primarily Liable Dischargers in performing Investigation and Response activities on Pier 64 Order Parcels and the grant of access to Owner for the Infrastructure installation (including without limitation coordination of timing and scope of such activities).

H. Terry Francois Parcel.

A portion of the Open Space Parcels and Street Parcels, taken together, constitute the Terry Francois Parcel, which is identified on the attached Exhibit 1. Notwithstanding anything to the contrary in this EIRP (including, without limitation, the specification of responsibilities on Open Space Parcels in Section IV.B., on New Street Parcels in Section IV.C., and Existing Street Parcels in Section IV.D.), Owner's sole obligations with respect to the Terry Francois Parcel are set forth exclusively in Section IV.E.

I. Interim Uses.

Owner's obligations under this EIRP shall not be broadened or accelerated by any Interim Use which Agency or City elects to place on a South Parcel prior to Construction. The Agency and City expressly assumes responsibility for all costs, liabilities or other Claims which arise out of their Interim Use of South 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 3.4.3. of the South OPA, for all Affordable Housing Parcels, prior to transfer of title of each Affordable Housing Parcel to Agency, 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 and prior to Construction and except as expressly assumed by Owner in this Section IV.A.2. (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, shall be assumed by Agency 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. 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 management and maintenance measures, (b) addressing unanticipated environmental conditions discovered on the parcel prior to commencing 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 Housing Phase in the South 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 Section 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 3.4.3 of the South 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 IV.B.2, 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. Owner will be responsible for (a) implementing any soil or groundwater Remediation requirements in the RMP that must be satisfied prior to Construction except for Pre-Construction management and maintenance 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 issuance of a Permit to Enter to Owner for 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 (i) after 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) after the Effective Date (with respect to all other Open Space Parcels) and 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.

5. Terry Francois Parcel. A portion of the Open Space Parcels and Street Parcels, taken together, constitute the Terry Francois Parcel, which is identified on the attached Exhibit 1. Notwithstanding anything to the contrary in this EIRP (including, without limitation, the specification of responsibilities on Open Space Parcels in Section IV.B., on New Street Parcels in Section IV.C., and Existing Street Parcels in Section IV.D.), Owner's sole obligations with respect to the Terry Francois Parcel are set forth exclusively in Section IV.E.

C. **New Street Parcels**

1. Final Site Clearance. Prior to issuance of a Permit to Enter 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, 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. Owner will be responsible for (a) implementing any soil or groundwater Remediation requirements in the RMP

that must be satisfied prior to Construction, except for Pre-Construction management and maintenance measures (which are assumed by Parcel Owner in the preceding sentence), and (b) addressing unanticipated environmental conditions discovered on the New Street Parcels prior to issuance of a Permit to Enter to Owner for 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 (i) after 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) after the Effective Date (with respect to all other New Street Parcels) and prior to the grant to Owner of a Permit to Enter 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.

The 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.

5. Terry Francois Parcel. A portion of the Street Parcels and Open Space Parcels, taken together, constitute the Terry Francois Parcel, which is identified on the attached Exhibit 1. Notwithstanding anything to the contrary in this EIRP (including, without limitation, the specification of responsibilities on Open Space Parcels in Section IV.B., on New Street Parcels in Section IV.C., and Existing Street Parcels in Section IV.D.), Owner's sole obligations with respect to the Terry Francois Parcel are set forth exclusively in Section IV.E.

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 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 the City.
2. City's Responsibilities. The City shall be responsible for complying with any Environmental Laws or satisfying any other environmental requirements or responsibilities 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 existing uses of 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 conditions, 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; and
 - e) Placement of fill over and around any Infrastructure 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.
4. Terry Francois Parcel. A portion of the Street Parcels and Open Space Parcels, taken together, constitute the Terry Francois Parcel, which is identified on the attached Exhibit 1. Notwithstanding anything to the contrary in this EIRP (including, without limitation, the specification of responsibilities on Open Space Parcels in Section IV.B., on New Street Parcels in Section IV.C., and Existing Street Parcels in Section IV.D.), Owner's sole obligations with respect to the Terry Francois Parcel are set forth exclusively in Section IV.E.

E. Terry Francois Parcel

- 1. Overlap of Terry Francois Parcel with Pier 64 Order Parcels. Whenever any portion of the Terry Francois Parcel is also a Pier 64 Order Parcel, then for

such portion of the Terry Francois Parcel, Owner's responsibility for obtaining RWQCB approval of a RMP shall be as set forth in Section III.G.1 for Pier 64 Order Parcels (rather than in Section IV.E.2. below), Owner's responsibility during Construction shall be as set forth in Section III.G.3 for Pier 64 Order Parcels (rather than in Section IV.E.5. below), and Owner shall have no obligation to obtain Final Site Clearance (as provided in Section IV.E.2. below). The Port's responsibilities for such portion of the Terry Francois Parcel shall be as set forth in Sections IV.E.2 and IV.E.3 below.

2. Final Site Clearance. Prior to issuance of a Permit to Enter for Construction for the Terry Francois Parcel, the Owner shall prepare and obtain RWQCB approval of a RMP covering the Terry Francois Parcel. The City, by and through the Port, at its sole and absolute discretion, may obtain Final Site Clearance. In the event the Port (at its sole cost and expense) elects to enroll the Terry Francois Parcel in the AB 2061 Program and obtain a Certificate of Completion under Cal. Health & Safety Code §25264, Owner shall reasonably cooperate with the Port in processing and pursuing the AB 2061 application; provided, however, that the Port shall not commence this process with the RWQCB until it receives written consent from Owner, or notification that Owner has obtained Final Site Clearance for the other parcels in the South Plan Area (except for the Pier 64 Order parcels) owned by the Parties or City.
3. Port's Responsibilities. The Port shall be responsible for complying with any Environmental Laws and satisfying any other environmental requirements and responsibilities 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 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.E.(4) below, the Port shall comply with any RMP requirements applicable during Construction and Post Construction.
4. Owner's Responsibilities. If Owner constructs the Infrastructure Improvements on the Terry Francois Parcel, Owner will be responsible for the following in connection with such Infrastructure improvements:
 - a) Complying with Public Works Code Article 20;

- b). Paying for any required excavation of soil or groundwafer disposal costs necessitated solely by 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 conditions, known to Owner at the time of Construction, that Owner believes will require Response beyond that necessitated by the Infrastructure installation; provided, however, that this Section IV.E.4(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.E.4.(d) and Section IV.E.4.(c) may be set forth in a Memorandum of Understanding between Owner and City;
- e) Placement of fill over and around any Infrastructure 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; and
- f) Notwithstanding anything to the contrary in this Section IV.E.(4), Owner shall not be responsible for any environmental cost, liability, or responsibility relating to current or former underground structures governing the procedures for construction.

F. Community Facilities Parcels

1. Owner's obligations set forth in this EIRP regarding the School Site and School Play Yard shall not be triggered until Owner enters into a separate agreement with the School District governing the procedures for construction.
2. Final Site Clearance. Prior to the commencement of Construction on the Community Facilities Parcels, 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 the City (for the Policy/Fire Station Parcel) and to the School District (of the School Site and School Play Yard) that the conditions specified in this section have been met.

3. Pre-Construction RMP Compliance. Except as expressly assumed by Owner in this Section IV.F.3, or otherwise provided under agreement between the Owner or City (or Owner and the University of California at San Francisco, or Owner and School District), all obligations for complying with Environmental Laws or satisfying any other environmental requirements or responsibilities prior to commencement of Construction shall be assumed by the Parcel Owner of the Police/Fire Station Parcels, the School Site, and the School Play Yard, including, without limitation: (a) maintaining 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) complying with Environmental Laws arising out of the operations and ownership of such parcel (including, without limitation, hazardous waste requirements and hazardous materials storage requirements), and (c) complying with Public Works Code Article 20 requirements triggered by any Interim Uses. Owner's responsibilities prior to Commencement of Construction are limited to the following: (a) implementing any Remediation requirements in the RMP that must be satisfied prior to Construction except for Pre-Construction management and maintenance measures (which is assumed by the Parcel Owner in the preceding sentence) and (b) addressing unanticipated environmental conditions discovered on the parcel prior to Commencing Construction if the RWQCB deems any such condition 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 either: (i) after title is transferred to the School District (for the School Site and School Play Yard), or (ii) after the Effective Date (for the Police/Fire Station).

4. During Construction.

- (a) Police/Fire Station.

- (1) Subject to City's performance of the conditions set forth in Section IV. F.4.(a)(2) below, Owner will be responsible for the following during Construction:

- (i) Complying with the Public Works Code Article 20;

- (ii) 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 (x) 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 (y) Owner's obligations under this EIRP to Investigate and Remediate Hazardous Substances are based on the understanding that Construction on the Police/Fire Station (aa) will be at or above existing grade, (bb) not include subterranean garages and (cc) provide for grading to be balanced on site to the extent reasonably possible. The 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 or Remediation were not required. 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 City 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 City) required for Investigation or Remediation. No incremental costs which the City seeks to impose upon Owner will be incurred unless Owner performs the activity giving rise to the cost, or unless Owner and the City have agreed in writing that some other entity may perform the activity. Further details and procedures for the implementation of this Section IV.F.4.(a)(1)(ii) shall be set forth in Memorandum of Understanding between Owner and City.
- (iii) Addressing to the satisfaction of the RWQCB any unanticipated environmental conditions discovered on the Police/Fire Station during Construction unless the environmental conditions arise out of materials placed on such parcel by an entity other than Owner after the Effective Date.

- (iv) 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.

(2) Owner's obligations during Construction set forth in Section IV.F.4.(a)(1) above are conditioned on the City's prior performance of the following:

- (i) At least eighteen (18) months prior to the date by which the City intends to commence Construction on the Police/Fire Station (the "City Construction Date"), delivery in writing to Owner of a Preliminary Development Notice as that term is defined in Section 3.2(a) of the Housing Program, Attachment C to the South OPA. For purposes of this Section IV.F.4(a)(2), "Agency Construction Date" as used in Section 3.2 of the Housing Program shall mean "City Construction Date" as defined in this Section IV.F.4.(a)(2).
- (ii) Delivery in writing of a Development Notice as defined in Section 3.2(b) of the Housing Program, Attachment C to the South OPA, in accordance with the schedule set forth in said Section 3.2(b). The timing of Owner's obligations under this Section IV.F.4.(a)(2) shall be subject to the provisions of Section 3.2(c) of the Housing Program, Attachment C to the South OPA and City shall have the obligations imposed on Agency by said Section 3.2(c).

(b) School Play Yard.

(1) Subject to School District's performance of the conditions set forth in Section IV.F.4.(b)(2) below, Owner will be responsible for the following during Owner's Construction of Initial Permanent Improvements on the School Play Yard:

- (i) Complying with Public Works Code Article 20;
- (ii) Carrying out any Investigation and Response measures specified in the RMP and required during the Construction of the Initial Permanent Improvements;

(iii) Addressing to the satisfaction of the RWQCB any unanticipated environmental conditions discovered on the School Play Yard during Construction unless the environmental condition arises out of materials placed on such parcel by an entity other than Owner after transfer of title to the School District;

(iv) 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.

(2) Owner's obligations under this Section IV.F.4.(b) are expressly conditioned upon Owner and School District's prior execution of an agreement governing the procedures for construction on the School Play Yard.

5. Post Construction RMP Compliance. Unless alternative provisions are set forth in a separate agreement, City, Agency and School District will comply with Post Construction management measures specified in the RMP, including, without limitation, maintaining any barriers installed during Construction and government oversight costs associated with such Post Construction management measures, if any for the Police/Fire Station, School Site, and School Play Yard. 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.

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 South 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 South Parcel. To request such acknowledgement, Owner shall submit to Agency or City for such South 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 or City 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 or City'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 South 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 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 South 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 SOUTH 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 South OPA, or (ii) the issuance of a Permit to Enter by the Agency or City for a South Parcel :

The Agency for itself and its agents, affiliates, successors and assigns, hereby release, 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

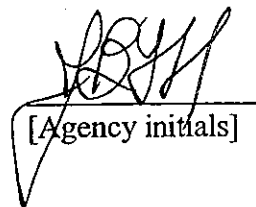
all Claims at law or in equity, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of conveyance or issuance of the Permit to Enter, which the Agency has or may have in the future, arising out of, or in any way connected with, the environmental or physical condition of the parcel either conveyed to it or subject to 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 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 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 Owner's ownership or the issuance of the Permit to Enter. 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 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 the 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, the 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 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 being conveyed upon either (i) the transfer of title of any Affordable Housing Parcel by Owner to Agency pursuant to this South OPA, or (ii) the issuance of a Permit to Enter by Agency for a South 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 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 or 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 the Agency Entities have 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 §25244(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).

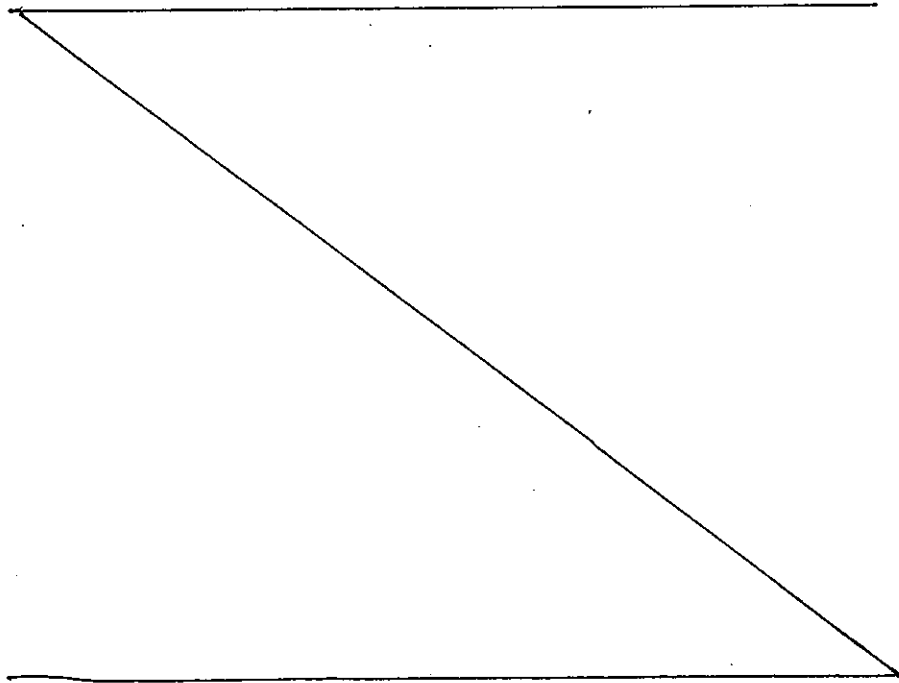
Except as expressly excluded above, the foregoing release includes all Claims, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of the transfer of title of the parcel or issuance of a Permit to Enter, which arise out of (i) the need or alleged need for additional Investigation or Remediation on the parcel (ii) Investigation or Remediation arising from the presence of Hazardous Substances on or emanating from the parcel, or other environmental conditions of the parcel, whether such conditions or Hazardous Substances existed prior to or subsequent to an Agency Entity'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

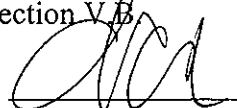
the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Owner hereby specifically acknowledges that 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 Catellus Development Corporation, a Delaware corporation, is not the Owner, and if Catellus Development Corporation executes the release in this Section 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
responding Agency Entities in this Section V.B.


[Owner initials]

C. Indemnity.

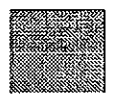
Agency shall defend, hold harmless and indemnify Owner Entities and Owner's Transferees, from and against any and all Claims resulting from a failure of Agency Entities or Agency's transferees, successors and assigns to comply with the requirements of the RMP on any Affordable Housing Parcel after such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

EXHIBIT 1

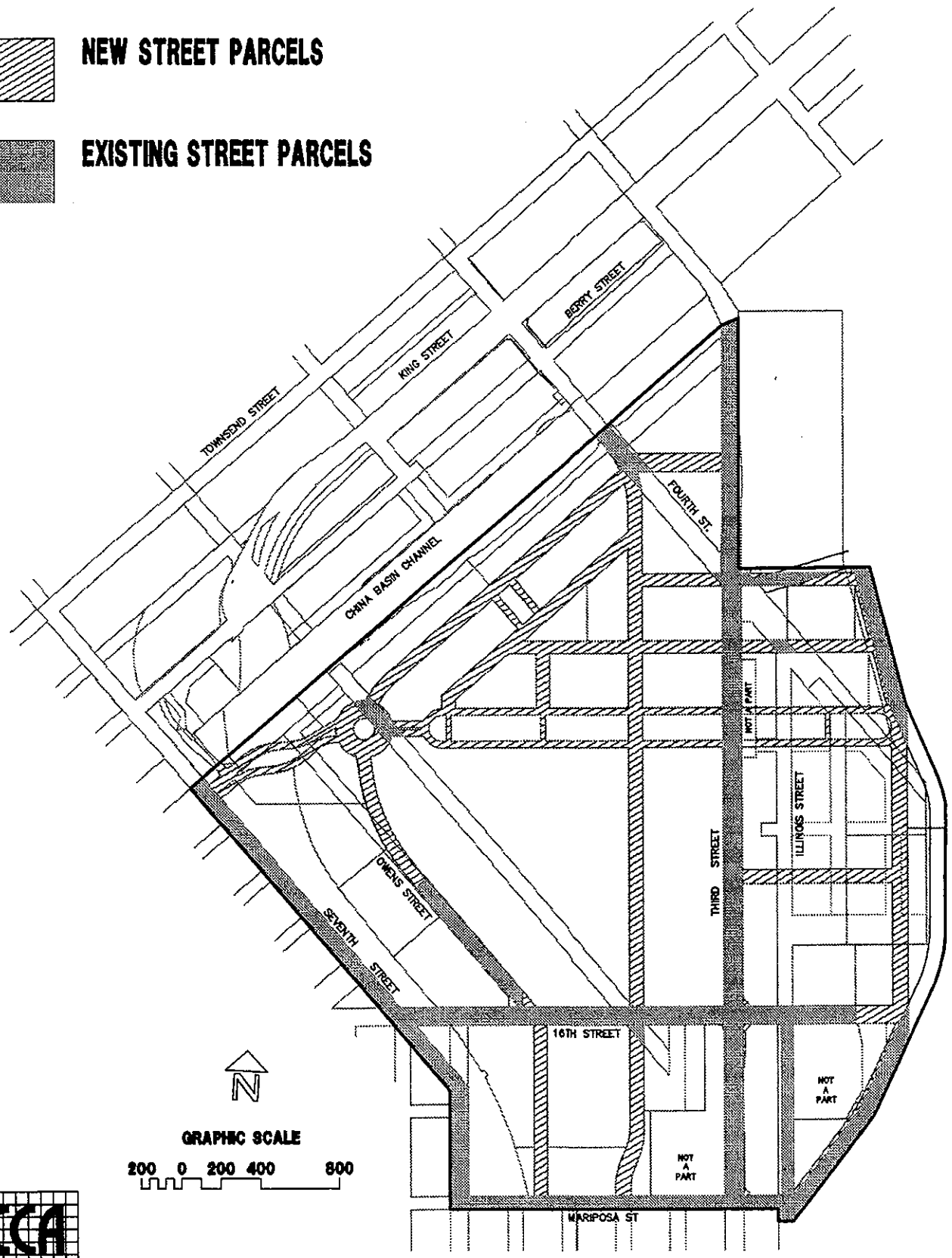
SOUTH OPA
EXHIBIT 1 TO ATTACHMENT K



NEW STREET PARCELS



EXISTING STREET PARCELS



ENVIRON3 98.1060/14-L

