
ACQUISITION AGREEMENT

dated as of June 1, 2001

by and between the

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

and

CATELLUS DEVELOPMENT CORPORATION

**applicable to:
Redevelopment Agency of the City and County of San Francisco
Community Facilities District No. 6
(Mission Bay South Public Improvements)**

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THIS ACQUISITION AGREEMENT, dated as of June 1, 2001 is by and between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic of the State of California (the "Agency"), and Catellus Development Corporation, a Delaware corporation (the "Developer"). Capitalized terms used in the following recitals have the meanings given such terms in Section 1.1 hereof.

RECITALS;

A. Financing Plan. The Agency and the Developer have agreed to the Financing Plan for the financing of, among other things, the acquisition, construction and installation of Infrastructure, as more particularly described in the Infrastructure Plan.

B. Development. The Developer, together with others, is developing land within the South Plan Area, which is expected to be included in the boundaries of one or more CFDs.

C. Infrastructure. The Infrastructure is to be constructed with respect to the South Plan Area, and the Agency and the Developer will benefit from a coordinated plan of design, engineering and construction of the Infrastructure and the development of the land in the South Plan Area.

D. Financings. The Developer and the Agency wish to finance the acquisition of the Infrastructure as set forth in the Financing Plan, and to provide for the payment therefor by entering into this Acquisition Agreement for the acquisition of the Infrastructure and payment for Components thereof as set forth herein with Acquisition Funds.

E. Bonds. Pursuant to the Financing Plan, the Agency has formed the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 6 (Mission Bay South Public Improvements) under the Act and is proceeding with the issuance of one or more Public Financings, the proceeds of which shall be used, in part, to finance the acquisition of all or a portion of the Infrastructure. Except as provided in this Acquisition Agreement or the Financing Plan, the execution by the Agency of this Acquisition Agreement in no way obligates the Agency to issue any Public Financing, or to acquire any Infrastructure with proceeds of any Public Financing or other Acquisition Funds.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Agency and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth below:

1. DEFINITIONS

1.1 Definitions. The following terms shall have the meanings ascribed to them in this Section 1.1 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other capitalized terms when used herein shall have the meanings ascribed to them in the South OPA (including the Financing Plan), the Redevelopment Plan or the Interagency Cooperation Agreement, as applicable.

"Acceptable Title" means title to real property or interest therein free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, except for any permitted exceptions as described in any of the Land Transfer Agreements and in the Housing Program.

the construction and/or acquisition of an Acquisition Facility or Component, such as costs of security, safety signage, payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required under the South OPA or the Land Transfer Agreements), (vii) costs of land or right-of-way acquisitions from unrelated third parties and condemnation of the Required Infrastructure Lands pursuant to the South OPA or Interagency Cooperation Agreement, and (viii) Financing Costs. Actual Costs shall include the Infrastructure costs, pursuant to the preceding sentence, which includes improvements constructed upon privately owned land, but which are constructed within recorded permanent easements in form and substance reasonably acceptable to the Director, for the benefit of the City or the Agency and (x) pedestrians as to surface improvements, or (y) utilities as to sub-surface improvements. Actual Costs shall not include (a) the costs of any Interim Facilities, (b) the portion of the costs of any Acquisition Facility or Component that is eligible for reimbursement by Muni, or (c) costs prohibited pursuant to Section 4.6A.(v).

"Affiliate" means a Person in which the Developer directly or indirectly owns and controls (i) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of equity interests (including rights to acquire such interests), or (ii) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of interests that have a right to nominate, vote for or otherwise select the members of the board or other governing body that directs or causes the direction of substantially all of the management and policies of that Person.

"Agency Account" means the Project Supervision Account within the Improvement Fund that may be used by the Agency to pay or reimburse Agency Costs, particularly those of a character described in the second sentence of the definition of Agency Costs in Section 1.1. hereof.

"Agency Costs" means the reasonable costs and expenses actually incurred and paid by the Agency not inconsistent with the purposes of this Acquisition Agreement and the South OPA, including reasonable costs and fees of third-party professionals necessary for the Agency to perform its duties hereunder and under the South OPA, costs incurred and paid by the Agency to City Agencies (excluding costs included in any City permit application or processing fees paid directly by the Developer to the City) excluding therefrom (i) general and administrative costs of overhead of the Agency except for costs directly attributable to staff time allocable to implementation of the development contemplated under the South OPA, (ii) any costs incurred prior to the effective date of the South OPA, (iii) fees or costs incurred in connection with an amendment of the Redevelopment Plan or Plan Documents not consented to by the Developer in accordance with the South OPA, and (iv) litigation costs otherwise potentially recoverable pursuant to Section 19.6 of the South OPA. It is expressly acknowledged that "Agency Costs" include reasonable costs and expenses related to the activities of the City (including, without limitation, its Department of Public Works and the Director and the City Attorney's Office) and the Agency described in this Acquisition Agreement, including the reasonable fees and expenses of any consultants or other parties engaged by any of them in connection with their activities hereunder.

"Budgeted Cost" means the estimated cost of an Acquisition Facility or Component as shown on Exhibit B hereto, as amended from time to time pursuant to Section 4.6A.

"City" means the City and County of San Francisco.

"City Agency/Agencies" includes all City departments, agencies, boards, commission and bureaus with subdivision or other permit, entitlement, or approval authority or jurisdiction over development within the South Plan Area, or any portion thereof, including, without limitation, the Port Commission, the City Administrator, the Public Works Department, the

"Acceptance Date" means the date the City (or such other public entity which is to own an Acquisition Facility) takes final action to accept dedication of or transfer of title to an Acquisition Facility and such Acquisition Facility has been so accepted.

"Acquisition Agreement" means this Acquisition Agreement, together with any Supplement hereto.

"Acquisition Facilities" means the Infrastructure shown in Exhibit B hereto, as such Exhibit is amended or supplemented from time to time in accordance with the provisions of this Acquisition Agreement.

"Acquisition Funds" means: (i) proceeds of Public Financings available for the purchase of Infrastructure, (ii) proceeds of Special Taxes collected by the Agency for a CFD levied to pay the costs of Infrastructure and not otherwise needed to pay debt service on a Public Financing or CFD administrative expenses, (iii) Net Available Increment to be used under the provision of the Financing Plan to pay the Acquisition Price of Infrastructure and not otherwise needed to pay debt service on any Public Financing, (iv) amounts received by the Agency for the construction of Infrastructure from any other owner of property within the South Plan Area, (v) interest earnings on all of the foregoing available for purposes of this Agreement and (vi) amounts received by the Agency for the construction of Infrastructure from The Regents of the University of California, if any, but only if the Agency and The Regents enter into a mutually acceptable agreement consistent with that certain Agreement for Contribution of Real Property, dated as of September 27, 1997, between Catellus Development Corporation and The Regents, as the same may be amended.

"Acquisition Price" means the amount paid by the Agency for an Acquisition Facility and/or any Components thereof determined in accordance with Article 4 hereof, being an amount equal to the Actual Cost of such Acquisition Facility or Component, but subject to the limitations and reductions provided for in Article 4.

"Act" means the Mello-Roos Community Facilities Act of 1982, Sections 53311 et seq. of the California Government Code, as amended.

"Actual Cost" means the substantiated, reasonable cost of an Acquisition Facility or a Component, which costs shall consist of the following, without duplication: (i) the "hard" costs incurred by the Developer for the construction of such Acquisition Facility or Component and associated demolition, environmental investigation, remediation and response activities pursuant to the South OPA, including the South Environmental Investigation and Response Program attached as Attachment K thereto, (ii) out-of-pocket costs (including for professional costs) incurred by the Developer prior to the commencement of construction of such Acquisition Facility or Component in preparing the Plans for such Acquisition Facility or Component and the related costs of environmental evaluations of the Acquisition Facility or Component, and design, engineering, architectural, legal, accounting, consulting and similar professional services, (iii) fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Acquisition Facility or Component, including inspection fees payable pursuant to Section 4.1 of this Acquisition Agreement, (iv) a construction and project management fee to be retained by the Developer or by or paid to any Affiliate of not to exceed four percent (4%) of the costs described in clause (i) above incurred for the construction of such Acquisition Facility or Component, (v) professional costs incurred by the Developer, the City or the Agency associated with the construction of such Acquisition Facility or Component, such as design, engineering, architectural, legal, accounting, inspection, construction staking, materials testing, consulting and similar professional services excluding cost of any such services provided directly by the Developer or any Affiliate; (vi) out-of-pocket costs directly related to

Public Utilities Commission, the Planning Commission, the Public Transportation Commission, the Parking and Traffic Commission, the Building Inspection Commission, the Public Health Commission, the Fire Commission, the Police Commission, together with any successor City Agency, department or officer designated by or pursuant to law.

"City Regulations" means (i) those City land use codes, including those of its Port Commission (including, without limitation, the Planning and Subdivision Codes, the City General Plan and Waterfront Land Use Plan), (ii) those ordinances, rules, regulations and official policies adopted thereunder (including the Mission Bay Subdivision Ordinance and Regulations), and (iii) all those ordinances, rules, regulations, official policies and plans governing zoning, subdivisions and subdivision design, land use, rate of development, density, building size, public improvements and dedications, construction standards, new construction and use, design standards, permit restrictions, development fees or exactions, terms and conditions of occupancy, or environmental guidelines or review, including those relating to hazardous substances, pertaining to the South Plan Area, as adopted and amended by the City from time to time.

"Component" means a component of an Acquisition Facility that the Director of Public Works has agreed can be separately identified, inspected and completed, and be the subject of a Payment Request hereunder. The Components of the Acquisition Facilities are shown on Exhibit B-1 hereto. Upon written request of the Developer delivered to the Agency to the effect that other Infrastructure should be included in Exhibit B for funding hereunder, the Components of such other Infrastructure to be financed following the financing of the Acquisition Facilities shall be determined by the Director of Public Works following consultation with the Developer, and shall be identified in a Supplement executed by the parties hereto, as further provided in Section 2.1(c) hereof.

"Construction Documents" means the Final Construction Documents and the applicable Design Documents.

"Design Documents" means Concept Plans, Basic Concept Design Documents, Schematic Design Documents, and Design Development Documents, all of which have the meanings set forth in the Design Review and Document Approval Procedure, and specifically excludes any contracts between the Developer and any contractor, subcontractor, architect, engineer, consultant or Mortgagee.

"Design Review and Document Approval Procedure" means the Design Review and Document Approval Procedure attached as Attachment G to the South OPA.

"Developer" has the meaning given in the first paragraph of this Acquisition Agreement.

"Developer's Cost of Funds" shall mean the cost of funds of Catellus Development Corporation as posted to the Developer's website at <http://www.catellus.com>. Notwithstanding the foregoing, (i) upon written request, the Developer agrees to provide to the Agency the written methodology used to determine any such cost of funds, (ii) the Developer shall update such cost of funds at least quarterly, and (iii) if the Developer ceases to post such cost of funds, and revisions thereto, on said website for any quarter, it shall provide to the Agency in writing, its then cost of funds, including the methodology to determine the same.

"Director of Public Works" or "Director" means the Director of Public Works of the City, or his or her written designee (or any successor official designated by applicable law) acting as such under this Acquisition Agreement or with respect to any specific action of the Director under this Agreement.

"District" means the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 6 (Mission Bay South Public Improvements).

"Final Construction Documents" has the meaning set forth in the Design Review and Document Approval Procedure.

"Financing Costs" means, subject to the limitations described below:

(i) interest expense and lender fees with respect to any construction loan obtained by the Developer from an unrelated third party with respect to the Infrastructure, not including any penalty or default charges or interest due by reason of the occurrence of a default with respect to any such loan; and

(ii) imputed interest expense with respect to any Infrastructure not financed from a loan of the character described in the preceding clause (i), with interest calculated at a rate equal to the Developer's Cost of Funds, with said imputed interest to be deemed to commence accruing as to (A) Actual Costs of the character described in clauses (i), (iii), (v), (vi) and (vii) of the definition of Actual Cost in Section 1.1 related to any Acquisition Facility or Component, as of the later of July 30, 2001 or the thirtieth (30th) day of the month following the month in which construction of the Acquisition Facility or Component commence, provided that the Developer is out-of-pocket for such Actual Cost by such interest accrual commencement date, and (B) Actual Cost of the character described in clause (ii) of the definition of Actual Cost in Section 1.1 related to any Acquisition Facility or Component, as of the later of July 30, 2001 or the thirtieth (30th) day of the month following the month in which physical construction of the Acquisition Facility or Component that is the subject of the Plans, environmental evaluations or professional costs commences.

Notwithstanding the foregoing, any such financing costs shall not be included within the definition of Actual Cost (a) to the extent such financing costs relate to the period prior to the thirtieth (30th) day of the month following the month in which physical construction of the Acquisition Facility or Component that is the subject of the Actual Cost request commences (provided that this clause shall not apply to lender fees and costs described in the preceding clause (i) that are paid by the Developer to an unrelated third party, which fees and costs shall be Actual Costs), (b) to the extent that such financing costs are in excess of commercially prevailing rates, (c) to the extent they relate to Actual Costs of the character described in clause (iv) of the definition of Actual Costs in Section 1.1, (d) to the extent such financing costs accrue during any period that the Developer or any Affiliate is in Material Breach under the North OPA or any other Plan Document or is in default in the payment of Special Taxes, (e) to the extent such financing costs apply to any period that is more than ninety (90) days following completion of the related item of Infrastructure as approved pursuant to the inspection described in Section 4.1 of this Agreement, or (f) to the extent they pertain to "Global Costs" identified as such in Exhibit C hereto.

"Financing Plan" means the Financing Plan attached as Attachment E to the South OPA.

"Fiscal Agent" means the entity acting as fiscal agent under the Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under a Fiscal Agent Agreement, as used in Section 2.3 of this Agreement.

"Fiscal Agent Agreement" means an agreement by that name between the Agency and the Fiscal Agent, providing for, among other matters, the issuance of a Public Financing payable

from Special Taxes, and the establishment of an Improvement Fund, as it may be amended from time to time.

"Goals for CFDs" means the Agency's Local Goals and Policies for Community Facilities Districts, in the form provided to the Owner on the date of the South OPA (and to be adopted in substantially such form by the Commission), and as thereafter amended but, with respect to the CFD(s) formed under the Financing Plan, solely to the extent required under the Act or other controlling federal or state law or as otherwise agreed to by the Owner, in its discretion.

"Housing Program" means the Housing Program attached as Attachment C to the South OPA.

"Improvement Fund" means an Improvement Fund established by a Fiscal Agent Agreement, or other document providing for the issuance of a Public Financing, each of which is expected to include an acquisition account and an Agency Account.

"Infrastructure" means those items identified in the Infrastructure Plan, including (1) the open space (including, among other items, park improvements and restrooms), streets, rails and rail line bridges, sewer and storm drainage systems, water systems, street improvements (including freeway ramps or other demolition), traffic signal systems, acquisition of Required Infrastructure Lands, dry utilities, and other improvements any of which are to be constructed in or for the benefit of the South Plan Area or any other matters described in the Infrastructure Plan.

"Infrastructure Plan" means the Infrastructure Plan attached as Attachment D to the South OPA, as it may be amended from time to time.

"Interagency Cooperation Agreement" means the Mission Bay South Interagency Cooperation Agreement, dated as of November 16, 1998, between the City and the Agency.

"Interim Facilities" means improvements installed in connection with the construction of Acquisition Facilities or Components, which improvements (i) are not intended to be permanent, and (ii) are not part of the Infrastructure included in the Infrastructure Plan; however, temporary improvements installed which are necessary in the normal due course of construction of permanent improvements (i.e. "means and methods") are not to be considered "Interim Facilities."

"Land Transfer Agreements" mean those certain agreements between Catellus Development Corporation, the City, the City acting by and through its Port Commission and the State Lands Commission, as applicable, generally referred to as the Amended and Restated City Land Transfer Agreement, Amended and Restated Port Land Transfer Agreement and Amended and Restated Agreement Concerning the Public Trust.

"Material Breach" means a default or breach by the Developer or any Affiliate that materially affects the ability of the Agency or any other party to a Plan Document (other than the Developer or any Affiliate) to timely proceed without substantially increased costs.

"Mission Bay Subdivision Ordinance" means the Subdivision Code of the City and County of San Francisco for the Mission Bay Project Area, also referred to as the Mission Bay Subdivision Code in the Design Review and Document Approval Procedure.

"Mission Bay Subdivision Ordinance and Regulations" means the Mission Bay Subdivision Ordinance, together with the Mission Bay Subdivision Regulations adopted by order of the City Department of Public Works.

"Muni" means the San Francisco Municipal Railway of the City and County of San Francisco.

"Net Available Increment" means the tax increment revenues arising under the Redevelopment Plan and received by the Agency, exclusive of: (i) Housing Increment (calculated solely at 20% of the total tax revenues received by the Agency pursuant to the Redevelopment Plan), (ii) tax increment revenues required by Redevelopment Law to be paid to other taxing agencies (initially, 20% of the total tax increment revenues received by the Agency, and otherwise pursuant to the Redevelopment Law and the Redevelopment Plan), and (iii) tax increment revenues needed to pay Agency Costs (as defined in the Financing Plan) not otherwise paid from other sources.

"Owner" means Catellus Development Corporation, a Delaware corporation, and its Transferees as permitted under the South OPA, except as otherwise provided in Section 3.9, Section 5.3, Article 6, Article 10 and Section 12.2 of the South OPA and the Program in Diversity/Economic Development Program.

"Payment Request" means a document, substantially in the form of Exhibit A hereto, to be used by the Developer in requesting payment of an Acquisition Price.

"Permit to Enter" means the Permit to Enter attached as Attachment F to the South OPA.

"Person" means any natural person, corporation, firm, partnership, association, joint venture, governmental or political subdivision or agency or any similar entity.

"Plan Documents" means the Redevelopment Plan and its implementing documents including, without limitation, any owner participation agreements, the Mission Bay South Design for Development and the Mission Bay Subdivision Ordinance and regulations adopted thereunder.

"Plans" means the Construction Documents, specifications, schedules and related construction contracts for the Acquisition Facilities or any Components thereof approved pursuant to the Design Review and Document Approval Procedure, applicable City Regulations (consistent with the Redevelopment Plan and Interagency Cooperation Agreement), or any other applicable standards of the entity (if other than the City or the Agency) that will own, operate or maintain the Acquisition Facilities when completed and acquired.

"Required Infrastructure Lands" has the meaning set forth in Section 5.4 of the South OPA.

"Program in Diversity/Economic Development Program" means the Mission Bay South Program in Diversity/Economic Development Program attached as Attachment H to the South OPA.

"Public Financing" means a debt obligation of the Agency the net proceeds of which are used to finance or refinance Infrastructure.

"Redevelopment Plan" means the Mission Bay South Redevelopment Plan for the Mission Bay South Redevelopment Project, approved pursuant to Ordinance No. 335-98, adopted by the Board of Supervisors of the City on November 2, 1998.

"South OPA" means the Mission Bay South Owner Participation Agreement, entered into as of November 16, 1998, between the Agency and Catellus Development Corporation.

"South Plan Area" means the land described in Attachment A to the South OPA.

"Special Taxes" means special taxes authorized to be levied in the District under the Act and the proceedings to establish the District.

"State" means the State of California.

"Supplement" means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including (i) any amendments to the list of Components in Exhibit B-1 and the list of reimbursements in Exhibit C, and/or (ii) the addition to Exhibit B of additional Acquisition Facilities (and Components) to be acquired hereunder.

"Transfer" means to sell, assign, convey, lease, sublease, mortgage, hypothecate or otherwise alienate, excluding therefrom any grant of occupancy rights for permanent improvements such as space leases or granted in connection with existing improvements within the South Plan Area.

"Transfer Entity" means any Person to whom a Transfer of all or substantially all of the undeveloped property in the South Plan Area has been effected by a Transfer permitted under the South OPA.

"Unavoidable Delay" means a delay in the performance of any term or condition of this Agreement that is caused by strikes or other labor disputes, acts of God, shortage of or inability to obtain labor or materials, damage to works in progress by any casualty, except to the extent caused by the negligence of the Person claiming the benefit of the Unavoidable Delay, lawsuits brought by plaintiffs unaffiliated with the Person claiming the benefit of Unavoidable Delay, restrictions imposed or mandated by governmental or quasi-governmental entities (other than the party claiming the unavoidable delay or delays by City Agencies) in issuing requisite approvals or consents, enemy action, civil commotion, fire, flood, earthquake or any other unforeseeable event beyond the reasonable control of a Person.

2. FUNDING

2.1 Agency Proceedings; Acquisition Facilities; Supplements to Exhibit B and B-1.

(a) The Agency shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of Public Financings; provided, however, that nothing herein shall be construed as requiring the Agency to issue a Public Financing except to the extent provided for in the Financing Plan.

(b) The Agency shall be obligated to purchase from the Developer under this Acquisition Agreement only the Acquisition Facilities listed in Exhibit B hereto, as such Exhibit may be amended and/or supplemented by any Supplement in accordance with Section 2.1(c) below.

(c) Upon the written request of the Developer, accompanied by a list of Acquisition Facilities and proposed Components thereof to be acquired hereunder, together with the proposed Budgeted Costs thereof, the Director of Public Works shall meet with representatives of the Developer to establish mutually acceptable supplements to Exhibit B and Exhibit B-1 to this Acquisition Agreement consistent with the Financing Plan and Interagency Cooperation Agreement. The Director of Public Works shall be deemed to have accepted any proposed supplement of the Developer unless, within sixty (60) days of the submittal thereof, the Director of Public Works shall send the Developer a written objection to all or any portion thereof. Such objection must be based upon the following grounds (the determination of which shall be made in good faith): (i) the unacceptability of any Component because it is not a complete, functional portion of an Acquisition Facility or a proposed Acquisition Facility is not included in the Infrastructure, (ii) the Budgeted Cost of an Acquisition Facility or Component appears to be unreasonable in the circumstances or otherwise in excess of the reasonably expected Actual Cost thereof or (iii) it is not permissible under the Act or the South OPA (including the Financing Plan). The Developer may resubmit any proposed supplement to Exhibit B [or B-1] (or portion thereof) to which a written objection is made by the Director of Public Works, and the Director of Public Works shall have thirty (30) days to review any such resubmittal. The Developer shall provide any supporting materials reasonably requested by the Director of Public Works in writing relative to an analysis of the proposed supplement, and the applicable time periods mentioned in the preceding sentences shall be tolled until such materials have been provided to the Director. Any proposed supplement to Exhibit B and B-1 (or any resubmittal thereof) not subject to a written objection by the Director of Public Works within the applicable period shall be deemed to be a part of Exhibit B and B-1, as applicable, hereof for all purposes of this Acquisition Agreement.

2.2 Source of Funds for Acquisition Prices.

(a) The Agency shall not be obligated to pay the Acquisition Price of any Acquisition Facility or any Components thereof under this Agreement except from Acquisition Funds. The Agency shall establish one or more accounts into which it shall deposit, upon receipt, Acquisition Funds pending their use for purposes of this Acquisition Agreement or as otherwise provided in the Financing Plan.

(b) The Developer acknowledges that a portion of the proceeds of some Public Financings may be deposited in an escrow fund established as necessary to comply with the Act, the Goals for CFDs or for credit concerns, and would become Acquisition Funds only upon satisfaction of the requirements and otherwise in the amounts specified in the applicable document authorizing the issuance of the Public Financing. The Agency agrees that, upon written request of the Developer, it will take all reasonable actions necessary to make the determinations and present the documents necessary under any such authorizing document to cause the release of funds from an escrow fund.

(c) While the Agency now expects to issue Public Financings, the Agency shall be under no obligation to issue any Public Financing except to the extent provided in the Financing Plan and makes no warranty, express or implied, that the proceeds thereof, together with other Acquisition Funds, will be sufficient to pay for all of the Infrastructure, including the Acquisition Facilities.

(d) It is acknowledged that the Fiscal Agent Agreement provides for the establishment of a Bond Proceeds Account and a Tax Increment Account from which Acquisition Funds are to be disbursed to pay the Acquisition Prices of Acquisition Facilities and Components, and that the Fiscal Agent Agreement provides for the use of amounts in the Bond Proceeds Account for such purpose prior to the use of amounts in the Tax Increment Account unless the Agency otherwise directs the Fiscal Agent. Upon the written request of the Developer, the Agency

agrees to direct the Fiscal Agent to apply amounts designated in such request on deposit in the Tax Increment Account prior to the use of amounts in the Bond Proceeds Account so long as such action will not adversely affect the exclusion from gross income of the interest on the bonds issued pursuant to the Fiscal Agent Agreement and is not otherwise inconsistent with the provisions of the Financing Plan.

(e) It is further acknowledged that the Fiscal Agent Agreement allows for a mandatory redemption of the bonds issued thereunder, in part, from amounts in the Bond Proceeds Account established thereunder, if the Finance Director (as defined in the Fiscal Agent Agreement) makes a determination or receives a certificate to the effect that the Project (as defined in the Fiscal Agent Agreement) has been abandoned. The Agency agrees to provide written notice to the Developer if at any time the Agency believes that work on the Project has ceased for a continuous period of nine (9) months and the Agency anticipates that it may, in the future, take actions under the Fiscal Agent Agreement to cause a redemption of the bonds as described in the prior sentence. The Agency acknowledges that Unavoidable Delays may occur which result in a cessation of work on the Project (as defined in the Fiscal Agent Agreement) for periods in excess of twelve (12) consecutive months, and that such circumstances may not constitute abandonment of the Project giving rise to grounds for a mandatory redemption of bonds issued under the Fiscal Agent Agreement.

(f) The Agency will use its best efforts to provide the Developer with the accounting records provided by the Fiscal Agent under Section 7.03 of the Fiscal Agent Agreement.

2.3 Public Financing Proceeds.

(a) The proceeds of any Public Financing shall be deposited, held, invested, reinvested and disbursed as provided in the instrument providing for the issuance thereof, all in a manner not inconsistent with the Financing Plan and this Agreement. A portion of the proceeds of each Public Financing may be used to fund reserves for debt service, to pay interest on a Public Financing (commonly referred to as "capitalized interest"), and to pay costs of issuance and therefore would not constitute Acquisition Funds.

(b) The Developer agrees that the Agency alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to any Public Financing authorizing document, and that the Developer has no right whatsoever to direct any such investment. The Agency shall invest such funds in a manner consistent with the Agency's investment policies for similar financings and otherwise in accordance with all applicable laws and the Fiscal Agent Agreement. The Agency shall have no responsibility whatsoever to the Developer with respect to any investment of Acquisition Funds prior to their use for purposes of this Acquisition Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available as Acquisition Funds.

(c) The Developer acknowledges that its obligation as an owner of real property in a CFD to pay Special Taxes levied in the CFD is not in any way dependent on: (i) the availability of Acquisition Funds to pay for all or any portion of the Acquisition Facilities or Components thereof hereunder, or (ii) the alleged or actual misconduct of the Agency in the performance of its obligations under this Acquisition Agreement, any Fiscal Agent Agreement, the South OPA, or any agreement to which the Developer or the Agency is a signatory.

(d) The Developer and the Agency hereby acknowledge that any lack of availability of Acquisition Funds to pay the Acquisition Price of Infrastructure or any Components thereof, in and of itself, shall in no way modify any rights or obligations of the Developer under the South OPA.

(e) The Agency may establish a separate Agency Account and deposit a portion of the proceeds of any Public Financing therein, to the extent it reasonably identifies Agency Costs incurred or to be incurred by the Agency or the City in discharging their obligations hereunder. The Agency may draw on such funds as necessary to pay such Agency Costs.

2.4 Reimbursements.

(a) The Agency acknowledges that, in addition to its acquisition of Facilities and payment for Components thereof hereunder, it will use a portion of the proceeds of the Public Financings to reimburse the Developer, to the extent permitted under the Act, for certain costs for which the Developer has advanced its own funds, including (i) CFD formation costs eligible to be financed by a CFD, (ii) certain freeway demolition costs, (iii) contributions by the Developer for Infrastructure constructed by others, such as contributions referred to in Section 2.B.v. of the Financing Plan related to sewer odor conditions and contributions for railway improvements, and (iv) other costs incurred by the Developer in anticipation of reimbursement from the proceeds of a Public Financing, such as advances pursuant to Section 2.E.i. of the Financing Plan in respect of consultant costs. The Agency shall use a portion of the proceeds of Public Financings issued by the Agency to reimburse the Developer for such advances pursuant to the Financing Plan, as described in Exhibit C.

Notwithstanding the foregoing, the Agency agrees that the Developer may include in any Payment Request submitted under the terms of this Acquisition Agreement a line item for reimbursement of amounts theretofore paid by or on behalf of the Developer to the Peninsula Corridor Joint Powers Board (the "JPB") under and pursuant to the Railroad Construction and Maintenance Agreement for Common Street Grade Crossing Project, between the JPB and the Developer, and to the extent that the Developer provides with any such Payment Request evidence satisfactory to the Director of Public Works that the amount requested to be reimbursed was paid to the JPB in respect of the cost of Infrastructure (such as copies of invoices from the JPB and copies of corresponding checks in payment thereof or other evidence of payment by or on behalf of the Developer), the Agency will promptly reimburse the amounts so expended from Acquisition Funds, subject to the priority for the use of funds under Section 2.5 hereof.

(b) The Agency and the Developer agree to amend Exhibit C hereto from time to time to add additional items, to be reimbursed from the proceeds of future Public Financings, that are eligible for such reimbursement as described in Section 2.4(a) but were not included on Exhibit C at the time of execution of this Agreement.

2.5 Priority for Police/Fire Facility Funding. The Developer and the Agency acknowledge and agree that under the provisions of Section 4.4(b) of the South OPA, upon satisfaction of the conditions set forth in clauses (i) and (ii) of the first sentence of said Section 4.4(b) (the "Conditions"), the City may obtain CFD funds in the amounts specified in said sentence. In order to implement the provisions of Section 4.4 of the South OPA, the Developer and the Agency hereby agree that, notwithstanding any other provision of this Agreement, upon satisfaction of the Conditions, the Agency shall have the right to use all available CFD Funds permitted under the applicable bond documents to make payments directly to the City required under Section 4.4(b) of the South OPA, and following the date on which the Conditions have been satisfied and until the obligation to the City under said Section 4.4(b) has been fully satisfied and provided that the Agency shall have expeditiously proceeded to obtain such funds, no Acquisition Funds will be used to pay Acquisition Prices of Acquisition Facilities or Components not theretofore paid under this Acquisition Agreement.

2.6. Costs of the Director.

(a) It is acknowledged that the Fiscal Agent Agreement provides for the Agency Account, that it is expected that the proceeds of Public Financings may be deposited to such Agency Account, and that it is intended that costs and expenses of the Director, and any consultants engaged by the Director or the City, related to the activities of the Director under this Acquisition Agreement will be charged against amounts in the Agency Account.

(b) In the event that amounts in the Agency Account are insufficient to fully pay the costs and expenses described in the preceding clause (a), and there is not sufficient Net Available Increment (excluding for purposes of this clause (b) amounts described in clause (iii) of the definition of Net Available Increment in Section 1.1 hereof) the Developer agrees to promptly pay, following submission of an invoice therefor, any of such costs and expenses.

(c) The Agency agrees that, upon the written request of the Developer, it will consider billing the Developer directly for costs and expenses described in the preceding clause (a), as opposed to funding amounts in the Agency Account or using Net Available Increment (excluding for purposes of this clause (c) amounts describe in clause (iii) of the definition of Net Available Increment in Section 1.1 hereof) for such purpose. The Agency will accommodate any such request, until it is rescinded in writing by the Developer, if the Developer has theretofore timely made any payment required under the preceding clause (b), and the Agency has no other material reason not to proceed in the manner requested by the Developer.

3. CONSTRUCTION OF INFRASTRUCTURE

3.1 Plans. To the extent that it has not already done so, the Developer shall prepare and obtain applicable governmental approval of all Plans for the Acquisition Facilities in accordance with the South OPA and the City Regulations or, as applicable, regulations of any other public entity that will own and operate the Acquisition Facilities. Copies of all Plans shall be provided by the Developer to the Director of Public Works upon request therefor, and, in any event, as built drawings and a written assignment (provided that the same can be reasonably obtained) of the Plans for any Acquisition Facility shall be provided to the City prior to its acceptance of a related Facility.

3.2 Duty of Developer to Construct.

(a) All Acquisition Facilities shall be constructed by or at the direction of the Developer in accordance with the South OPA and the applicable Construction Documents. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of Infrastructure in a good, workpersonlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their good faith efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Acquisition Facilities.

(b) To the extent required under the South OPA, the Developer shall be obligated (i) to construct and convey to the City (or other applicable governmental agency) all Acquisition Facilities and Components thereof, and (ii) to use its own funds to pay all costs thereof in excess of the Acquisition Prices thereof to be paid therefor hereunder, subject in all events to the terms of the Financing Plan.

(c) Except as otherwise provided in the South OPA, the Developer shall not be relieved of its obligation to construct each Acquisition Facility and Component thereof and convey each such Acquisition Facility in accordance with the terms hereof, even if, (i) because of the limitations imposed by Section 4.6 hereof, the Acquisition Price for such Component or Acquisition Facility is less than the Actual Cost, or cost to the Developer, of such Component or Acquisition Facility, or (ii) there are insufficient Acquisition Funds then available to pay the Acquisition Prices thereof at the time the Developer submits a Payment Request therefor.

3.3 Relationship to Public Works Contracting Requirements.

(a) This Acquisition Agreement is for the acquisition by the City of the Acquisition Facilities and payment for Components thereof from time to time, from Acquisition Funds and is not intended to be a public works contract. The Agency and the Developer acknowledge and agree that the Infrastructure is of local, and not state-wide concern, and that the provisions of the California Public Contract Code shall not apply to the construction of the Infrastructure. The Agency and the Developer further acknowledge and agree that City public works contracting requirements are not applicable to the construction and acquisition of Infrastructure. The Agency and the Developer agree that the Developer shall award all contracts for the construction of the Acquisition Facilities and the Components thereof, and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of the Acquisition Facilities and that compliance with the Public Contract Code and such City requirements with respect to the Acquisition Facilities would work an incongruity and would not produce an advantage to the Agency or any CFD.

(b) Notwithstanding the foregoing, the Developer shall award all contracts for construction of the Acquisition Facilities, and materials related thereto by means of a bid process consistent with this Section 3.3(b) or otherwise acceptable to the Director of Public Works, in each case consistent with the requirements of the South OPA and applicable City Regulations (including but not limited to the Program in Diversity/Economic Development Program, and prevailing wage requirements contained therein). The Developer shall establish a list of written criteria acceptable to the Director of Public Works (including experience, ability to perform on schedule and financial ability) to determine qualified general contractors for any contract. Such general contractors shall comply with any applicable provisions of the South OPA (including but not limited to the Program in Diversity/Economic Development Program and prevailing wage requirements, provided that nothing in this Agreement shall modify the remedy provisions of the Program in Diversity/ Economic Development Program). Formal bids shall be requested from those entities on the list of qualified contractors.

The Developer shall prepare bid packages, including engineering reports and estimates, for each of the Acquisition Facilities, and shall submit such packages to the Director of Public Works, reasonably in advance of the anticipated bid, for review. Upon agreement by the Director of Public Works and the Developer on the content of such bid packages and a schedule of bid prices, plus an acceptable margin of variance, the Developer may proceed to take bids on the applicable Acquisition Facilities. The Agency shall meet with the qualified general contractors to discuss the applicable requirements of the Program in Diversity/ Economic Development Program. At the reasonable request of the Developer, the Director of Public Works shall also meet with the qualified general contractors to discuss the requirements of the particular contract to be bid.

Bids for each Component shall be submitted to the Developer prior to the time and date prescribed for bid opening. If a bid is within the constraints of the approved bid package, the Developer shall award the applicable contract to the lowest responsible bidder. If all bids are in excess of the bid parameters, the Developer shall obtain the consent of the Director of Public Works prior to awarding the contract. Upon written request of the Director, the Developer

shall provide an analysis of bids for construction and materials for the Acquisition Facilities, constructed or to be constructed by or under the supervision of the Developer indicating how the winning bid was determined and how it was consistent with the applicable bid package.

(c) The Developer shall develop or cause to be developed and shall maintain or cause to be maintained a cost-loaded project schedule, using the critical path method, providing for all major project elements included in the construction of the Acquisition Facilities to be acquired hereunder, so that the whole project is scheduled in an efficient manner. The Developer shall provide the Director of Public Works with complete copies of the schedule and each update to the schedule for the Director's review.

(d) From time to time at the request of the Director, representatives of the Developer shall meet and confer with the Director of Public Works and Agency staff, consultants and contractors regarding matters arising hereunder with respect to the Acquisition Facilities, Components and the progress in constructing and acquiring the same, and as to any other matter related to the Acquisition Facilities or this Acquisition Agreement. The Developer shall advise the Director of Public Works in advance of any coordination and scheduling meetings to be held with contractors relating to the Acquisition Facilities, in the ordinary course of performance of an individual contract. The Director of Public Works shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the Director of Public Works to resolve disputes and/or ensure the proper completion of the Acquisition Facilities, and, at the request of the Developer, shall attend such meetings.

3.4 Independent Contractor.

(a) In performing this Acquisition Agreement, the Developer is an independent contractor and not the agent or employee of the Agency, the City or any CFD. Except as otherwise provided in this Acquisition Agreement, none of the Agency, the City or any CFD shall be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer.

(b) The Agency has determined that it would obtain no advantage by undertaking the construction by the Agency directly of the Infrastructure, and that the provisions of this Acquisition Agreement require that the Acquisition Facilities be constructed by the Developer as if they had been constructed under the direction and supervision of the Agency.

3.5 Performance and Payment Bonds. Subject to the provisions of the South OPA and the Interagency Cooperation Agreement, the Developer agrees, in accordance with applicable City Regulations, to post performance and payment bonds with respect to the construction of Acquisition Facilities to the extent that the projected Acquisition Funds are reasonably determined by the Agency to be insufficient (in time or amount) to pay the expected Acquisition Prices of the Acquisition Facilities; provided that to the extent not otherwise required by the applicable City Regulations, the Developer shall require all contractors and/or subcontractors it employs in connection with the construction of Acquisition Facilities to provide labor and materials and performance bonds (the premiums for which shall constitute Actual Costs of the related Acquisition Facilities) which name the Agency and the City as additional insureds.

3.6 Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Acquisition Facilities, and all such contracts and supplemental agreements shall be submitted to the Director. Prior approval of supplemental agreements by the Director of Public Works shall only be required for such change orders which

in any way materially alter the quality or character or expected future maintenance costs of the subject Acquisition Facilities, or which involve an amount equal to the lesser of five percent (5%) of the amount of the bid for the Acquisition Facility involved or \$50,000. The Director of Public Works shall approve or deny all such contracts or supplements submitted to it (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director of Public Works thereof. Any such contract or supplemental agreement properly submitted to the Director of Public Works and not denied in writing by the Director of Public Works within such 10 day period shall be deemed to be approved in the form submitted for all purposes of this Acquisition Agreement.

3.7 Time for Completion. The Developer acknowledges and agrees that the reasonably anticipated time for the completion of the Acquisition Facilities or Components thereof must satisfy the requirements of applicable federal tax laws and regulations with respect to the use of bond proceeds to finance such Acquisition Facilities or Components, and the Developer shall provide the Agency with such reasonably requested certificates or other assurances as may be required in connection therewith.

3.8 School Facilities and Rail Facilities. Pursuant to Sections 4.5 and 5.3 of the South OPA, Infrastructure, for purposes of this Acquisition Agreement, may include certain costs related to school facilities and rail facilities. It is hereby acknowledged that any such facilities will be eligible for funding with CFD Public Financing or Special Tax proceeds only to the extent permitted under Sections 53313.9 and 53316.2, as applicable, of the Act or as otherwise permitted under applicable law.

4. ACQUISITION AND PAYMENT

4.1 Inspection. No payment hereunder shall be made by the Agency to the Developer for an Acquisition Facility or Component thereof until the Acquisition Facility or Component thereof has been inspected and found by the Director of Public Works to be completed substantially in accordance with the approved Plans and otherwise consistent with the South OPA, the Interagency Cooperation Agreement and any applicable City Regulations. The Agency shall cooperate with the Developer in obtaining applicable approvals consistent with the terms of the South OPA. Except as otherwise provided in the South OPA, the Developer agrees to pay all inspection, permit and other similar fees of the Agency or the City applicable to construction of the Acquisition Facilities, not otherwise paid from an Agency Account, subject to reimbursement as a component of the Acquisition Price of the related Acquisition Facilities.

4.2 Agreement to Sell and Purchase Facilities. The Developer hereby agrees to sell the Acquisition Facilities listed in Exhibit B hereto, as amended from time to time, to the Agency (or other applicable public agency that will own an Acquisition Facility), and the Agency hereby agrees to use Acquisition Funds when available to pay the Acquisition Prices thereof to the Developer, subject to the terms and conditions hereof and of the Financing Plan. The Agency shall not be obligated to purchase any Acquisition Facility until the Acquisition Facility is completed and the Acceptance Date for such Acquisition Facility has occurred; provided that the Agency has agreed hereunder to make payments to the Developer for certain Components of Acquisition Facilities expressly shown in Exhibit B-1 hereto, as it may be supplemented by any Supplement prior to completion of the Acquisition Facility or the transfer of title to the property underlying it to the applicable governmental agency or utility. The Developer acknowledges that the Components have been identified for payment purposes only, and that the City (or other applicable public agency that will own an Acquisition Facility) shall not be obligated to accept an Acquisition Facility of which a Component is a part until the entire Acquisition Facility has been completed. The Agency acknowledges that the Components do not have to be

accepted by the City (or other applicable public agency that will own an Acquisition Facility) as a condition precedent to the payment of the Acquisition Price therefor, but any such payment shall not be made until the Component has been completed in accordance with the Plans therefor and any City Regulations applicable thereto, as determined in accordance with the Interagency Cooperation Agreement. After the Developer has met the inspection requirements set forth in Section 4.1, the Agency shall use good faith efforts to cause the City to make the Acceptance Date for a final Component to occur by causing the City to accept dedication of any Infrastructure or Open Space Parcels required to be dedicated to the City, in accordance with the Interagency Cooperation Agreement.

4.3 Payment Requests. In order to receive the Acquisition Price for a completed Acquisition Facility or Component thereof, inspection thereof under Section 4.1 shall have been made and the Developer shall deliver to the Director of Public Works: (i) a Payment Request in the form of Exhibit A hereto for such Acquisition Facility or Component, together with all attachments and exhibits required by Exhibit A and this Section 4.3 to be included therewith, in an organized manner, and (ii) if payment is requested for a completed Acquisition Facility, (a) if the property on which the Acquisition Facility is located is not owned by the Agency (or other applicable public agency that will own the Acquisition Facility) at the time of the request, a copy of the recorded documents conveying to the Agency (or other applicable public agency that will own the Acquisition Facility) Acceptable Title to the real property on, in or over which such Acquisition Facility is located, as described in Section 5.1 hereof, (b) a copy of the recorded notice of completion of such Acquisition Facility (if applicable), (c) an assignment of any warranties and guaranties for such Acquisition Facility, in a form acceptable to the Agency, (d) a computation showing any reimbursements from Muni that may be payable with respect to the Acquisition Facilities, which amounts shall be deducted from the determination of Actual Cost for the related Acquisition Facility or Component, and (e) an assignment to the Agency, to the extent permissible, of any reimbursements from third parties (other than Muni) that may be payable with respect to the Acquisition Facilities, such as utility or other reimbursements, to be used by the Agency to repay Public Financings or to be added to the Acquisition Funds.

4.4 Processing Payment Requests. Upon receipt of a Payment Request (and all accompanying documentation), the Director of Public Works shall conduct a review in order to confirm that such request is complete, that such Component or Acquisition Facility identified therein was constructed substantially in accordance with the requirements of Section 4.1 of this Agreement, and to verify and approve the Actual Cost of such Component or Acquisition Facility specified in such Payment Request. The Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review. For any Acquisition Facilities to be acquired by a public entity or utility other than the City or the Agency, the Developer shall provide evidence acceptable to the Director of Public Works that such Acquisition Facilities are acceptable to such entity or utility. Within ten (10) business days of receipt of any Payment Request, the Director of Public Works shall diligently attempt to complete his or her review of the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. The Director of Public Works shall provide a written approval or denial (specifying the reason for any denial) of each completed Payment Request within 30 days of its submittal, or, if additional documentation has been requested from the Developer with respect to a Payment Request within the period required by the next sentence, within 30 days of the submission by the Developer of the additional documentation. Failure of the Director of Public Works to notify the Developer that a Payment Request is incomplete on or before ten (10) days after the Developer first notifies the Director that the Developer has not received notification within the 10-business day period therefor as provided above (by delivery by the Developer of a written notice in the form of Exhibit D hereto), shall be deemed to mean that the Payment Request is complete. All requests

for payment for the costs of any Component or Acquisition Facility contained in a Payment Request that are not specifically denied by the Director of Public Works within thirty (30) days after the Developer first notifies the Director of failure to respond within the applicable 30-day period for review specified above, shall be deemed to be approved in the form submitted for all purposes of this Agreement.

4.5 Payment.

(a) Upon approval or deemed approval of the Payment Request by the Director as provided in Section 4.4 above, the Director of Public Works shall sign the Payment Request and forward the same to the Fiscal Agent, with a copy to the Deputy Executive Director, Finance Administration of the Agency. In the event of the deemed approval of a Payment Request, the Developer shall have the right to forward to the Payment Request directly to the Fiscal Agent, with copies thereof to the Deputy Executive Director, Finance Administration of the Agency and the Director of Public Works. A Payment Request (or a Payment Request that is deemed approved pursuant to Section 4.4 above), shall be paid by the Fiscal Agent in accordance with the provisions of the Fiscal Agent Agreement or, if there are insufficient funds available in the bond proceeds account or the tax increment proceeds account of the Improvement Fund, the Deputy Executive Director, Finance Administration of the Agency shall, within the then current Agency financial accounting payment cycle but in any event within fifteen (15) business days of receipt of such Payment Request, cause the same to be paid by the Agency from available Acquisition Funds. The source of Acquisition Funds on which to draw to meet any Payment Request shall be determined in accordance with the procedures set forth in the Financing Plan. Any such Payment Request not paid in full due to an insufficiency of Acquisition Funds, shall be paid promptly following the availability of additional Acquisition Funds. The Agency agrees to take all actions reasonably required to cause the Fiscal Agent to satisfy Payment Requests submitted to the Fiscal Agent in accordance with this Acquisition Agreement, subject to the availability of Acquisition Funds in the bond proceeds account or the tax increment proceeds account of the Improvement Fund.

(b) Once paid in full, the Acquisition Price paid for any Acquisition Facility or Component shall constitute payment in full for such Acquisition Facility or Component, as applicable, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such Acquisition Facility or Component, as specified in the Plans.

4.6 Restrictions on Payments. Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 4.2 and 4.5(a) hereof:

A. Amounts of Payments.

(i) Subject to the following paragraphs of this Section 4.6, payments for each Component or Acquisition Facility will be made only in the amount of the Acquisition Price for the respective Component or Acquisition Facility, not to exceed the Budgeted Cost thereof, except as provided in the remainder of this Section 4.6A(i). The Budgeted Cost for each Component or Acquisition Facility shall be the budgeted cost for such item set forth on Exhibit B as increased by (i) the increase, if any, between the amount of any contract awarded pursuant to Section 3.3(b) and the Budgeted Cost for such Acquisition Facility and (ii) (a) the cost of any change orders approved by the Director of Public Works or (b) any amount otherwise permitted pursuant to Section 3.6. To the extent the Actual Cost of a Component or Acquisition Facility exceeds the Budgeted Cost therefore, the Acquisition Price shall equal the Actual Cost to the extent that: (i) the Director of Public Works reasonably concludes that the increase was due to

changes that were necessary and appropriate, and (ii) the Agency reasonably expects there will be sufficient Acquisition Funds during the life of the Redevelopment Plan to pay for the reasonably expected costs of all remaining Infrastructure.

(ii) Nothing herein shall require the Agency in any event to pay more than the Actual Cost of an Acquisition Facility or Component. The parties hereto acknowledge and agree that all payments to the Developer for the Acquisition Prices of Acquisition Facilities or Components are intended to be reimbursements to the Developer for monies already expended or for immediate payment by the Developer (or directly by the Agency) to third parties in respect of such Acquisition Facilities and/or Components. The Developer shall provide evidence reasonably satisfactory to the Director that payments have been received by the applicable contractor or other third party with respect to any amounts to be reimbursed to the Developer. Such evidence may consist of canceled checks, bank statements, lien releases not conditioned on payment or other similar evidence that such payments have been received.

(iii) Notwithstanding any other provision of this Acquisition Agreement, payments in respect of Actual Costs described in clause (ii) of the definition of Actual Costs in Section 1.1 (the "Clause ii Amounts") shall be made as follows: (a) at the time the Developer submits a Payment Request for the first Component of an Acquisition Facility, the Developer shall provide a reasonable estimate, based on documented costs per clause (ii) above, of the total expected Actual Costs of the Acquisition Facility of which the Component is a part, (b) payment for the Clause ii Amounts shall be paid with other Actual Costs of the related Acquisition Facility pro rata, based upon the estimate of such other Actual Costs described in the preceding clause (a) and the total amount of such Clause ii Amounts, (c) in connection with the Payment Request for the final Component of any Acquisition Facility, the portion of the Clause ii Amounts to be paid pursuant to such Payment Request shall be adjusted to be the then remaining Clause ii Amount related to the applicable Acquisition Facility not theretofore paid to the Developer.

(iv) The Developer shall make reasonable allocations of the costs of any joint trenches to the Infrastructure and non-Infrastructure to be installed in any such trench, such that Actual Costs related to such trench shall only include the portion of the costs thereof reasonably allocable to the Infrastructure.

(v) The Developer shall exclude from any Payment Request the portion of any costs related to Infrastructure that are eligible for reimbursement from Muni. The Agency shall be entitled to delay payments in respect of costs for which any such reimbursements may apply until the amount eligible for reimbursement can reasonably be determined.

B. Joint or Third Party Payments. The Agency may make any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing or (unless the Developer provides sureties, undertakings, securities and/or lien bonds of the Developer or appropriate contractors or subcontractors that are deemed satisfactory by the Director to assure payment of such claims) as the Agency otherwise determines such joint or third party payment is necessary to obtain lien releases.

C. Withholding Payments.

(i) The Agency shall be entitled, but shall not be required, to withhold any payment hereunder for a Component or an Acquisition Facility if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, possessory interest taxes, or Special Taxes levied in the CFD. In the event of any such delinquency, the Agency shall only make payments hereunder directly to contractors or other

third parties employed in connection with the construction of the Acquisition Facilities or a Transfer Entity, until such time as the Developer provides the Director of Public Works with evidence that all such delinquent taxes and assessments have been paid.

(ii) The Agency shall withhold final payment for any Acquisition Facility (but not for any Component thereof) constructed on land, until Acceptable Title to such land has been conveyed to the public entity that will own the respective Facility (if such property is not already owned by the City or any other such public entity), as described in Article V hereof. Notwithstanding the foregoing, it is acknowledged that the Actual Cost of any land on which an Acquisition Facility or Component is to be constructed may be paid to the Developer or its designee, following conveyance of Acceptable Title thereto to the City (or other applicable governmental agency) and submission by the Developer of a Payment Request therefor.

(iii) The Agency shall be entitled to withhold any payment hereunder for a Component that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Component. The Agency shall waive this limitation upon the provision by the Developer of sureties, undertakings, and/or lien bonds of the Developer or appropriate contractors or subcontractors and deemed satisfactory by the Director of Public Works to assure payment of such claims.

(iv) The Agency shall be entitled to withhold payment for the final Component of any Acquisition Facility until: (a) the Director of Public Works determines that the Acquisition Facility is ready for its intended use and has been constructed substantially in accordance with all applicable City Regulations, (b) the Acceptance Date for the Acquisition Facility has occurred and the requirements of Section 5.1, if applicable to such Acquisition Facility, have been satisfied, and (c) general lien releases (conditioned solely upon payment from Acquisition Funds to be used to acquire such Acquisition Facility or final Component) have been submitted to the Director of Public Works for the Acquisition Facility. The Agency hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the Agency to indemnify the Agency and the City for any losses sustained by the Agency or the City because of any liens that may exist at the time of acceptance of such an Acquisition Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director, but that payment for the final Component of any Acquisition Facility may be withheld until all disputes with the applicable contractor or subcontractor have been resolved to the satisfaction of the Director. The Agency shall be entitled to withhold payment for the final Component of any Acquisition Facility to be owned by governmental entities other than the City, until the Developer provides the Director of Public Works with evidence that the governmental entity has accepted dedication of and/or title to the Acquisition Facility. The Director of Public Works shall promptly determine whether an Acquisition Facility is ready for intended use and is in compliance with applicable City Regulations under (a) above and shall so notify the Developer as soon as reasonably practicable in writing of his or her determination. If such determination is that an Acquisition Facility does not meet such requirements, the Director shall, in such notice, identify with particularity the reason(s) therefor.

(v) Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or material man's lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Acquisition Facilities or any Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall only be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director.

D. Retention. The Agency shall be entitled to withhold from the amounts payable pursuant to any Payment Request such amounts as are authorized by applicable City Regulations. The Agency shall be obligated to release any such retention for each Component in accordance with applicable City Regulations.

E. Frequency. Unless otherwise agreed to by the Director, no more than one Payment Request shall be submitted by the Developer in any calendar month.

F. Restrictions on Escrowed Funds. The Developer acknowledges that the provisions of a Public Financing authorizing document may require that Public Financing proceeds deposited to an escrow fund be used to redeem a portion of the Public Financing, and in such event will not be available as Acquisition Funds. The Developer agrees to assist the Agency in releasing funds from any such escrow fund as requested by the Agency.

4.7 Defective or Nonconforming Work. If any of the work done or materials furnished for a Facility or Component are found by the Director of Public Works to be defective or not in accordance with the applicable Plans and City Regulations: (i) and such finding is made prior to payment for the Acquisition Price of such Facility or Component hereunder, the Agency may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director, or (ii) and such finding is made after payment of the Acquisition Price of such Facility or Component, the Agency and the Developer shall act in accordance with applicable City Regulations, and the Interagency Cooperation Agreement and the Infrastructure Plan.

4.8 City Cooperation. The Agency shall use all reasonable efforts to obtain the compliance by the City with the provisions of the Interagency Cooperation Agreement, as they affect the acceptance by the City of Acquisition Facilities.

4.9 Street Sweeper. Notwithstanding the foregoing or any other provision of this Acquisition Agreement, (i) a street sweeper shall be considered an Acquisition Facility for purposes of this Agreement, and (ii) payment may be made for the Actual Costs related to the street sweeper promptly following its conveyance to, and the acceptance thereof, by the City and the submission by the Developer of a Payment Request therefor.

5. OWNERSHIP AND TRANSFER OF FACILITIES

5.1 Conveyance of Land, Title. The transfer of, maintenance of and right of entry with respect to all land on, in or over which any Infrastructure will be located shall be governed by the South OPA, the Interagency Cooperation Agreement and the City Regulations.

6. INSURANCE

6.1 Insurance Requirements. The Developer shall, at all times prior to the final Acceptance Date of any Acquisition Facilities comply with the insurance requirements set forth in any Permit to Enter issued by the Agency in accordance with the South OPA or by the City in accordance with the Interagency Cooperation Agreement, or otherwise in accordance with any other applicable City Regulations.

6.2 Evidence of Insurance. The Developer shall furnish to the Agency and the City, from time to time upon request of the Agency or the City's Risk Manager, a certificate of insurance (and/or, upon request by the Agency or the City's Risk Manager, a complete copy of any policy) regarding each insurance policy required to be maintained by the Developer under any Permit to Enter issued by the Agency in accordance with the South OPA or by the City in

accordance with the Interagency Cooperation Agreement, or otherwise in accordance with any other applicable City Regulations.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Representations, Covenants and Warranties of the Developer. The Developer represents and warrants for the benefit of the Agency as follows:

A. **Organization.** The Developer is a corporation duly organized and validly existing under the laws of the State of Delaware, is in compliance with the laws of such State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

B. **Authority.** The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. **Financial Records.** Until the final Acceptance Date for each Acquisition Facility, the Developer covenants to maintain proper books of record and account for the construction of such Acquisition Facility and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles.

D. **Land Sales.** The Developer agrees that in the event that it sells any land owned by it within the boundaries of a CFD, the Developer will (i) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement, and (ii) notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

E. **Additional Information.** The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the original purchasers of any Public Financing or the Agency related to the status of construction of improvements within the CFD, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the respective Public Financing.

F. **No Misrepresentation.** The Developer shall not make any material misrepresentation or omission in any written materials furnished to the Agency for use in connection with any preliminary official statement, official statement, bond purchase contract or continuing disclosure certificate or agreement used in connection with the sale of any Public Financing.

G. **Continuing Disclosure.** The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any Public Financing. The Developer acknowledges that a condition to the issuance of any Public Financing will be the then compliance by the Developer with its obligations under such agreement.

H. **Allocation of Sales Taxes.** The Developer shall cooperate reasonably with the Agency and the City in investigating the feasibility of a program to maximize the capture of sales taxes for the City with respect to any construction contracts and subcontracts for Acquisition Facilities or Components and other Improvements, provided that the Developer shall not be unreasonable in declining to implement such a program if it would incur other than immaterial costs in such implementation and such costs would not be reimbursed. Such a program could include, by way of example only, use of a purchasing agent. Before commencing construction of Acquisition Facilities under this Agreement, the Developer, the Agency and the

City shall meet and confer in good faith to evaluate the feasibility of implementing any such program and the relative financial benefits and burdens to the City and the Developer.

I. **Utility and Other Reimbursements.** The Developer agrees to use commercially reasonable efforts to enter into contractual arrangements with utility companies (such as Pacific Bell, Pacific Gas and Electric, TCI and RCN) to obtain reimbursements related to the installation of Infrastructure, under circumstances and in form similar to those obtained by the Developer in connection with the installation of infrastructure improvements being constructed by the Developer in other similar developments. The Developer agrees to submit any such agreements to the Director for reasonable review and comment at least twenty (20) days prior to the execution thereof, and to use diligent efforts to assist the Agency in collecting amounts due under any such agreements.

7.2 **Indemnification and Hold Harmless.** The Developer acknowledges and agrees that the indemnities of the Owner contained in the South OPA and in the consent to the Interagency Cooperation Agreement include, without limitation, any and all Losses (as defined therein) arising out of the breach of this Agreement by the Developer, the Developer's or any of its contractor's, agents', consultants' or representatives' negligent or defective construction of the Acquisition Facilities or any Components acquired from the Developer under this Agreement, the Developer's non-payment under contracts between the Developer and its consultants, engineers, advisors, contractors, subcontractors or suppliers in the provision of such Acquisition Facilities or Components or any claims of persons employed by the Developer or its contractors, agents, consultants or representatives to construct such Acquisition Facilities or Components, all subject to the terms, conditions, exceptions (including, without limitation, the exception for negligence or willful acts or omissions of the indemnified party) and limitations contained in the South OPA and the Interagency Cooperation Agreement, as applicable and further provided that any demand for indemnification hereunder with respect to negligent or defective construction must be brought, if at all, within two (2) years after the related Acquisition Facilities or Components are determined to be complete in accordance with the inspection described in Section 4.1 hereof.

8. TERMINATION

8.1 **Mutual Consent.** This Acquisition Agreement may be terminated by the mutual, written consent of the Agency and the Developer, in which event the Agency may let contracts for any remaining work related to the Acquisition Facilities not previously acquired from the Developer hereunder, and use all or any portion of the Acquisition Funds to pay for same, and in such event the Developer shall have no claim or right to any further payments for the Acquisition Price of Acquisition Facilities or Components hereunder, except for Acquisition Facilities or Components which have been completed but not yet paid for from Acquisition Funds or as otherwise may be provided in such written consent.

8.2 **Agency Election for Cause.**

(a) The following events shall constitute grounds for the Agency, at its option, to terminate this Acquisition Agreement, without the consent of the Developer:

(i) The Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(ii) The Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer, or shall suffer an attachment or levy of execution to be made against the property it owns within the CFD unless, in any of such cases,

such circumstance shall have been terminated or released within ninety (90) days thereafter.

(iii) The Developer or any of its Affiliates shall at any time challenge the validity of a CFD established in accordance with, or any Public Financing issued in accordance with the Financing Plan, or the levy of Special Taxes within such a CFD, other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method of Apportionment of the Special Taxes for such CFD.

(b) If any such event described in Section 8.2(a) occurs, the Agency shall give written notice of its knowledge thereof to the Developer, and the Developer shall agree to meet and confer with the Director of Public Works and other appropriate Agency staff and consultants as to options available to assure timely completion of the Acquisition Facilities and Infrastructure not yet constructed. Such options may include, but not be limited to the termination of this Acquisition Agreement by the Agency. If the Agency elects to terminate this Acquisition Agreement, the Agency shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the Agency to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the Director of Public Works the grounds for such termination. Such period may be extended, at the sole discretion of the Agency, if the Developer, to the satisfaction of the Agency, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the Agency, the Developer has not eliminated or completely mitigated such grounds, to the satisfaction of the Agency, the Agency may then terminate this Acquisition Agreement.

(c) Notwithstanding the foregoing, so long as any event listed in Section 8.2(a) has occurred, notice of which has been given by the Agency to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the Agency may in its discretion cease making payments for the Acquisition Price of Acquisition Facilities or Components under Article 4 hereof to the Developer; provided that the Developer shall receive payment of the Acquisition Price of any Component or Acquisition Facility that was completed at the time of the occurrence of an event listed in Section 8.2(a) above upon submission of the documents and compliance with the other applicable requirements of this Acquisition Agreement.

8.3 Force Majeure. A party who is subject to Unavoidable Delay in the performance of an obligation hereunder, or in the satisfaction of a condition to the other party's performance hereunder, shall be entitled to a postponement of the time for performance of such obligation or satisfaction of such condition during the period of enforced delay attributable to an event of Unavoidable Delay, subject to the provisions of this Section 8.3.

The Unavoidable Delay provisions of this Section shall not apply unless (i) the party seeking to rely upon such provisions shall have given notice to the other party, within thirty (30) days after obtaining knowledge of the beginning of an enforced delay, of such delay and the cause or causes thereof, to the extent known, and (ii) a party claiming the Unavoidable Delay must at all times be acting diligently and in good faith to avoid foreseeable delays in performance, and to remove the cause of the delay or to develop a reasonable alternative means of performance.

9. MISCELLANEOUS

9.1 Limited Liability of Agency and City. Except as otherwise provided in the South OPA, the Developer agrees that any and all obligations of the Agency and/or the City arising out of or related to this Acquisition Agreement are special and limited obligations of the Agency

and the City, as applicable, and the Agency and City's obligations to make any payments hereunder are restricted entirely to available Acquisition Funds and from no other source. No member of the Board of Supervisors, the Commission, or Agency staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof. It is understood and agreed that no commissioners, members, officers, agents, or employees of the Agency or the City (or of either of its successors or assigns) shall be personally liable to the Developer nor shall any officers, directors, shareholders, agents or employees of the Developer (or of its successors or assigns) be personally liable to the Agency or the City in the event of any default or breach of this Agreement by the Agency or the Owner or for any amount which may become due to the Owner or the Agency or the City, as the case may be, hereunder or for any obligations of the parties under this Agreement.

9.2 Audit. The Director of Public Works and the Deputy Executive Director of Public Works-Finance Administration of the Agency, or their respective representatives, shall have the right, during normal business hours and upon the giving of reasonable prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer related to any of the Components and Acquisition Facilities, and any bids taken or received for the construction thereof or materials therefor.

9.3 Attorney's Fees. Should either party hereto institute any action or proceeding in court or other dispute resolution mechanism (DRM) to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 9.3 include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel for the Agency or the Developer shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the Agency's or the Developer's in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City, or, in the case of the Developer's in-house counsel, as employed by the outside counsel for the Developer.

9.4 Notices.

(a) A notice or communication under this Acquisition Agreement by either party to the other (or by or to the Director of Public Works) shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

(i) In the case of a notice or communication to the Agency:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Reference: Mission Bay South
Telefacsimile: (415) 749-2565

With copies to:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Mission Bay Project Manager
Reference: Mission Bay South
Telefacsimile: (415) 749-2585

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: General Counsel
Reference: Mission Bay South
Telefacsimile: (415) 749-2575

(ii) In the case of notice or communication to the Director of Public Works:

Department of Public Works
City and County of San Francisco
1680 Mission Street
San Francisco, CA 94103
Attn: Deputy Bureau Chief Bureau of Construction Management
Telefacsimile: (415) 554-8218

With copies to:

Mayor's Office of Economic Development
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place, Suite 436
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Reference: Mission Bay South
Telefacsimile: (415) 554-6018

Office of the City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102
Attn: Jesse C. Smith
Reference: Mission Bay South
Telefacsimile: (415) 554-3808

(iii) And in the case of a notice or communication to the Developer at:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: Mission Bay Development Office
Telefacsimile: (415) 974-3724

With a copies to:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: General Counsel
Telefacsimile: (415) 974-4613

And to:

O'Melveny & Myers
400 South Hope Street
Los Angeles, CA 90071
Attn: Kathryn Sanders
Telefacsimile: (213) 430-6407

Coblentz, Patch, Duffy & Bass, LLP
222 Kearny Street, 7th Floor
San Francisco, California 94108
Attn: Pamela S. Duffy
Telefacsimile: (415) 989-1663

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Acquisition Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (i) the Section of this Acquisition Agreement pursuant to which the notice is given and the action or response required, if any;
- (ii) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (iii) if approval is being requested, shall be clearly marked "Request for Approval under the Mission Bay South Acquisition Agreement"; and
- (iv) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

(b) Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Acquisition Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile.

(c) Any notice or request for review, consent or other determination or action by the Agency or the Director of Public Works that could be subject to deemed approval under any provision of this Agreement shall display prominently on the envelope enclosing such request (if any) and the first page of such request, substantially the following words: "MISSION BAY INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN DEEMED APPROVAL."

9.5 Successors and Assigns. This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Developer, except to a Transferee in connection with a Transfer permitted under the South OPA and upon such Transfer, the Developer shall be released from its obligations hereunder to the extent provided in the South OPA. In any event, any such assignment shall be in writing and shall clearly identify the scope of the rights and/or obligations assigned.

9.6 Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the South Plan Area. Nothing herein shall be construed as affecting the Agency's or the Developer's rights, or duties to perform their respective obligations, under the South OPA, the Interagency Cooperation Agreement and other Plan Documents and any applicable City Regulations. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are both a party.

9.7 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist upon and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

9.8 Parties in Interest. Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Agency, the City and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the Agency or the Developer shall be for the sole and exclusive benefit of the Agency, the City and the Developer. The City is an intended third party beneficiary of this Acquisition Agreement.

9.9 Amendment. This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the Agency and the Developer. Such amendment may provide for additional Acquisition Facilities (including Components thereof) to be added to Exhibit B hereto and, if applicable, Exhibit B-1 hereto pursuant to Section 2.1(c), and/or the additional reimbursements to be added to Exhibit C hereto pursuant to Section 2.4.

9.10 Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

9.11 Interpretation of Agreement. Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction is required of the Developer or the Agency pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Captions used in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Acquisition Agreement as of the day and year first-above written.

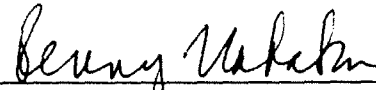

Authorized by Agency Resolution No.193-98, adopted September 17, 1998.

REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN
FRANCISCO, a public body, corporate and
politic

By: 
Executive Director

Its: 
Secretary

Approved as to form:

By: 
 Agency General Counsel

CATELLUS DEVELOPMENT
CORPORATION, a Delaware corporation

By: _____

Title: _____

By: _____

Title: _____

19026 01 J4048

IN WITNESS WHEREOF, the parties have executed this Acquisition Agreement as of the day and year first-above written.

Authorized by Agency Resolution No.193-98, adopted September 17, 1998.

REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN
FRANCISCO, a public body, corporate and
politic

By: _____
Executive Director

Its: _____
Secretary

Approved as to form:

By: _____
Agency General Counsel

CATELLUS DEVELOPMENT
CORPORATION, a Delaware corporation

By: _____
Title: Vice President

By: _____
Title: _____

ACQUISITION AGREEMENT

EXHIBIT A

FORM OF PAYMENT REQUEST

PAYMENT REQUEST NO. _____

The undersigned (the "Developer"), hereby requests payment in the total amount of \$_____ for the Acquisition Facilities (as defined in the Acquisition Agreement for Mission Bay South (the "Agreement") between the Redevelopment Agency of the City and County of San Francisco (the "Agency") and the Developer), or Components thereof (as described in Exhibit B-1 to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the Agency as follows:

1. He (she) is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed Acquisition Facility, the Developer has submitted or submits herewith to the City as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Acquisition Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Component, the Developer has in his construction office a marked set of drawings or similar plans and specifications for the Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.

3. All costs of the Acquisition Facilities or Components thereof for which payment is requested hereby are Actual Costs (as defined in the Agreement) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the Agency.

4. Supporting documentation (such as canceled checks or unconditional lien releases with respect to amounts to be reimbursed to the Developer, or such as third party invoices along with conditional lien releases in the case of direct payments to be made to third parties) is attached with respect to the costs for which payment is requested.

5. There has been compliance with applicable provisions of the South OPA (as defined in the Agreement) relating to prevailing wages or otherwise for the work to construct the Acquisition Facilities or Components thereof for which payment is requested.

6. The Acquisition Facilities or Components thereof for which payment is requested were constructed in accordance with all applicable City Regulations (as defined in the Agreement), and in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Developer is in compliance with the terms and provisions of the Agreement and no portion of the amount being requested to be paid was previously paid.

8. The Acquisition Price for each Acquisition Facility or Component (a detailed calculation of which is shown in an Attachment 2 hereto for each such Acquisition Facility or Component), has been calculated in conformance with the terms of Section 4.6 of the Acquisition Agreement.

9. Neither the Developer nor any Affiliate (as defined in the Agreement) is in default in the payment of ad valorem real property taxes, possessory interest taxes or special taxes or special assessments levied in the South Plan Area (as defined in the Agreement), except as follows: _____.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

DEVELOPER:

CATELLUS DEVELOPMENT
CORPORATION

By: _____
Authorized Representative
of the Developer

Date: _____

Payment Request Approved for
Submission to Fiscal Agent

By: _____
Director of Public Works of
of the City, or designee

Date: _____

ATTACHMENT 1
TO EXHIBIT A

[list here all Acquisition Facilities or Components thereof for which payment is requested, and attach support documentation]

[To be completed prior to submission of related Payment Request]

ATTACHMENT 2
TO EXHIBIT A

CALCULATION OF ACQUISITION PRICE

[Use a separate sheet for each Acquisition Facility or Component
for which payment is being requested]

1. Description (by reference to Exhibit B or B-1 to the Acquisition Agreement) of the Acquisition Facility or Component _____
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): \$ _____
3. Budgeted Cost: \$ _____
4. Permitted Additions to Budgeted Cost (to the extent, and only to the extent, that Actual Cost exceeds Budgeted Cost):
 - A. Increase, if any, between amount of contract awarded pursuant to Section 3.3(b) of the Acquisition Agreement and the Budgeted Cost \$ _____
 - B. Costs of change orders approved by the Director of Public Works pursuant to Section 3.6 of the Acquisition Agreement \$ _____
 - C. Costs of change orders permitted under Section 3.6 of the Acquisition Agreement for which prior approval of the Director of Public Works was not required \$ _____
 - D. Proposed additions, not otherwise included in A., B. or C. above, that were necessary or appropriate (subject to review by Director of Public Works as to necessity and appropriateness, and Agency as to expectation of sufficient Acquisition Funds for remaining Infrastructure costs, pursuant to last sentence of Section 4.6 A.(i) of the Acquisition Agreement) \$ _____
5. Subtractions from Purchase Price:
 - A. Holdback for lien releases (see Section 4.6 C.(iii) of the Acquisition Agreement) \$ _____
 - B. Retention (see Section 4.6 D. of the Acquisition Agreement) \$ _____
6. Total disbursement requested (Amount listed in 3, plus amounts, if any, listed in 4 (total of amounts in 3 and 4 not to exceed amount listed in 2), less amounts, if any, listed in 5) \$ _____

ACQUISITION AGREEMENT

EXHIBIT B

DESCRIPTION OF ACQUISITION FACILITIES AND APPLICABLE BUDGETED COSTS Planned Projects Initiated Calendar Year 2001

Among other reimbursements, the Communities Facilities District (CFD) will acquire and reimburse Catellus for the Actual Costs associated with the design, approval, construction, development and acquisition of subsurface utilities components, surface improvements components and open space improvements associated with the development of the Mission Bay South Plan Area.

At the present time, Catellus' calendar year 2001 acquisition facilities to be under construction consists of the following projects, denoted by the Mission Bay Master Plan Block Number, when associated with a final map, or improvement plan title when not associated with a final map:

Mission Bay Plan Block 26-28 Phase 1

Budgeted Cost: \$9,893,316

Subsurface utilities components and surface improvements components shall be developed in accordance with Improvement Plans as approved by and amended from time to time by the City and County of San Francisco Director of Public Works, and as accepted, in whole or in part, from time to time, by the City and County of San Francisco Board of Supervisors.

- Realign Terry Francois Boulevard with subsurface utilities components and surface improvements components.
- Construct South Commons Street with subsurface utilities components and surface improvements components.
- Construct South Street with subsurface utilities components and surface improvements components.

Mission Bay Plan Block 41-43 Phase 1, 16th and Owens (UCSF Blocks 18, 21 and 24 Infrastructure)

Budgeted Cost: \$13,851,105

Subsurface utilities components and surface improvements components shall be developed in accordance with Improvement Plans as approved by and amended from time to time by the City and County of San Francisco Director of Public Works, and as accepted, in whole or in part, from time to time, by the City and County of San Francisco Board of Supervisors.

- Realign and/or reconstruct portions of Sixteenth Street and construct subsurface utilities components and surface improvements components.
- Realign and reconstruct portions of Owens Street with subsurface utilities components and surface improvements components.
- Construct entry to Fourth Street with subsurface utilities components and surface improvements components.

Owens St at Park P1

Budgeted Cost: \$3,764,075

Subsurface utilities components and surface improvements components shall be developed in accordance with Improvement Plans as approved by and amended from time to time by the City and County of San Francisco Director of Public Works, and as accepted, in whole or in part, from time to time, by the City and County of San Francisco Board of Supervisors.

- Construct subsurface utilities components and surface improvements components on Owens Street.
- Construct subsurface utilities components and surface improvements components on Fourth Street.

Park P1

Budgeted Cost: \$4,758,278

Subsurface utilities components and surface improvements components shall be developed in accordance with Improvement Plans as approved by and amended from time to time by the San Francisco Redevelopment Agency, and as accepted, in whole or in part, from time to time, by the City and County of San Francisco Board of Supervisors.

- Active and passive recreation areas consisting of subsurface utilities components and surface improvements components.
- Park pavilion building.

Pump Station 1

Budgeted Cost: \$3,712,500

Subsurface utilities components and surface improvements components shall be developed in accordance with Improvement Plans as approved by and amended from time to time by the City and County of San Francisco Director of Public Works, and as accepted, in whole or in part, from time to time, by the City and County of San Francisco Board of Supervisors.

- Construct storm water pump station including subsurface structure, piping, mechanical equipment, electrical components and controls.
- Construction surface improvements including control housing and outfall structures.

Third Street Corridor – Mission Creek to South Common

Budgeted Cost: \$15,517,382

Subsurface utilities components and surface improvements components shall be developed in accordance with Improvement Plans as approved by and amended from time to time by the City and County of San Francisco Director of Public Works, and as accepted, in whole or in part, from time to time, by the City and County of San Francisco Board of Supervisors.

- Construct subsurface utilities components and surface improvements components on Fourth Street from Mission Creek to Owens Street.
- Construct subsurface utilities components and surface improvements components on Owens Street.
- Construct subsurface utilities components and surface improvements components on Third Street from Owens Street to South Commons.

All Acquisition Facilities identified are or will be included in a set of Bonded Improvement Plans approved by the relevant San Francisco City Departments and the San Francisco Board of Supervisors. Schedules and standards for the Facilities are governed by the Improvement Plans and associated Improvement Agreements.

ACQUISITION AGREEMENT

EXHIBIT B-1

DISCRETE COMPONENTS OF ACQUISITION FACILITIES

Block 26-28 Phase 1 Acquisition Facility		Hard Costs		Soft Costs	
CFD component by block, street or parcel as appropriate	QTY	Units	Total (Hard Costs)	Total (Soft Costs)	Total Amount (hard cost + soft cost)
201	Land acquisition including pre-construction demolition and utility relocations and other costs				
SUBTOTAL ITEM 201			62,397	31,199	93,596
210	Street furnishings including trash receptacles and bike racks				
SUBTOTAL ITEM 210			35,457	17,729	53,186
211	Storm drain including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, inlets, cleanouts, and service stubs				
SUBTOTAL ITEM 211			1,189,041	594,521	1,783,562
212	Sanitary sewer including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, vents, cleanouts, and service stubs				
SUBTOTAL ITEM 212			502,195	251,098	753,293
213	Low pressure water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, service stubs and hydrants				
SUBTOTAL ITEM 213			988,789	494,395	1,483,184
214	Reclaimed water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, service stubs and hydrants				
SUBTOTAL ITEM 214			348,108	173,054	519,162
215	Joint Trench including trenching, soil spoil off-haul and disposal, backfill, compaction, conduits, vaults, equipment, cables, various under ground costs, and miscellaneous structures. Total amount listed is subject to partial reimbursement by occupants.				
SUBTOTAL ITEM 215			1,210,165	605,063	1,815,248
216	Curbs and gutters including soil spoil off-haul and disposal, vertical curbs, construction curbs, granite curbs, curb ramps and driveway depressions				
SUBTOTAL ITEM 216			132,145	66,073	198,218
217	Street sections including grading, soil spoil off-haul and disposal, base-rock, concrete base, conform-grinding, concrete barrier, and asphalt pavement, permanent, primary and final lifts				
SUBTOTAL ITEM 217			752,635	376,318	1,128,953
218	Signage and striping including all posts, foundations, sign attachments, striping, pavement markings, markers, delineators, and barriers				
SUBTOTAL ITEM 218			154,632	77,316	231,948
219	Sidewalks including final grading, soil spoil off-haul and disposal, curb ramps, driveways, concrete, temporary asphalt sidewalk, and specialty treatments (pavers, granite) (exclusive of Blocks 26a and 28)				
SUBTOTAL ITEM 219			25,925	12,962	38,887
220	Landscaping including structural backfill (tree vault), soil spoil off-haul and disposal, associated irrigation, trees, shrubs and plants (exclusive of Blocks 26a and 28)				
SUBTOTAL ITEM 220			26,536	13,268	39,804
221	Street lighting, including foundations, soil spoil off-haul and disposal, conduit (exclusive of joint trench), conductors (exclusive of Blocks 26a and 28)				
SUBTOTAL ITEM 221			174,344	87,172	261,515
Block 26a Frontage Surface Improvements					

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222	Sidewalks including final grading, soil spoil off-haul and disposal, curb ramps, driveways, concrete, temporary asphalt sidewalk, and specialty treatments (pavers, granite) along parcel's street frontage	_____	_____	-	-	-
SUBTOTAL ITEM 222		_____	_____	116,661	58,330	174,991
223	Landscaping including structural backfill (tree vault), soil spoil off-haul and disposal, associated irrigation, trees, shrubs and plants	_____	_____	-	-	-
SUBTOTAL ITEM 223		_____	_____	119,412	59,706	179,118
224	Street lighting, including foundations, soil spoil off-haul and disposal, conduit (exclusive of joint trench), conductors	_____	_____	-	-	-
SUBTOTAL ITEM 224		_____	_____	261,515	130,758	392,273
Block 28 Frontage Surface Improvements						
225	Sidewalks including final grading, soil spoil off-haul and disposal, curb ramps, driveways, concrete, temporary asphalt sidewalk, and specialty treatments (pavers, granite) along parcel's street frontage	_____	_____	-	-	-
SUBTOTAL ITEM 225		_____	_____	116,661	58,330	174,991
226	Landscaping including structural backfill (tree vault), soil spoil off-haul and disposal, associated irrigation, trees, shrubs and plants	_____	_____	-	-	-
SUBTOTAL ITEM 226		_____	_____	119,412	59,706	179,118
227	Street lighting, including foundations, soil spoil off-haul and disposal, conduit (exclusive of joint trench), conductors	_____	_____	-	-	-
SUBTOTAL ITEM 227		_____	_____	261,515	130,758	392,273
Totals				6,585,544	3,297,772	9,883,316

BLOCK 41-43 Phase 1 and 16th and Owens (UCSF Blocks 18, 21 and 24) ACQUISITION FACILITY					Total (Hard Costs)	Total (Soft Costs)	Total Amount (hard cost + soft cost)
CFD component by block, street or parcel as appropriate							
Bid Item	component	Description	QTY.	Units			
Improvements defined on plans titled Block 41, 42 & 43 Public Improvements							
301		Land acquisition including pre-construction demolition and utility relocations and other costs					
SUBTOTAL ITEM 301							
310		Street furnishings including trash receptacles and bike racks					
SUBTOTAL ITEM 310					7,400	3,700	11,100
311		Storm drain including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, joints, inlets, cleanouts, and service stubs - including Storm Drain Pump Station, Phase I overlaid flow channel and storm drain detention basin					
SUBTOTAL ITEM 311					1,599,100	799,550	2,398,650
312		Sanitary sewer including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, joints, vents, cleanouts, and service stubs - including Pump Station					
SUBTOTAL ITEM 312					524,050	262,025	786,075
313		Auxiliary water supply system (AWSS) high pressure water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, service stubs and hydrant installation					
SUBTOTAL ITEM 313					179,000	89,500	268,500
314		Low pressure water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, service stubs and hydrant installation					
SUBTOTAL ITEM 314					458,500	229,250	687,750
315		Reclaimed water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, and service stubs					
SUBTOTAL ITEM 315					254,000	127,000	381,000
316		Natural gas line, including mainline extension, trenching, soil spoil offhaul and disposal, laterals and service stubs, backfill, compaction, and other associated work					
SUBTOTAL ITEM 316					20,000	10,000	30,000
317		Joint Trench including trenching, soil spoil off-haul and disposal, backfill, compaction, conduits, vaults, equipment, cables, various under ground costs, and miscellaneous structures. Total amount listed is subject to partial reimbursement by occupants					
SUBTOTAL ITEM 317					2,580,000	1,290,000	3,870,000
318		Curbs and gutters including soil offhaul and disposal, ac curbs, curb ramps, and driveway depressions					
SUBTOTAL ITEM 318					81,500	40,750	122,250
319		Street sections including grading, soil offhaul and disposal, base-rock, concrete base, conform-grinding, concrete barrier, and asphalt pavement, permanent and primary and final lifts					
SUBTOTAL ITEM 319					257,300	128,650	385,950
320		Signage and striping including all posts, foundations, sign attachments, striping, pavement markings, markers, delineators, and barriers					
SUBTOTAL ITEM 320					18,000	9,000	27,000
321		Sidewalks including final grading, soil offhaul and disposal, curb ramps, concrete sidewalk, and specialty treatments					
SUBTOTAL ITEM 321					130,000	65,000	195,000
322		Landscaping including structural backfill (tree vault), soil offhaul and disposal, associated irrigation, trees, shrubs and plants					

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SUBTOTAL ITEM 322		160,000	80,000	240,000
323	Street lighting, including foundations, soil offhaul and disposal, conduit (exclusive of joint trench), conductors			
SUBTOTAL ITEM 323		340,000	170,000	510,000
324	Traffic signals, including poles, foundations, soil offhaul and disposal, conduit (exclusive of joint trench), conductors, signal heads and controllers, street name signs			
SUBTOTAL ITEM 324		250,000	125,000	375,000
Improvements defined on plans titled Owens St. and 16th St. Improvements				
325	Street furnishings including trash receptacles and bike racks			
SUBTOTAL ITEM 325		10,000	5,000	15,000
326	Storm drain including trenching, pipe, backfill, soil offhaul and disposal, compaction, structures, manholes, joints, inlets, cleanouts, and service stubs			
SUBTOTAL ITEM 326		373,720	186,860	560,580
327	Auxiliary water supply system (AWSS) high pressure water including trenching, soil offhaul and disposal, pipe, backfill, compaction, valves, corrosion protection, service stubs and hydrant installation			
SUBTOTAL ITEM 327		92,000	46,000	138,000
328	Reclaimed water including trenching, soil offhaul and disposal, pipe, backfill, compaction, valves, corrosion protection, and service stubs			
SUBTOTAL ITEM 328		80,000	40,000	120,000
329	Joint Trench including trenching, soil spoil off-haul and disposal, backfill, compaction, conduits, vaults, equipment, cables, various under ground costs, and miscellaneous structures. Total amount listed is subject to partial reimbursement by occupants.			
SUBTOTAL ITEM 329		1,000,000	500,000	1,500,000
330	Curbs and gutters including soil offhaul and disposal, ac curbs, curb ramps, and driveway depressions			
SUBTOTAL ITEM 330		22,000	11,000	33,000
331	Street sections including grading, soil offhaul and disposal, base-rock, concrete base, conform-grinding, concrete barrier, and asphalt pavement, permanent and primary and final lifts			
SUBTOTAL ITEM 331		200,500	100,250	300,750
332	Signage and striping including all posts, foundations, sign attachments, striping, pavement markings, markers, delineators, and barriers			
SUBTOTAL ITEM 332		7,000	3,500	10,500
333	Sidewalks including final grading, soil offhaul and disposal, curb ramps, concrete sidewalk, and specialty treatments			
SUBTOTAL ITEM 333		145,000	72,500	217,500
334	Landscaping including structural backfill (tree vault), soil offhaul and disposal, associated irrigation, trees, shrubs and plants			
SUBTOTAL ITEM 334		110,000	55,000	165,000
335	Street lighting, including foundations, soil offhaul and disposal, conduit (exclusive of joint trench), conductors			
SUBTOTAL ITEM 335		125,000	62,500	187,500
336	Traffic signals, including poles and foundations, soil offhaul and disposal, conduit (exclusive of joint trench), conductors, signal heads and controllers, street name signs			
SUBTOTAL ITEM 336		210,000	105,000	315,000
Totals		9,234,070	4,617,035	13,851,105

Community Facilities District No. 6 (South of Channel)

PARK P1 ACQUISITION FACILITY		Total (Hard Costs)	Total (Soft Costs)	Total Amount (hard cost + soft cost)
CFD component by block, street or parcel as appropriate				
General Components				
810	Land acquisition including pre-construction demolition and utility relocations and other costs			
	DIVISION SUBTOTAL	193,882	96,941	290,823
811	Furnishings including play structures, recreation equipment, benches, fountains, trash receptacles, bike racks, signage and other miscellaneous equipment			
	DIVISION SUBTOTAL	144,193	72,097	216,290
812	Underground wet and dry utilities, including sewer, storm drain, low pressure water, reclaimed water, high pressure water (AWSS), natural gas, electrical and telecommunications services, trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, joints, inlets, cleanouts, service stubs, valves, corrosion protection, hydrants, vaults, conduits, equipment.			
	DIVISION SUBTOTAL	6,165	3,083	9,248
813	Hardscape including pedestrian and recreational surfaces, such as sidewalks, plazas, playgrounds, bikeways, seating areas, curbs, gutters, retaining walls, foundations, piles, grading, soil spoil off-haul and disposal, base-rock, standard and upgraded concrete and asphalt pavement, decomposed granite and other surfaces.			
	DIVISION SUBTOTAL	739,195	369,598	1,108,793
814	Lighting and other electrical, including foundations, soil spoil off-haul and disposal, conduit (exclusive of joint trench), conductors			
	DIVISION SUBTOTAL	141,247	70,624	211,871
815	Landscaping including structural backfill (tree vault), soil spoil off-haul and disposal, associated irrigation, trees, shrubs and ground covers, soil, soil amendments, rough and final grading, clearing, grubbing, wetland/channel bank restoration.			
	DIVISION SUBTOTAL	1,067,540	533,770	1,601,310
816	Pavilions and other structures including piles, wood piers, including site preparation, soil spoil offhaul and disposal, foundations, structure, finishes, mechanical, electrical systems, specialty equipment			
	DIVISION SUBTOTAL	879,983	439,982	1,319,945
Totals		3,172,185	1,586,093	4,758,278

		Hard Costs			
Pump Station #1 Acquisition Facility		(i)			
CFD component by block, street or parcel as appropriate		construction	Total (Hard Costs)	Total (Soft Costs)	TOTAL Amount (hard cost + soft cost)
General Components					
1110	Land acquisition including pre-construction demolition and utility relocations and other costs	20,000	20,000	10,000	30,000
DIVISION SUBTOTAL					
1111	Pump station including, but not limited to: site preparation, excavation, soil spoil haul off and disposal, structural, architectural, mechanical and electrical systems, outfall and other related components.	2,455,000	2,455,000	1,227,500	3,682,500
Totals		2,475,000	2,475,000	1,237,500	3,712,500

Community Facilities District No. 6 (South of Channel)

OWENS ST. AT PARK P1 ACQUISITION FACILITY		Total (Hard Costs)	Total (Soft Costs)	Total Amount (hard cost + soft cost)
CFD component by block, street or parcel as appropriate		Total (Hard Costs)	Total (Soft Costs)	Total Amount (hard cost + soft cost)
General Components				
901	Land acquisition including pre-construction demolition and utility relocations and other costs	-	-	-
	DIVISION SUBTOTAL	12,635	6,318	18,953
910	Street furnishings including trash receptacles and bike racks	-	-	-
	DIVISION SUBTOTAL	-	-	-
911	Storm drain including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, joints, inlets, cleanouts, and service stubs	-	-	-
	DIVISION SUBTOTAL	373,438	186,719	560,157
912	Sanitary sewer including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, joints, vents, cleanouts, and service stubs	-	-	-
	DIVISION SUBTOTAL	304,862	152,431	457,293
915	Reclaimed water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, and service stubs	-	-	-
	DIVISION SUBTOTAL	200,676	100,338	301,014
916	Natural gas line, including mainline extensions, laterals and service stubs, backfill, trenching, soil spoil off-haul and disposal, compaction and other associated work	-	-	-
	DIVISION SUBTOTAL	59,241	29,620	88,861
917	Joint Trench including trenching, soil spoil off-haul and disposal, backfill, compaction, conduits, vaults, equipment, cables, various under ground costs, and miscellaneous structures. Total amount listed is subject to partial reimbursement by occupants.	-	-	-
	DIVISION SUBTOTAL	533,165	266,583	799,748
918	Curbs and gutters including soil spoil off-haul and disposal, granite curbs, curb ramps, and driveway depressions	-	-	-
	DIVISION SUBTOTAL	9,485	4,743	14,228
919	Street sections including grading, soil spoil off-haul and disposal, base-rock, concrete base, conform-grinding, and asphalt pavement, primary and final lifts	-	-	-
	DIVISION SUBTOTAL	287,304	143,652	430,956
920	Signage and striping including all posts, foundations, sign attachments, striping, pavement markings, markers, delineators, and barriers	-	-	-
	DIVISION SUBTOTAL	68,754	34,377	103,131
921	Sidewalks including final grading, soil spoil off-haul and disposal, curb ramps, concrete sidewalk, and specialty treatments	-	-	-
	DIVISION SUBTOTAL	91,598	45,799	137,397
922	Landscaping including structural backfill (tree vault), soil spoil off-haul and disposal, associated irrigation, trees, shrubs and plants	-	-	-
	DIVISION SUBTOTAL	-	-	-
923	Street lighting, including foundations, soil spoil off-haul and disposal, conduit (exclusive of joint trench), conductors; and installation of Owner furnished anchor bolts, bases, poles, arms, and luminaires	-	-	-
	DIVISION SUBTOTAL	248,697	124,349	373,046
924	Traffic signals, including contractor furnished poles and foundations, soil spoil off-haul and disposal, conduit (exclusive of joint trench), conductors, signal heads and controllers, street name signs; and installation of Owner furnished anchor bolts, bases, poles, arms, and luminaires	-	-	-
	DIVISION SUBTOTAL	150,000	75,000	225,000
	PENDING MUNI REIMBURSEMENT - INFRA. PLAN ITEM 924 ONLY	(75,000)	(13,500)	(88,500)
Totals		2,493,383	1,270,692	3,764,075

Community Facilities District No. 6 (South of Channel)

Third Street from Owens Street to South Common, Owens Street from Fourth to Third Streets					Total (Hard Costs)	Total (Soft Costs)	Total Amount (hard cost + soft cost)
CFD component by block, street or parcel as appropriate					Total (Hard Costs)	Total (Soft Costs)	Total Amount (hard cost + soft cost)
Bid Item	component	Description	QTY.	Units			
1001		Land acquisition including pre-construction demolition and utility relocations and other costs					
SUBTOTAL ITEM 1001					169,164	84,582	253,746
1010		Street furnishings including trash receptacles and bike racks					
SUBTOTAL ITEM 1010					99,820	49,910	149,730
1011		Storm drain including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, joints, inlets, cleanouts, and service stubs					
SUBTOTAL ITEM 1011					725,625	362,813	1,088,438
1012		Sanitary sewer including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, structures, manholes, joints, vents, cleanouts, and service stubs					
	0.01	12" SS		l.f.			
SUBTOTAL ITEM 1012					507,938	253,969	761,906
1013		Auxiliary water supply system (AWSS) high pressure water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, service stubs and hydrant installation					
SUBTOTAL ITEM 1013					507,938	253,969	761,906
1014		Low pressure water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, service stubs and hydrant installation					
SUBTOTAL ITEM 1014					435,375	217,688	653,063
1015		Reclaimed water including trenching, soil spoil off-haul and disposal, pipe, backfill, compaction, valves, corrosion protection, and service stubs					
SUBTOTAL ITEM 1015					362,813	181,406	544,219
1016		Natural gas line, including mainline extension, trenching, soil spoil offhaul and disposal, laterals and service stubs, backfill, compaction, and other associated work					
SUBTOTAL ITEM 1016					217,688	108,844	326,531
1017		Joint Trench including trenching, soil spoil off-haul and disposal, backfill, compaction, conduits, vaults, equipment, cables, various under ground costs, and miscellaneous structures. Total amount listed is subject to partial reimbursement by occupants					
SUBTOTAL ITEM 1017					2,031,750	1,015,875	3,047,625
1018		Curbs and gutters including soil offhaul and disposal, curb ramps, and driveway depressions					
SUBTOTAL ITEM 1018					335,363	167,682	503,045
1019		Street sections including grading, soil offhaul and disposal, base-rock, concrete base, conform-grinding, concrete barrier, and asphalt pavement, permanent and final lifts					
SUBTOTAL ITEM 1019					1,283,092	641,546	1,924,638
1020		Signage and striping including all posts, foundations, sign attachments, striping, pavement markings, markers, delineators, and barriers					
SUBTOTAL ITEM 1020					198,765	99,383	298,148
1021		Sidewalks including final grading, soil offhaul and disposal, curb ramps, concrete sidewalk, and specialty treatments					
SUBTOTAL ITEM 1021					684,830	342,465	1,027,295
1022		Landscaping including structural backfill (tree vault), soil offhaul and disposal, associated irrigation, trees, shrubs and plants					
SUBTOTAL ITEM 1022					1,679,902	839,951	2,519,853
1023		Street lighting, including foundations, soil offhaul and disposal, conduit (exclusive of joint trench), conductors					
SUBTOTAL ITEM 1023					722,760	361,380	1,084,140
1024		Traffic signals, including poles, foundations, soil offhaul and disposal, conduit (exclusive of joint trench), conductors, signal heads and controllers, street name signs					
SUBTOTAL ITEM 1024					800,000	300,000	900,000
Pending Muni Reimbursement for Item 1024: 50% of 1/2 of the Traffic Signals.					(150,000)	(177,000)	(327,000)
					10,412,921	5,104,461	15,517,382

ACQUISITION AGREEMENT

EXHIBIT C

SCHEDULE OF REIMBURSEMENTS

Amounts shown to be drawn from available Public Financing proceeds are entirely dependent on the availability of the proceeds of a Public Financing for such purpose, if and when any such Public Financing is issued.

Source of Obligation	From First Public Financing	Purpose	From Later Public Financings	Purpose
Formation Costs	\$1,992,832(1)	District Formation		
"Global" Costs	\$1,140,617(2)	Early engineering studies benefiting large areas of project		
Sewer Plant Exaction	\$5,000,000	Two separate payments of \$2.5 million		
Infrastructure Lands	\$2,643,000	Reimbursement for land purchased for public Infra., dedicated to City		
JPB Costs	\$222,000	JPB Rail Reimbursement		
Cost of Issuance	\$20,000	Initial payment for SOC appraisal		
Cost of Issuance	\$35,000	Developer Counsel O'Melveny & Meyers		
Cost of Issuance	\$20,000	Special Tax Consultant		

- (1) Consisting of the following: Antonia Bava, Landscape Architect, \$56,462; Caldwell Flores Winters, Special Tax Consultant, \$9,548; Coblenz, Patch, Duffy & Bass LLP, legal expenses, \$22,620; Davis Langdon Adamson, Infra Cost Planning & Mgmt., \$37,480; David Taussig & Associates, Special Tax Consultant, \$45,255; JF Engineering & Co., infrastructure estimates, \$47,028; KCA Engineers, Infra Est/Phasing/Sewer, \$476,474; Lee & Ro, Inc., water quality consultant, \$73,923; Olin Partnership, Landscape Architect, \$134,540; O'Melveny & Myers, Developer's Bond Counsel, \$82,504; Peninsula Corridor, Rail Estimates, \$79,932; SF Redevelopment Agency, RDA Staff/City Attorney Fees, \$66,147; Santina & Thompson, Engineers/Rail Estimates, \$621,304; Treadwell Rolio, Environmental & Geotechnical, \$30,326; and Wilbur Smith Associates, Traffic Engineers, \$209,289.
- (2) Consists of Master Streetscape Plans, \$252,969; Master BCDC Permit, \$178,845; Hardy Cross Study, \$19,362; Rail Infrastructure Plan, \$8,965; JPB Passenger Rail, \$65,377; CPUC Rail Crossing, \$371,756; Grading Plan, \$79,953; and Storm/Sewer, \$163,388.

ACQUISITION AGREEMENT

EXHIBIT D

FORM OF NOTICE OF FAILURE TO NOTIFY

RESPONSE REQUIRED TO AVOID DEEMED COMPLETION

_____, ____ [insert date of Notice]

Department of Public Works
City and County of San Francisco
1680 Mission Street
San Francisco, California 94103
Attn: Deputy Bureau Chief of Construction Management

Re: Payment Request No. ____ - Mission Bay South Acquisition Agreement, dated as of June 1, 2001, by and between the Redevelopment Agency of the City and County of San Francisco and Catellus Development Corporation

Dear Director of Public Works:

This notice is being delivered pursuant to Section 4.4 of the above-referenced Agreement (the "Agreement"). On _____, ____ the undersigned (the "Developer") submitted to you Payment Request No. ____ (the "Payment Request"). The purpose of this notice is to inform you, in accordance with Section 4.4 of the Agreement, that the Developer has not received notice from you, within ten (10) business days after submittal of the Payment Request, that the Payment Request is complete or what, if any, additional documentation is needed to complete the Payment Request.

Section 4.4 of the Agreement provides that a failure by you to notify the Developer that the Payment Request is incomplete on or before ten (10) business days after your receipt of this notice shall be deemed to mean that the Payment Request is complete.

If you have any questions regarding this notice or the Payment Request, please contact

CATELLUS DEVELOPMENT
CORPORATION, a Delaware corporation

By: _____

Title: _____

By: _____

Title: _____

cc: Mayor's Office of Economic Development
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place, Suite 436
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Reference: Mission Bay South

Office of the City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102
Attn: Jesse C. Smith
Reference: Mission Bay South

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Reference: Mission Bay South

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Mission Bay Project Manager
Reference: Mission Bay South

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: General Counsel
Reference: Mission Bay South